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Vol. 57 No. 168

# federal register

Friday
August 28, 1992

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# federal register

Friday
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**Briefing on How To Use the Federal Register**
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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## THE FEDERAL REGISTER

## WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### ATLANTA, GA

**WHEN:** September 17, at 9:00 a.m.
**WHERE:** Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
**RESERVATIONS:** [404–639–3528 (Atlanta area)]
1–800–347–1997 (outside Atlanta area)

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# Presidential Documents

Title 3—

The President

Proclamation 6466 of August 26, 1992

## National D.A.R.E. Day, 1992

By the President of the United States of America

A Proclamation

Millions of young Americans who have wisely decided to stay off drugs, out of gangs, and in school are living testimony to the effectiveness of Drug Abuse Resistance Education (Project D.A.R.E.). Together with their parents, teachers, and teams of dedicated law enforcement personnel, these children are taking a firm stand against illicit drug use while also demonstrating their determination to make the most of their God-given talent and potential. At the same time, by setting examples of personal responsibility and respect for authority, graduates of Project D.A.R.E. are making an important contribution to the success of our National Drug Control Strategy.

Led by experienced law enforcement officers, Project D.A.R.E. equips students with basic facts about drugs and alcohol and about the devastating effects that these substances can have on the mind and body. In order that children might avoid the dangers of trying drugs and alcohol, D.A.R.E. also equips participants with practical decision-making skills, helping them to recognize that actions have consequences and that personal accountability and self-control are signs of strong moral character and maturity.

By befriending students and by helping them to grow in self-confidence, the law enforcement officers who conduct the D.A.R.E. program build strong bonds of mutual understanding and trust between themselves and young people in their communities. Yet the success of Project D.A.R.E. also depends on the cooperation of parents, who are encouraged to talk with, and to listen to, their children—and to set positive examples for them. This partnership among parents, children, law enforcement officers, and educators continues to change lives for the better in all 50 States and at Department of Defense Dependent Schools around the world.

Through innovative public-private partnerships such as Project D.A.R.E., our Nation has made significant progress in reducing the demand for drugs—a priority of our National Drug Control Strategy. Since we launched this strategy in 1989, overall drug use in the United States has dropped by more than 10 percent. Statistics cited by the Partnership for a Drug-Free America show a decline of 48 to 56 percent in drug use by juveniles between the ages of 13 and 17, and three separate studies indicate that adolescent use of cocaine dropped even more dramatically—by 63 percent—between 1988 and 1991. These trends are encouraging, and they offer reason to believe that our National Drug Control Strategy will continue to bear fruit.

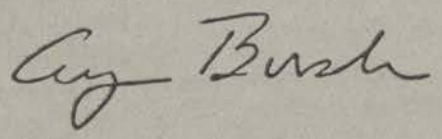
Because Project D.A.R.E. brings drug abuse prevention to the classroom, it not only meets a key objective of our National Drug Control Strategy but also complements America 2000, our national strategy to achieve excellence in our schools. One of the six National Education Goals that form the basis of America 2000 calls for every school in the United States to be free of drugs and violence. If we are to achieve that goal, all Americans must work together to create safe, drug-free communities where learning can happen. Reaching an estimated 25 million young Americans every year, Project D.A.R.E. provides an outstanding example of cooperation among parents, educators, law enforcement personnel, business owners, and civic and religious leaders. On this

occasion, we celebrate their efforts and congratulate each of the young Americans who have chosen to say "No!" to drugs and "Yes!" to opportunity through education.

The Congress, by Senate Joint Resolution 295, has designated September 10, 1992, as "National D.A.R.E. Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 10, 1992, as National D.A.R.E. Day. I encourage all Americans to observe this day with appropriate programs and activities in celebration of Drug Abuse Resistance Education and in honor of the many dedicated professionals and volunteers who have made it possible. I also invite Americans to observe this occasion by joining in community-based partnerships in support of America 2000 and our National Drug Control Strategy.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 905, 911, 915, 921, 922, 923, 924, 947, 958, 982, and 985

[Docket No. FV-92-086]

### Expenses and Assessment Rates for Specified Marketing Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 905, 911, 915, 921, 922, 923, 924, 947, 958, 982, and 985 for the 1992–93 fiscal period. Authorization of these budgets enables the Citrus Administrative Committee, the Florida Lime Administrative Committee, the Avocado Administrative Committee, the Washington Fresh Peach Marketing Committee, the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, the Washington-Oregon Fresh Prune Marketing Committee, the Oregon-California Potato Committee, the Idaho-Eastern Oregon Onion Committee, the Filbert/Hazelnut Marketing Board, and the Spearmint Oil Administrative Committee (Committees and Board) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

**EFFECTIVE DATES:** April 1, 1992, through March 31, 1993 (§ 911.231, § 915.231, § 921.231, § 922.231, § 923.232, and § 924.232); June 1, 1992, through May 31, 1993 (§ 985.312), July 1, 1992, through June 30, 1993 (§ 947.243, § 958.236, and § 982.337); and August 1, 1992, through July 31, 1993 (§ 905.231).

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

**SUPPLEMENTARY INFORMATION:** This rule is effective under Marketing Agreement and Order No. 905 (7 CFR part 905), both as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida; Marketing Agreement and Order No. 911 (7 CFR part 911), both as amended, regulating the handling of limes grown in Florida; Marketing Agreement and Order No. 915 (7 CFR part 915), both as amended, regulating the handling of avocados grown in South Florida; Marketing Agreement and Order No. 921 (7 CFR part 921) regulating the handling of fresh peaches grown in designated counties in Washington; Marketing Agreement and Order No. 922 (7 CFR part 922) regulating the handling of apricots grown in designated counties in Washington; Marketing Agreement and Order No. 923 (7 CFR part 923) regulating the handling of cherries grown in designated counties in Washington; Marketing Agreement and Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon; Marketing Agreement No. 114 and Order No. 947 (7 CFR part 947), both as amended, regulating the handling of Irish potatoes grown in Oregon-California; Marketing Agreement No. 130 and Order No. 958 (7 CFR part 958), both as amended, regulating the handling of onions grown in designated counties of Idaho and Malheur County, Oregon; Marketing Agreement and Order No. 982 (7 CFR part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington; and Marketing Order No. 985 (7 CFR part 985) regulating the handling of spearmint oil produced in the Far West. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges, grapefruit, tangerines, tangelos, limes, avocados, peaches, apricots, cherries, fresh prunes, Irish potatoes, onions, filberts/hazelnuts, and spearmint oil are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable limes, avocados, peaches, apricots, cherries, and fresh prunes handled during the 1992–93 fiscal period, which began April 1, 1992, through March 31, 1993, all assessable spearmint oil handled during the 1992–93 fiscal period, which began June 1, 1992, through May 31, 1993, all assessable Irish potatoes, all assessable onions, and all assessable filberts/hazelnuts handled during the 1992–93 fiscal period, which began July 1, 1992, through June 30, 1993, and all assessable oranges, grapefruit, tangerines, and tangelos handled during the 1992–93 fiscal period, which begins August 1, 1992, through July 31, 1993. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 citrus handlers of fresh oranges, grapefruit, tangerines, and tangelos grown in Florida under Marketing Order No. 905, and approximately 10,200 producers of these fruits. There are approximately 20 handlers of Florida limes under Marketing Order No. 911, and approximately 260 lime producers. There are approximately 40 handlers of Florida avocados under Marketing Order No. 915, and approximately 300 avocado producers. There are approximately 65 handlers of Washington peaches under Marketing Order No. 921, and approximately 890 producers. There are approximately 59 handlers of Washington apricots under Marketing Order No. 922, and approximately 190 producers. There are approximately 63 handlers of Washington cherries under Marketing Order No. 923, and approximately 1,100 producers. There are approximately 32 handlers of Washington-Oregon prunes under Marketing Order No. 924, and approximately 350 producers. There are approximately 40 handlers of Oregon-California potatoes under Marketing Order No. 947, and approximately 550 producers. There are approximately 35 handlers of Idaho-Eastern Oregon onions under Marketing Order No. 958, and approximately 450 producers. There are approximately 20 handlers of Oregon-Washington filberts/hazelnuts under Marketing Order No. 982, and approximately 1,000 producers. Also, there are approximately 9 handlers of spearmint oil produced in the Far West under Marketing Order No. 985, and approximately 253 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and handlers may be classified as small entities.

The budgets of expenses for the 1992–93 fiscal period were prepared by the Citrus Administrative Committee, the Florida Lime Administrative Committee, the Avocado Administrative Committee, the Washington Fresh Peach Marketing Committee, the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, the Washington-Oregon Fresh Prune Marketing Committee, the Oregon-California Potato Committee, the Idaho-Eastern Oregon Onion Committee, the Filbert/Hazelnut Marketing Board, and the Spearmint Oil Administrative Committee, the agencies responsible for local administration of the orders, and submitted to the Department for approval. The members of these Committees are handlers and producers of Florida citrus, Florida limes, Florida avocados, Washington peaches, Washington apricots, Washington cherries, Washington-Oregon fresh prunes, Oregon-California potatoes, Idaho-Eastern Oregon onions, Oregon-Washington filberts/hazelnuts, and Far West spearmint oil. They are familiar with the Committees' and Board's needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the Committees and Board were derived by dividing anticipated expenses by expected shipments of oranges, grapefruit, tangerines, tangelos, limes, avocados, peaches, apricots, cherries, prunes, Irish potatoes, onions, filberts/hazelnuts, and spearmint oil. Because these rates will be applied to actual shipments, they must be established at rates that will provide sufficient income to pay the Committees' and Board's expenses.

The Citrus Administrative Committee met March 5, 1992, and unanimously recommended a budget with expenses of $200,000 for the 1992–93 fiscal period, compared with budgeted expenses of $216,000 for 1991–92. The expense items in the 1992–93 budget are for administration of the marketing order, and include such major expenditure items as employee salaries, benefits, and travel; office operations expenses; and the purchase of shipping information. These administrative expense items for 1992–93 are $10,000 higher than those approved for 1991–92, reflecting inflationary pressures. However, overall expenses for 1992–93 are $16,000 lower than those approved for 1991–92, because the 1991–92 budget contained an additional budget item of $26,000 to fund Committee travel expenses relating to member attendance at the Texas-Mexico Citrus Conference in 1992.

The Committee also recommended a 1992–93 assessment rate of $0.003 per 4/5 bushel carton of fresh fruit shipped, compared with $0.0025 established for 1991–92. Assessment income for 1992–93 is expected to total $187,500, based on estimated shipments of 60,500,000 cartons of assessable fruit. Interested income for 1992–93 is estimated at $4,000, compared with $8,000 estimated for 1991–92. The estimated $8,500 deficit for 1992–93 will be drawn from the Committee's reserve fund.

The Florida Lime Administrative Committee met January 8, 1992, and unanimously recommended a 1992–93 budget of $226,310. Last season's budget was $269,000. Major expense items include employee benefits ($21,500), salaries ($50,000), travel ($14,000), research ($49,060), and marketing activities ($45,000). The Committee recommended a reduced budget for the 1992–93 fiscal year from the last fiscal year's budget based on decreases in expenditures for travel, research, and contingencies.

The Committee also unanimously recommended an assessment rate of $0.16 per bushel (55 pounds), a decrease of $0.02 from last season. Anticipated shipments of 1.4 million 55-pound bushels of limes would yield $224,000 in assessment income. This, along with $10,310 in interest income on savings would be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1991–92 fiscal period, estimated at $219,192, were within the maximum permitted by the order of three fiscal periods' expenses.

The Avocado Administrative Committee met January 8, 1992, and unanimously recommended a 1992–93 budget with expenditures of $180,000 and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados shipped under the marketing order. Budgeted expenditures for 1991–92 were $187,000, while the assessment rate was $0.16. Committee assessment income for 1992–93 is estimated at $176,000, based on shipments of 1,100,000 bushels of assessable avocados, and interest income is estimated at $7,000. The Committee plans to place the projected $3,000 surplus in its reserve fund, which is currently well within the maximum authorized under the marketing order.

Major expenditure items in the Committee's budget for the 1992–93 fiscal year, compared with those budgeted in 1991–92 (in parentheses), are $130,750 ($143,000) for program administration, $45,250 ($34,000) for

production research, and $5,000 ($10,000) for marketing research and development. The program administration expenditures include employee salaries and benefits, office operations, a financial audit, marketing order enforcement, committee travel, a contingency reserve, and miscellaneous expenses. The production research expenditures include $25,000 for water table research by Ghioto, Inc.; $2,750 for grove maintenance research; $2,500 for tree topping and thinning research; $10,000 for pollution biology research, and $5,000 for avocado variety research. The marketing expenditures include $5,000 for projects to be considered later by the Committee.

The Stone Fruit Executive Committee (SFEC) met on January 30, 1992, and unanimously recommended 1992–93 fiscal year expenditures and assessment rates for each of these marketing orders. The SFEC is made up of officers of the four stone fruit marketing Committees established under these orders. The SFEC is authorized to take this action under the by-laws of the stone fruit marketing Committees. The SFEC's recommendations are based on preseason projections of 1992 season shipments, expenses, and reserve fund levels under these orders.

The 1992–93 budgeted expenditures for these marketing orders are higher than those for 1991–92. Most of the higher expenditures reflect salary increases and the addition of a new line item, "Contingency." Contingency funds will be used for payment of accrued vacation and/or sick leave when an employee is terminated or if any of the Committees leave the joint office management. The assessment rates for the 1992 season, however, remained consistent. In addition, each stone fruit Committee has adequate reserves to fund any expenditures in excess of income for 1992–93.

The expenditures are all for administration of these orders, except for cherry market development activities. Administrative expenses include those for salaries, travel, and office operations. The stone fruit marketing Committees share office expenses, based on an agreement among the committees.

The Washington Fresh Peach Marketing Committee met on May 12, 1992, and recommended a slight decrease in the audit category for total expenditures of $23,565 and a $1.00 per ton assessment rate, $2.00 less than the rate in the proposed rule. In comparison, 1991–92 budgeted expenditures were $21,394, and the assessment rate was $3.00 per ton.

The Washington Apricot Marketing Committee met on May 12, 1992, and recommended slight revisions in the travel and audit categories for total expenditures of $8,691 and a $2.00 per ton assessment rate, $2.00 less than the rate in the proposed rule. In comparison, 1991–92 budgeted expenditures were $7,760, and the assessment rate was $4.00 per ton.

The Washington Cherry Marketing Committee met on May 5, 1992, and recommended slight revisions in the audit and market development categories for total expenditures of $114,469 and a $2.00 per ton assessment rate, $3.00 less than the rate in the proposed rule. In comparison, 1991–92 budgeted expenditures were $104,130, and the assessment rate was $5.00 per ton.

The Washington-Oregon Fresh Prune Marketing Committee met on May 20, 1992, and recommended a slight decrease in the audit category for total expenditures of $18,275 and a $2.00 per ton assessment rate, $1.00 less than the rate in the proposed rule. In comparison, 1991–92 budgeted expenditures were $18,115, and the assessment rate was $3.00 per ton.

The Oregon-California Potato Committee met March 4, 1992, and unanimously recommended a 1992–93 budget of $44,750, $500 less than the previous year. Slight increases in the inspection fees, miscellaneous, office supplies, postage, and telephone categories will be offset by a $2,000 decrease in the equipment category.

The Committee also unanimously recommended an assessment rate of $0.005 per hundredweight, $0.001 more than last season. This rate, when applied to anticipated shipments of 7,350,000 hundredweight, will yield $36,750 in assessment income. This, along with $8,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1992–93 fiscal period, estimated at $12,000, were within the maximum permitted by the order of one fiscal period's expenses.

The Idaho-Eastern Oregon Onion Committee met March 24, 1992, and unanimously recommended a 1992–93 budget of $954,312, $62,747 more than the previous year. Major increases include $1,000 for Committee expenses, $3,055 for management salary, $2,107 for office salaries, $1,000 for miscellaneous, $41,000 for promotion/advertising, and $5,000 for contingencies, plus the addition of a $10,000 compliance survey category.

The Committee also unanimously recommended an assessment rate of $0.11 per hundredweight, $0.01 less than last season. This rate, when applied to anticipated shipments of 7,600,000 hundredweight, will yield $836,000 in assessment income. This, along with $30,000 in interest income and $88,312 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1992–93 fiscal period, estimated at $800,000 to $900,000, were within the maximum permitted by the order of one fiscal period's expenses.

The Filbert/Hazelnut Marketing Board conducted a telephone vote on March 13, 1992, and unanimously recommended 1992–93 marketing order expenditures of $387,605 and an assessment rate of $14.00 per ton of assessable filberts/hazelnuts. In comparison, 1991–92 marketing year budgeted expenditures were $388,050 and the assessment rate was $14.00 per ton.

Major expenditure categories in the 1992–93 budget, compared to those budgeted for 1991–92 (in parentheses), are $73,355 ($72,350) for administration, $200,000 ($200,000) for promotion, and $98,000 ($100,000) for emergency reserve fund. The emergency reserve fund will only be used if the crop exceeds 20,000 merchantable tons and an unforeseen emergency occurs during the marketing year. In 1991–92, only $35,900 of the $100,000 emergency fund was used for promotion and marketing and computer services.

Assessment income for 1992–93 is expected to total $378,000 based on a crop estimate of 27,000 tons of assessable filberts/hazelnuts. Interest and incidental income for 1992–93 is estimated at $7,000. Operating reserve funds at the beginning of the 1992–93 fiscal period, estimated at $205,539, were well within the maximum permitted by the order of one fiscal period's expenses.

The Spearmint Oil Administrative Committee met on February 13, 1992, and unanimously recommended 1992–93 marketing order expenditures of $183,972 and an assessment rate of $0.08 per pound of spearmint oil. Assessment income for the 1992–93 marketing year is estimated at $166,000 based on shipments of 2,075,000 pounds of spearmint oil. Additionally, interest and incidental income for the 1992–93 marketing year is estimated at $10,000. In comparison, the 1991–92 marketing year budgeted expenditures were $199,000 and the assessment rate was $0.08 per pound of spearmint oil.

Major expenditure categories in the 1992–93 budget are $72,000 for program administration, $89,972 for salaries, and

$22,000 for Committee travel and compensation. Comparable budgeted expenditures for the 1991–92 marketing year were $86,100, $90,600, and $22,000, respectively.

The Committee may expend operational reserve funds of $7,972 to meet budgeted expenses and additional reserve funds may be used to meet any deficit in assessment income. Also, any unexpended funds may be carried to the next marketing year as a reserve.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Proposed rules were published in the **Federal Register** on June 9, 1992, for 7 CFR part 905 (57 FR 24384); 7 CFR part 911 (57 FR 24385); 7 CFR part 915 (57 FR 24386); 7 CFR parts 921, 922, 923, and 924 (57 FR 24388), 7 CFR part 958 (57 FR 24390); and 7 CFR part 985 (57 FR 24391); and on June 10, 1992, for 7 CFR part 947 (57 FR 24562) and 7 CFR part 982 (57 FR 24563). Those documents contained proposals to add § 905.231, § 911.231, § 915.231, § 921.231, § 922.231, § 923.232, § 924.232, § 947.243, § 958.236, § 982.337, and § 958.312, to authorize expenses and establish assessment rates for the Committees and Board. Those rules provided that interested persons could file comments through June 19, 1992, for 7 CFR parts 905, 911, 915, 921, 922, 923, 924, 958, and 985, and through June 22, 1992, for 7 CFR parts 947 and 982. Comments were received from the Washington Fresh Peach, Washington Apricot, Washington Cherry, and Washington-Oregon Fresh Prune Marketing Committees forwarding revised expenses and assessment rates for each Committee. These changes have been incorporated in this final rule.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committees and Board need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the Florida Lime Administrative Committee, the Avocado Administrative Committee, the Washington Fresh Peach Marketing Committee, the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, and the Washingtion-Oregon Fresh Prune Marketing Committee began on April 1, the 1992–93 fiscal period for the Spearmint Oil Administrative Committee began on June 1, the 1992–93 fiscal period for the Oregon-California Potato Committee, the Idaho-Eastern Oregon Onion Committee, and the Filbert/Hazelnut Marketing Board began on July 1, and the 1992–93 fiscal period for the Citrus Administrative Committee begins on August 1. The marketing orders require that the rates of assessment for the fiscal period apply to all assessable oranges, grapefruit, tangerines, tangelos, limes, avocados, peaches, apricots, cherries, fresh prunes, Irish potatoes, onions, filberts/hazelnuts, and spearmint oil handled during the fiscal period. In addition, handlers are aware of these actions which were recommended by the Committees and Board at public meetings.

**List of Subjects**

*7 CFR Part 905*

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

*7 CFR Part 911*

Limes, Marketing agreements, Reporting and recordkeeping requirements.

*7 CFR Part 915*

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

*7 CFR Part 921*

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

*7 CFR Part 922*

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

*7 CFR Part 923*

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

*7 CFR Part 924*

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

*7 CFR Part 947*

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

*7 CFR Part 958*

Marketing agreements, Onions, Reporting and recordkeeping requirements.

*7 CFR Part 982*

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

*7 CFR Part 985*

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR parts 905, 911, 915, 921, 922, 923, 924, 947, 958, 982, and 985 are hereby amended as follows:

1. The authority citation for 7 CFR parts 905, 911, 915, 921, 922, 923, 924, 947, 958, 982, and 985 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

2. A new § 905.231 is added to read as follows.

**Note:** This section will not appear in the Code of Federal Regulations.

**§ 905.231 Expenses and assessment rate.**

Expenses of $200,000 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.003 per ⅘ bushel carton of assessable fruit is established for the fiscal period ending July 31, 1993. Any unexpended funds from the 1991–92 fiscal period may be carried over as a reserve.

## PART 911—LIMES GROWN IN FLORIDA

3. A new § 911.231 is added to read as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

**§ 911.231 Expenses and assessment rate.**

Expenses of $226,310 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.16 per bushel (55 pounds) of assessable limes is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

## PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

4. A new § 915.231 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

**§ 915.231 Expenses and assessment rate.**

Expenses of $180,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

## PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

5. A new § 921.231 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

**§ 921.231 Expenses and assessment rate.**

Expenses of $23,565 by the Washington Fresh Peach Marketing Committee are authorized and an assessment rate of $1.00 per ton of assessable peaches is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

## PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

6. A new § 922.231 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

**§ 922.231 Expenses and assessment rate.**

Expenses of $8,691 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $2.00 per ton is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

## PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

7. A new § 923.232 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

**§ 923.232 Expenses and assessment rate.**

Expenditures of $144,469 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $2.00 per ton is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

## PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

8. A new § 924.232 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations

**§ 924.232 Expenses and assessment rate.**

Expenses of $18,275 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $2.00 per ton of assessable prunes is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

## PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

9. A new § 947.243 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

**§ 947.243 Expenses and assessment rate.**

Expenses of $44,750 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1993. Unexpended funds may be carried over as a reserve.

## PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

10. A new § 958.236 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

**§ 958.236 Expenses and assessment rate.**

Expenses of $954,312 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.11 per hundredweight of assessable onions is established for the fiscal period ending June 30, 1993. Unexpended funds from the 1991–92 fiscal period may be carried over as a reserve.

## PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

11. A new § 982.337 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

**§ 982.337 Expenses and assessment rate.**

Expenses of $387,605 by the Filbert/Hazelnut Marketing Board are authorized and an assessment rate payable by each handler in accordance with § 982.61 is fixed at $14.00 per ton of assessable filberts/hazelnuts for the 1992–93 marketing year ending June 30, 1993. Unexpended funds may be carried over as a reserve.

## PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

12. A new § 985.312 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

**§ 985.312 Expenses and assessment rate.**

Expenses of $183,972 by the Spearmint Oil Administrative Committee are authorized and an assessment rate payable by each handler, in accordance with § 985.41, is established at $0.08 per pound of salable spearmint oil for the 1992–93 marketing year ending May 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: August 24, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92-20659 Filed 8-27-92; 8:45 am]

BILLING CODE 3410-02-M

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## 7 CFR Part 910

[FV-92-078IFR]

## Expenses and Assessment Rate for Lemons Grown in California and Arizona

**AGENCY:** Agricultural Marketing Service, USDA

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenditures and establishes an assessment rate for the 1992–93 fiscal year under Marketing Order No. 910 for lemons produced in California and Arizona. Funds to administer this program are derived from assessments on handlers. This action is needed in

order for the Lemon Administrative Committee (Committee), the agency responsible for the administration of the order, to have sufficient funds to meet the expenses of operating the program. This facilitates program operations. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture (Department) for approval.

**DATES:** Effective beginning August 1, 1992 through July 31, 1993. Comments received by September 28, 1992, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 690-3670.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Order No. 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, California-Arizona lemons are subject to assessments. It is intended that the assessment rate will be applicable to all assessable California-Arizona lemons handled during the 1992-93 fiscal year (August 1-July 31). This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, and handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona who are subject to regulation under the lemon marketing order and approximately 2,000 producers of lemons in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual revenues of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of lemon producers and handlers may be classified as small entities.

The lemon marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable California-Arizona lemons handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The Committee consists of handlers, producers, and a non-industry member. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of lemons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on June 2, 1992, and unanimously recommended 1992-93 marketing order expenditures of $875,000 and an assessment rate of $0.045 per carton of lemons. In comparison, 1991-92 marketing year budgeted expenditures were $825,000 and the assessment rate was $0.045 per carton. Assessment income for 1992-93 is estimated to total $798,750 based on anticipated fresh domestic shipments of 17,750,000 cartons of lemons. This, along with $20,000 in interest income and $56,250 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1992-93 fiscal year, estimated at $399,750, will be within the maximum permitted by the order of one-half of one fiscal year's expenses.

Major budget categories for 1992-93 are $253,100 for field and compliance expenses, $479,900 for administrative and office salaries, and $118,000 for Committee member expenses. Comparable expenditures for the 1991-92 fiscal year were $209,500, $459,500, and $118,000, respectively.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1992–93 fiscal year begins August 1, 1992, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable lemons handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

**List of Subjects in 7 CFR Part 910**

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

## PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 910.230 is added to read as follows:

**§ 910.230 Expenses and assessment rate.**

Note: This section will not appear in the Code of Federal Regulations

Expenses of $875,000 by the Lemon Administrative Committee are authorized, and an assessment rate of $0.045 per carton of assessable lemons is established for the 1992–93 fiscal year ending on July 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: August 24, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–20700 Filed 8–27–92; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Parts 926, 948, and 953**

**[Docket No. FV-92-090]**

## Expenses and Assessment Rates for Specified Marketing Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 926, 948, and 953 for the 1992–93 fiscal period. Authorization of these budgets enables the Tokay Grape Industry Committee, the Colorado Potato Administrative Committee, Northern Colorado Office (Area III), and the Southeastern Potato Committee (Committees) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

**EFFECTIVE DATE:** April 1, 1992, through March 31, 1993 (§ 926.231); June 1, 1992, through May 31, 1993 (§ 953.249); and July 1, 1992, through June 30, 1993 (§ 948.208).

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–9918.

**SUPPLEMENTARY INFORMATION:** This rule is effective under Marketing Agreement and Order No. 926 [7 CFR part 926], both as amended, regulating the handling of Tokay grapes grown in San Joaquin, County, California; Marketing Agreement No. 97 and Order No. 948 [7 CFR part 948], both as amended, regulating the handling of Irish potatoes grown in Colorado; and Marketing Agreement No. 104 and Order No. 953 [7 CFR part 953], both as amended, regulating the handling of Irish potatoes grown in Southeastern States (Virginia and North Carolina). The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Tokay grapes and Irish potatoes are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Tokay grapes handled during the 1992–93 fiscal period, which began April 1, 1992, through March 31, 1993, all assessable Southeastern potatoes handled during the 1992–93 fiscal period, which began June 1, 1992, through May 31, 1993, and all assessable Colorado Area III potatoes handled during the 1992–93 fiscal period, which began July 1, 1992, through June 30, 1993. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 30 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 3 handlers of Tokay grapes grown in San Joaquin, County, California, under Marketing Order No. 926, and approximately 40 producers. There are approximately 17 handlers of Colorado Area III potatoes under Marketing Order No. 948, and approximately 120 producers. Also, there are approximately 60 handlers to Southeastern potatoes under Marketing Order No. 953, and approximately 150

producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and handlers may be classified as small entities.

The budgets of expenses for the 1992–93 fiscal period were prepared by the Tokay Grape Industry Committee, the Colorado Potato Administrative Committee, Northern Colorado Office (Area III), and the Southeastern Potato Committee, the agencies responsible for local administration of the orders, and submitted to the Department for approval. The members of these Committees are handlers and producers of Tokay grapes, Colorado Area III potatoes, and Southeastern potatoes. They are familiar with the Committees' needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the Committees were derived by dividing anticipated expenses by expected shipments of Tokay grapes and Irish potatoes. Because these rates will be applied to actual shipments, they must be established at rates that will provide sufficient income to pay the Committees' expenses.

The Tokay Grape Industry Committee met on April 24, 1992, and unanimously recommended a 1992–93 fiscal year budget and assessment rate for this marketing order. The Committee's recommendations are based on preseason projections of 1992 season shipments, expenses, and reserve fund levels under the order.

The 1992–93 budget expenditures for this marketing order are lower than those for 1991–92. The decrease in the budget reflects a reduction in auditing expenses. The assessment rate for the 1992 season, however, remained constant. In addition, the Committee has adequate reserves to fund any expenditures in excess of income for 1992–93.

The expenditures are all for administration of this order. Administrative expenses include those for salaries and office operations.

The Committee recommended a 1992–93 budget of $5,275 and an assessment rate of $0.07 per 23 pound lug of Tokay grapes shipped under M.O. 926. In comparison, the 1992–92 budgeted expenditures were $5,375 and the assessment rate was $0.07 per 23 pound lug.

The Colorado Potato Administrative Committee, Northern Colorado Office (Area III) met on April 9, 1992, and unanimously recommended a 1992–93 budget of $15,134, $10,799 more than the previous year. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. In previous years administrative expenses that were shared were divided so that 85 percent was paid under the State and 15 percent under the Federal order. Management has concluded that the jointly operated programs consume about equal administrative time, so it was recommended that the two orders split the administrative costs equally. Major increases include almost $5,300 for manager's salary, $800 for office supplies, $1,700 for rent, $510 for utilities, and $525 for compliance. All promotion and advertising expenses are financed under the State order.

The Committee also unanimously recommended an assessment rate of $0.02 per hundredweight, $0.0175 more than last season's rate. This rate, when applied to anticipated shipments of 824,200 hundredweight will yield $16,485, which will be adequate to cover expected expenses. Interest income of $1,250 and $1,200 received from the Federal-State Inspection Service for rent will provide additional income of $2,450. Funds in the Committee's authorized reserve at the beginning of the 1992–93 fiscal period, estimated at $6,918, were within the maximum permitted by the order of two fiscal periods' expenses.

The Southeastern Potato Committee met on April 16, 1992, and unanimously recommended a 1992–93 budget of $11,000, the same as last year. Major expense items include Committee staff salaries and travel expense.

The Committee also recommended an assessment rate of $0.0050 per hundredweight, $0.0025 more than last season's rate. Production figures for the 1992–93 season are not yet available. However, the Committee anticipates shipments will be about the same as last year, approximately 1.3 million hundredweight. The $17,829 reserve will be adequate to cover the expenses incurred. Funds remaining at the end of the 1992–93 fiscal period should be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Proposed rules were published in the **Federal Register** on June 19, 1992, for 7 CFR part 926 (57 FR 27373); 7 CFR part 948 (57 FR 27375); and 7 CFR part 953 (57 FR 27376). Those documents contained proposals to add § 926.231, § 948.208, and § 953.249, to authorize expenses and establish assessment rates for the Committees. Those rules provided that interested persons could file comments through June 29, 1992. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1992–93 fiscal year for the Tokay Grape Industry Committee began on April 1, the 1992–93 fiscal period for the Southeastern Potato Committee began on June 1, and the 1992–93 fiscal period for the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) began on July 1. The marketing orders require that the rates of assessment for the fiscal period apply to all assessable Tokay grapes and Irish potatoes handled during the fiscal period. In addition, handlers are aware of these actions which were recommended by the Committees at public meetings.

**List of Subjects**

*7 CFR Part 926*

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

*7 CFR Parts 948 and 953*

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 926, 948, and 953 are hereby amended as follows:

1. The authority citation for 7 CFR parts 926, 948, and 953 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

## PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

2. A new § 926.231 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

### § 926.231 Expenses and assessment rate.

Expenses of $5,275 by the Tokay Grape Industry Committee are authorized, and an assessment rate of $0.07 per 23 pound lug of assessable California Tokay grapes is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

## PART 948—IRISH POTATOES GROWN IN COLORADO

3. A new § 948.208 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

### § 948.208 Expenses and assessment rate.

Expenses of $15,134 by the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) are authorized, and an assessment rate of $0.02 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1993. Unexpended funds may be carried over as a reserve.

## PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

4. A new § 953.249 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

### § 953.249 Expenses and assessment rate.

Expenses of $11,000 by the Southeastern Potato Committee are authorized, and an assessment rate of $0.0050 per hundredweight of assessable potatoes is established for the fiscal period ending May 31 1993. Unexpended funds may be carried over as a reserve.

Dated: August 24, 1992.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–20697 Filed 8–27–92; 8:45 am]

BILLING CODE 3410-02-M

## 7 CFR Parts 927 and 931

[Docket No. FV-92-085]

## Expenses and Assessment Rates for Marketing Orders Covering Winter Pears Grown in Oregon, Washington, and California and Fresh Bartlett Pears Grown in Oregon and Washington

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 927 and 931 for the 1992–93 fiscal period (July 1–June 30). Authorization of these budgets enables the Northwest Fresh Bartlett Pear Marketing Committee (NFBPMC) and the Winter Pear Control Committee (WPCC) to incur expenses that are reasonable and necessary to administer these programs. Funds to administer these programs are derived from assessments on handlers.

**DATES:** Effective beginning July 1, 1992 through June 30, 1993. Comments received by September 28, 1992 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Candace Mintz, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–3923.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Order Nos. 927 (7 CFR part 927) regulating the handling of winter pears grown in Oregon, Washington, and California, and 931 (7 CFR part 931) regulating the handling of fresh Bartlett pears grown in Oregon and Washington. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1973, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, shipments of winter pear grown in Oregon, Washington, and California, and fresh Bartlett pears in Oregon and Washington are subject to assessment. It is intended that the assessment rates specified herein will be applicable to all asessable winter pears and Bartlett pears handled during the 1992–93 fiscal year, beginning July 1, 1992, through June 30, 1993. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

There are approximately 85 handlers of winter pears and 60 handlers of fresh Bartlett pears regulated under these marketing orders each season. There are approximately 1,850 winter pear

producers in Washington, Oregon and California and approximately 1,800 Bartlett pear producers in Washington and Oregon. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The winter pear and Bartlett pear marketing orders, administered by the Department, require that the assessment rates for a particular fiscal year apply to all assessable pears handled from the beginning of such year. Annual budgets of expenses are prepared by the committees, the agencies responsible for local administration of these marketing orders, and submitted to the Department for approval. The members of the committees are pear handlers and producers. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committees' budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the committees are derived by dividing the anticipated expenses by expected shipments of pears (in standard boxes). Because those rates are applied to actual shipments, they must be established at rates which will provide sufficient income to pay the committees' expected expenses.

The WPCC met May 29, 1992, and unanimously recommended 1993–93 fiscal period expenditures of $6,039,367 and an assessment rate of $0.415 per standard box or equivalent of assessable pears shipped under M.O. 927. In addition, the WPCC also unanimously approved an additional assessment rate of $0.03 per standard box equivalent for Anjou pears for a total assessment rate of $0.445 per standard box of Anjou pears. This additional assessment on Anjou pears will be used to fund Ethoxyquin research. The WPCC's 1991–92 fiscal period budgeted expenditures were $5,130,616 and the assessment rate was $0.38.

These expenditures are primarily for paid advertising and promotion, production research projects, and program administration. Aside from the major budget increases in expenditures for production research projects, Ethoxyquin research, paid advertising, and contingency line items, most of the expenditure items are budgeted at about last year's amounts.

Assessment income for the 1992–93 fiscal period is expected to total $5,572,034 based on shipments of 12,716,350 packed boxes of pears at $0.415 per standard box or equivalent plus an additional $0.03 per standard box of Anjou pears. Other available funds include $150,000 of voluntary payments on assessments of intrastate shipments, $10,000 of prior year assessments, a reserve of $282,333 carried into this fiscal period, and $25,000 of miscellaneous income from interest bearing accounts and additions to assessment income in the event the crop is larger than estimated. Total funds available equal $6,039,367, the same as the recommended budget.

The NFBPMC met May 28, 1992, and unanimously recommended 1992–93 fiscal period expenditures of $116,390 and an assessment rate of $0.025 per standard box or equivalent of assessable pears shipped under M.O. 931. In comparison, 1991–92 fiscal period budgeted expenditures were $91,062 and the assessment rate was $0.03.

These expenditures are primarily for program administration. Most of the expenditure items are budgeted at about last year's amounts with the exception of increases in salaries, and reserve for contingencies. Salaries were increased from $35,550 to $37,330, and reserve for contingencies was increased from $14,230 to $36,065.

Assessment income for the 1992–93 fiscal period is expected to total $67,200 based on shipments of 2,688,000 packed boxes of pears at $0.025 per standard box or equivalent. Other available funds include a reserve of $38,090 carried into this fiscal period, $100 of prior year assessments, and $11,000 in miscellaneous income from interest bearing accounts and additions to assessment income in the event the crop is larger than estimated. Total funds available equal $116,390, the same as the recommended budget.

Both committees also unanimously recommended that any unexpended funds or excess assessments from the 1991–92 fiscal period be placed in their reserve. The reserves are within the limits authorized under the marketing orders.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committees and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the fiscal year for both committees begins July 1, 1992, and the marketing orders require that the rates of assessment for the fiscal year apply to all assessable pears handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the committees at their respective public meetings and which are similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

**List of Subjects in 7 CFR Parts 927 and 931**

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 927 and 931 are amended as follows:

## PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR parts 927 and 931 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 927.232 is added to read as follows:

**Note:** This section will not appear in the annual Code of Federal Regulations.

**§ 927.23 Expenses and assessment rate.**

Expenses of $6,039,367 by the Winter Pear Control Committee are authorized and an assessment rate of $0.415 per standard box, or equivalent, of pears is

established for the fiscal period ending June 30, 1993. In addition, a supplemental assessment rate of $0.03 per standard box, or equivalent, of Anjou variety pears is established for the same period for research. Unexpended funds may be carried over as a reserve.

## PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

3. New § 931.227 is added to read as follows:

**Note:** This section will not appear in annual Code of Federal Regulation.

**§ 931.227 Expenses and assessment rate.**

Expenses of $116,390 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized, and an assessment rate of $0.025 per standard box or equivalent of assessable pears is established, for the fiscal period ending June 30, 1993. Unexpended funds from the 1992–93 fiscal period may be carried over as a reserve.

Dated: August 24, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–20695 Filed 8–27–92; 8:45 am]

BILLING CODE 3410-02-M

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## 7 CFR Part 929

[FV-92-089IFR]

## Expenses and Assessment Rate for Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenditures and establishes an assessment rate under the cranberry marketing order for the 1992–93 fiscal year. This action is needed for the Cranberry Marketing Committee (Committee), which is responsible for local administration of the order, to incur operating expenses during the 1992–93 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

**DATES:** This interim final rule becomes effective on September 1, 1992. Comments which are received by September 28, 1992 will be considered prior to issuance of any final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, D.C. 20090–6456; telephone: (202) 720–5127.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, cranberries grown in 10 States are subject to assessments. It is intended that the assessment rate specified herein be made applicable to all assessable cranberries during the 1992–93 fiscal year, beginning on September 1, 1992. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of cranberry handlers and producers may be classified as small entities.

The cranberry marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable cranberries handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The Committee members are cranberry producers. They are familiar with the Committee's needs and with the costs of goods, services, and personnel in their local areas and are in a position to formulate appropriate budgets.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will

produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so the Committee will have funds to pay its expenses for the 1992–93 fiscal year beginning on September 1, 1992.

The Committee conducted a mail vote and recommended 1992–93 marketing order expenditures of $146,600 and an assessment rate of $0.03 per 100-pound barrel of cranberries shipped. Assessment income for 1992–93 is estimated at $120,540 based on a crop of 4,018,000 barrels. Interest income expected to be received is estimated at $5,500, bringing total income to $126,040. The Committee plans to transfer $20,560 from its reserve account to meet the deficit between income and expenditures. Major budget categories for 1992–93 remain the same as in past years; $64,935 for salaries, $30,000 for travel and meeting expenses, and $34,355 for administrative expenses.

In comparison, the 1991–92 fiscal year budgeted expenditures were $167,730, and the assessment rate was $0.037 per 100-pound barrel of cranberries shipped. Corresponding budgeted expenditures for the 1991–92 season were $67,640 for salaries, $37,500 for travel and meeting expenses, and $44,245 for administrative expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the Committee begins on September 1, 1992, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable cranberries handled during the fiscal year; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

**List of Subjects in 7 CFR Part 929**

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

## PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 929.233 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

**§ 929.233 Expenses and assessment rate.**

Expenses of $146,600 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.03 per 100-pound barrel of assessable cranberries is established for the fiscal year ending on August 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: August 24, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–20693 Filed 8–27–92; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Part 987**

**[FV-92-069IFR]**

## Addition of California Certified Farmers' Markets as an Exempted Outlet for Domestic Dates Produced or Packed in Riverside County, California

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule changes the administrative rules and regulations of the California date marketing order to add California certified farmers' markets to the list of outlets to which date producers may sell dates of their own production exempt from certain requirements under the marketing order. Date producers who qualify under this rule will be exempt from inspection, volume control, container and assessment requirements issued under the marketing order. The purpose of this action is to facilitate the marketing of dates by producers. This revision was unanimously recommended by the California Date Administrative Committee (Committee), which is responsible for local administration of the order.

**EFFECTIVE DATE:** Interim final rule effective August 28, 1992. Comments received by September 28, 1992 will be considered prior to any finalization of this interim final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments received will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2020.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Order No. 987 (7 CFR part 987), both as amended, regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This

interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 25 handlers of California dates subject to regulation under the order each season and approximately 135 date producers in the regulated area. The majority of the date handlers and producers may be classified as small entities. This action will not impose a significant impact on the small entities involved.

This interim final rule revises § 897.152 of the administrative rules of the order. This action was unanimously recommended by the Committee at its April 23, 1992, meeting.

Section 987.152(a) provides that producers who sell their own product through direct mail services, at date shops, or directly to consumers at roadside stands within a 25-mile radius of Indio, California, may be exempt from inspection, volume control, container, and assessment regulations under the marketing order. The Committee grants producers permission to sell dates through these outlets only if the producer files with the Committee a form wherein the producer describes how the dates are to be sold, sells only dates meeting modified U.S. Grade B or better standards, and reports such sales to the Committee.

Producers who sell dates of their own production at farmers' market outlets, however, are not provided the same exemptions. Generally, only the very small date producers sell their own production at farmers' markets. Therefore, the Committee recommended exempting dates sold by producers at California certified farmers' markets from inspection, volume control, container and assessment requirements. The recommended change would reduce marketing costs for producers so marketing their own production. The exemption will provide those producers with the same exemption given to producers utilizing other direct-to-consumer outlets.

Industry members stated that the costs associated with the inspection, container and assessment regulations represent a larger percentage of a small producer's total revenue. For example, they pointed out that the sequential sampling method of inspection damages a portion of the fruit. Sequential sampling inspections requires that a sample be taken from each size of container packed. However, producers who sell their product at California certified farmers' markets pack small quantities of fruit in several different container sizes, allowing consumers a choice when purchasing the fruit. Thus, the industry members claimed that small producers who market dates of their own production lose proportionately more fruit than handlers who pack dates in only a few, different sized, large containers.

Because of the small amount of production so marketed, this additional regulatory exemption is not expected to have a negative effect on program objectives. The Committee estimates that less than one percent of California dates produced in the production area are marketed through certified farmers' markets.

Under this action, California date producers who intend to market their own production, or a portion thereof, at farmers' markets are required to file CDAC Form No. 9 before such exemption would be granted. CDAC Form No. 9 specifies that dates sold at exempted outlets set forth in § 987.152(a) be at least modified U.S. Grade B. This helps to insure that producers are not using exempted outlets to market substandard fruit. In addition, producers who produce dates for which an exemption is being sought would be required to be certified, by the State of California or the local county government organization, that the producer adheres to applicable state certification standards. A copy of the certification documents would be submitted with the exemption application (CDAC Form No. 9) to the Committee.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the information collection requirements that are being added by this action have been approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 0581-0077.

On the basis of the foregoing, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes requirements on producers handling dates; (2) this action was recommended at a public meeting; (3) it is desirable to have this action in place as soon as possible so producers handling dates can take advantage of the relaxed requirements; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 987**

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 987 is amended to read as follows:

## PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CA

1. The authority citation for 7 CFR part 987 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**Subpart—Administrative Rules**

2. Section 987.152 is amended by revising paragraph (a) to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

**§ 987.152 Exemption from regulation.**

(a) *Producer exemption.* The Committee may permit any producer to sell dates from such producer's own production free of the requirements of §§ 987.41, 987.45, 987.48, and 987.72 when sold directly to consumers through a roadside stand or date shop owned or operated by the producer within 25 miles of the city limits of Indio, California, through shipments by parcel post or express, or by certified producers at certified farmers' markets, as these terms are defined by the State of California. Permission to so sell dates shall be granted only upon the producer filing with the Committee a completed CDAC Form No. 9 wherein the producer describes how the producer plans to sell such dates and agrees to sell only dates of DAC date quality of the producer's own production in direct sales; and to report such sales to the Committee. If the producer fails to comply with this agreement, the Committee may revoke any or all exemptions granted the producer.

* * * * *

Dated: August 24, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92-20694 Filed 8-27-92; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Part 997**

**[Docket No. FV-92-074IFR]**

## Changes in the Provisions Regulating the Quality of Domestically Produced Peanuts Not Subject to the Peanut Marketing Agreement

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule changes the outgoing quality regulations which regulate the quality of peanuts handled by persons who are not signatory to the Peanut Marketing Agreement. The outgoing regulations are changed: To allow commingling of peanut lots of different quality levels at the request of the buyer after the lots have passed quality and aflatoxin inspection and have been positive lot identified (PLI); and to provide handlers with the option of selling failed peanut lots to second handlers for blanching. These actions will facilitate the movement of peanuts to market and, thus, increase the volume of peanuts placed in marketing channels. These changes are intended to bring the quality requirements into conformity with those specified in the Agreement.

**DATES:** This interim final rule is effective August 28, 1992. Comments received by September 28, 1992 will be considered prior to finalization of the rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456, telephone 202-720-3610.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], and as further amended December 12, 1989, Public Law 101-220, section 4 (1), (2), 103 Stat. 1878, hereinafter referred to as the "Act."

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 80 handlers of peanuts who have not signed the Agreement and thus, are subject to the regulations contained herein. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $3,500,000. It is estimated that most of the handlers are small entities. Most producers doing business with these handlers are also small entities. Small agricultural producers have been defined as those having annual receipts of less than $500,000.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1991 totalled 4.94 billion pounds, a 37 percent increase from 1990. The 1991 crop value is $1.4 billion, up 12 percent from 1990.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. The Agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965. Approximately 5 percent of the crop is marketed by handlers who are not signatory to the Agreement.

Requirements established pursuant to the Agreement provide that farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) must be diverted to non-edible uses. Each lot of shelled peanuts, destined for edible channels, must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Peanut Administrative Committee (Committee). The Committee, established under the Agreement, works with the Department in administering the marketing agreement program. Inspection and chemical analysis programs are administered by the Department.

Public Law 101-220, enacted December 12, 1989, amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the Agreement (non-

signers) be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. Under the amendment, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. Regulations to implement Public Law 101–220 were issued and made effective on December 4, 1990 [55 FR 49980], amended on October 31, 1991 [56 FR 55988], and are published in 7 CFR part 997. Violation of those regulations may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts. The support price for quota peanuts is determined under section 108b of the Agricultural Act of 1949 (7 U.S.C. 1445c–2) for the crop year during which the violation occurs. The intent of Public Law 101–220 and the objective of the Agreement is to insure that only wholesome peanuts of good quality enter edible market channels.

The first change will amend § 997.30(d) to allow commingling of peanut lots of different grade categories at the request of a buyer, after the lots have passed quality and aflatoxin inspection and have been PLI. Some buyers do not have commingling equipment at their facilities. This rule will allow handlers to satisfy the occasional request received from buyers that multiple lots be mixed prior to shipment to the buyer. Because such commingled lot will lose its original identity, the commingled load will no longer be considered PLI and the peanuts comprising the load will no longer be eligible for an appeal inspection. A transfer certificate will be issued on the entire, commingled load certifying that, prior to commingling, the individual lots were PLI and had met all program requirements. Loss of the handler's right to an appeal inspection should not represent a significant concern to handlers as lots that pass quality and aflatoxin inspection normally do not need an appeal inspection.

The change is beneficial to the industry because it facilitates movement of peanuts and helps handlers meet their customers' needs. The change is affected by adding the following at the end of § 997.30(d): "* * * except that lots which are commingled at the request of the buyer will require a transfer certificate to be issued designating that the lots were positive lot identified prior to commingling. All such commingled lots will no longer be considered positive lot identified, and, therefore, no longer eligible for appeal inspection."

The second change clarifies that handlers can sell peanut lots failing to meet outgoing quality and aflatoxin requirements to other handlers for blanching or further handling. Section 997.40(a)(1) provides the first handler with the option of selling a lot of failed peanuts to a second handler for remilling or further handling. This rule provides the same opportunity with regards to blanching; i.e., that a first handler may sell a failed lot of peanuts to a second handler for blanching or for further handling. Such peanuts shall be blanched pursuant to paragraph (a)(2) of § 997.40. Blanching is one of the most commonly used methods of making peanuts which fail quality and/or aflatoxin requirements suitable for human consumption. It was not the intention of the Department, when promulgating Part 997, to exclude blanching from disposition options available to second handlers.

As noted in paragraph (a)(1) with regards to remilling, second handlers may be either handlers who are not signatory to the Agreement or are signatory handlers as defined in 7 CFR part 998.8. The same definition of handler is applied under paragraph (a)(2) for blanching.

This action is implemented by inserting one sentence in paragraph (a)(2) of § 997.40 specifying that a handler may sell failed peanuts to another handler, or a handler as defined in the Agreement (7 CFR 998.8), for blanching or further handling. To be eligible for disposal into human consumption outlets, peanuts blanched by a second handler must meet the requirements listed in § 997.30(a) and be accompanied by a negative aflatoxin certificate. Movement of such peanut lots must conform to requirements of paragraphs (a)(3) and (a)(4) of § 997.40. That is, lots must be accompanied by a valid grade inspection certificate and be PLI; title to the lots for custom remilling or blanching must be retained by the handler until certified for human consumption; peanuts which continue to fail quality requirements must be reported to the Department; and, residual peanuts continuing to fail quality and aflatoxin requirements must be disposed of by crushing or export, or be disposed of according to provisions in paragraph (b)(3) of § 997.40.

Similar changes have been made in the outgoing quality regulation of the Agreement (7 CFR 998.200), effective for the 1992–93 crop year.

Both of the actions in this rulemaking will facilitate the movement of peanuts to market and, thus, may increase the volume of peanuts placed in the channels of commerce. The commingling change should help some smaller handlers meet load specifications for buyers who had previously only dealt with large handlers.

There are no changes applicable to the incoming quality requirements. Therefore, the incoming quality regulation applicable to 1991–92 crop peanuts continues to be effective for 1992–93 crop peanuts.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

The information collection requirements that are contained in the sections of these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0163.

After consideration of all available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on peanut handlers not subject to the Agreement; (2) the new crop year begins on July 1, 1992, and handlers need to know the regulations applicable to handling the 1992 peanut crop; (3) both actions will ease the movement of peanuts to market and, thus, increase the volume of peanuts placed in marketing channels; (4) this action brings the quality requirements under Part 997 into conformity with those under the Agreement as required by the Act; and (5) this action provides a 30–day comment period, and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 997**

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

**Note:** This section will be published in the annual Code of Federal Regulations.

## PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674; sec. 4, 103 Stat. 1878, 7 U.S.C. 608b.

2. Section 997.30 is amended by adding two sentences at the end of paragraph (d) to read as follows:

**§ 997.30 Outgoing regulation.**

* * * * *

(d) * * * All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except that lots which are commingled at the request of the buyer will require a transfer certificate to be issued designating that the lots were positive lot identified prior to commingling. All such commingled lots will no longer be considered positive lot identified, and, therefore, no longer be eligible for appeal inspection.

* * * * *

3. In § 997.40, the first sentence of paragraph (a)(2) is republished and a new sentence is added immediately after it to read as follows:

**§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.**

* * * * *

(a) * * *

(2) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for human consumption specified in § 997.30(a) because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin. Handlers may sell such peanuts to another handler, or to a handler as defined in 7 CFR 998.8, for blanching or further handling. * * *

* * * * *

Dated: August 24, 1992.

Ronald L. Cioffi,

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–20699 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–02–M

## 7 CFR Part 1007

[DA–92–14]

## Milk in the Georgia Marketing Area; Order Suspending Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This docket makes inoperative the requirement that producers be paid on the basis of a base and excess payment plan for the month of August 1992. The suspension was requested by a cooperative association because the current provisions tend to discourage milk production at a time when milk production is declining. In addition any needed supplemental milk supplies could be obtained by handlers on a direct-shipped basis from producers in nearby markets.

**EFFECTIVE DATE:** August 1 through August 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 15, 1992; published June 19, 1992 (57 FR 27377).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action would tend to encourage milk production during the month of August which is a month of declining milk production.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Georgia marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on June 19, 1992, (57 FR 27377) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Several comments were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1007.32, paragraph (a).
2. In § 1007.61(a), the words "of September through January".
3. In § 1007.61, paragraph (b).

### Statement of Consideration

This action makes inoperative the requirement that producers be paid on the basis of the base and excess plan for the month of August 1992. Dairymen, Inc. (DI), a cooperative association of producers having a substantial amount of milk pooled on the Georgia milk market, requested the suspension. The cooperative asked for the suspension in order to remove a conflict which currently exists between the order provisions and the need for additional milk in this market for the month of August.

DI stated that the current order provisions provide that producers be paid a base and excess price for the months of February through August. The cooperative said that this plan was designed to encourage milk production during the base-building months of September through January when a greater volume of milk is needed for

fluid use, and to discourage additional production (excess milk) during the months of February through August when the additional milk production is not needed for fluid use.

DI stated that marketing conditions have changed since those provisions were adopted in the Georgia order. In recent years, milk production during the month of August has been in short supply. DI believes that production should not be discouraged through the payment of the excess price for additional production during the month of August.

Interested parties were given an opportunity to submit written data, views, and arguments concerning the proposed suspension. One producer indicated that presumably the majority of producers would be producing less than their base in August and that, compared to the base price under the base and excess plan, the blend price is likely to be lower than the price if any producers are producing excess milk. Another producer indicated that the payment of the blend price in August of 1990 and 1991 did not result in any increase in milk production.

As indicated by proponent cooperative, the market is likely to be short of milk during August. In the recent past, supplemental milk supplies have been needed in the market during August. Accordingly, any milk production in excess of base milk is needed to serve the fluid Class I market, which is the highest price use of milk. In the absence of this suspension action, producers with excess milk would be encouraged to shift off the market in August and thereby detract from the basic function of the order in assuring an adequate supply of milk. In addition, the base plan, if continued in August, would tend to be an impediment to fluid milk handlers' ability to attract supplemental milk supplies on a direct-shipped basis from producers in nearby markets. Under the plan, such producers would be credited only with the excess price because of not having a base on this market.

This action should contribute to an increase in the amount of milk available for fluid use during August. As explained above, the market is likely to be short of fluid milk during that month. Suspending the base and excess plan provisions may very well result in a blend price which is lower than the base price, as indicated by the producers opposing this action. However, the needs of the market are such that it is appropriate to suspend the aforesaid provisions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that this action should make more milk available for fluid use in the market in August 1992.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Only a few producers filed comments in opposition to the suspension.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1007**

Milk marketing orders.

*It is therefore ordered*, That the following provisions in § 1007.32(a), § 1007.61 (a) and (b) of the Georgia order are hereby suspended from August 1 through August 31, 1992.

## PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. The authority citation for 7 CFR part 1007 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1007.32 [Suspended in Part]**

2. In § 1007.32, paragraph (a) is suspended.

**§ 1007.61 [Suspended in Part]**

3. In § 1007.61(a) the following words: "of September through January" are suspended.

4. In § 1007.61, paragraph (b) is suspended.

Dated: August 24, 1992.

Daniel Haley,
*Administrator.*

[FR Doc. 92–20660 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–02–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Fair Housing and Equal Opportunity

### 24 CFR Part 103

[Docket No. R–92–1425; FR–2565–F–04]

### Fair Housing Complaint Processing

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document makes a technical amendment to 24 CFR part 103, which sets forth the complaint processing procedures under the Fair Housing Act, to correct an omission in § 103.200 which occurred in the publication of a final rule on December 28, 1990 (55 FR 53293).

**EFFECTIVE DATE:** August 28, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Strong, Deputy Assistant General Counsel for Fair Housing Litigation, Fair Housing Division, Office of the General Counsel, room 9238, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–1207 or (202) 9300 (TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** On January 23, 1989 (54 FR 3232), the Department published a final rule that adopted regulations to implement the changes made in title VIII of the Civil Rights Act of 1968 by the Fair Housing Amendments Act of 1988 (Pub. L. 100–430, approved September 13, 1988) (title VIII as amended by the Fair Housing Amendments Act of 1988 is referred to as the Fair Housing Act). The final rule created a new part 103, which codifies the Department's procedures for the investigation and conciliation of complaints under section 810 of the Fair Housing Act.

Under § 103.400 of the January 23, 1989 final rule, the General Counsel of HUD was delegated exclusive authority to make determinations of whether or not reasonable cause exists to believe that discrimination has occurred under the Fair Housing Act. On December 28, 1990 (55 FR 53293), the Department published a final rule that amended § 103.400 to delegate authority to the Assistant Secretary for Fair Housing and Equal Opportunity to make determinations of *no* reasonable cause. The General Counsel retained sole authority to make determinations that reasonable cause exists, and also retained authority, concurrent with that

of the Assistant Secretary, to make determinations of no reasonable cause. In addition to the amendment to § 103.400, the December 28, 1990 final rule made conforming amendments to 24 CFR 103.200(a)(3), 103.300(a), and 109.16(a).

The Department recently discovered certain editorial errors in § 103.200. In § 103.200(a), the word "purpose" should be "purposes." In § 103.200(a)(3), several words were inadvertently omitted, which rendered the meaning of that provision unclear. Paragraphs (a) and (a)(3) of § 103.200 should read as follows (the bracketed language indicates the letters and words that were inadvertently omitted):

**§ 103.200 Investigations.**

(a) Upon the filing of a complaint under § 103.40, the Assistant Secretary will initiate an investigation. The purpose[s] of an investigation are:

* * * * *

(3) To develop factual data necessary for the General Counsel to make a determination under § 103.400 whether [reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur], and [for] the Assistant Secretary to make a determination under § 103.400 that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

This document therefore corrects the editorial omissions found in 24 CFR 103.200(a) and (a)(3).

**List of Subjects in 24 CFR Part 103**

Administrative practice and procedure, Aged, Fair housing, Handicapped, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and Recordkeeping requirements.

Accordingly, the following amendment is made to 24 CFR part 103:

## PART 103—FAIR HOUSING—COMPLAINT PROCESSING

1. The authority citation for 24 CFR part 103 continues to read as follows:

Authority: 42 U.S.C. 3600–3619; 42 U.S.C. 3535(d).

2. Section 103.200 is amended by revising paragraphs (a) introductory text and (a)(3) to read as follows:

**§ 103.200 Investigations.**

(a) Upon the filing of a complaint under § 103.40, the Assistant Secretary will initiate an investigation. The purposes of an investigation are:

* * * * *

(3) To develop factual data necessary for the General Counsel to make a determination under § 103.400 whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and for the Assistant Secretary to make a determination under § 103.400 that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

* * * * *

Dated: August 19, 1992.

**Leonora L. Guarraia,**

*General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 92–20561 Filed 8–27–92; 8:45 am]

BILLING CODE 4210–28–M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 100

**[CGD2 92–13]**

## Special Local Regulations: Big River World Finals—Dragboat Races

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary Final Rule.

**SUMMARY:** Special local regulations are being adopted for the Big River World Finals—Dragboat Races. This event will be held on the Wheeler Lake at Tennessee River, from mile 276.5 to mile 277.5 on August 29 & 30, 1992. The regulations are needed to provide for the safety of life on navigable waters during the event.

**EFFECTIVE DATES:** These regulations will be effective daily 8 a.m. to 7 p.m., August 29 & 30, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ensign D. R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, Fax: (314) 539–2685.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. There was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

**Drafting Information**

The drafter of these regulations is Ensign D. R. Dean, Project Officer, Second Coast Guard District Boating Safety Division.

**Discussion of Regulations**

The Big River World Finals consist of ¼ mile drag boat races. Regulation is required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during portions of the effective periods to all vessel traffic except participants, official regatta vessels, and patrol craft. Actual river closures will not exceed three hours in duration. Mariners will be afforded enough time between closure periods to transit the area. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (Water).

**Regulations**

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T0213 is added, to read as follows:

**§ 100.35–T0213 Big River World Finals—Drag Boat Races.**

(a) *Regulated Area.* The Wheeler Lake at Tennessee River, mile 276.5 to mile 277.5.

(b) *Special Local Regulations.* (1) The U.S. Coast Guard and U.S. Coast Guard Auxiliary will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the

regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(6) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Dates.* These regulations are effective: 8 a.m. to 7 p.m. on August 29 & 30, 1992.

Dated: August 20, 1992.

J.J. Lantry,

*Captain, U.S. Coast Guard Commander, Second Coast Guard District, Acting.*

[FR Doc. 92-20748 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-14-M

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## 33 CFR Part 100

[CGD2 92-07]

## Special Local Regulations: 22nd Annual Charleston Sternwheel Regatta

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary Final Rule.

**SUMMARY:** Special local regulations are being adopted for the 22nd Annual Charleston Sternwheel Regatta. This event will be held on the Kanawha River, from mile 57.5 to mile 61.5 from August 28 through September 6, 1992. The regulations are needed to provide for the safety of life on navigable waters during the event.

**EFFECTIVE DATES:** These regulations will be effective: 8 p.m. to 10 p.m. on August 28, 1992; 12 noon to 6 p.m. daily August 29 and 30, 1992; 7 p.m. to 11 p.m. daily August 31–September 4, 1992; 1 p.m. to 10 p.m. daily September 5 and 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ensign D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103-2832. The telephone number is (314) 539-3971, Fax: (314) 539-2685.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. There was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

### Drafting Information

The drafter of these regulations is Ensign D.R. Dean, Project Officer, Second Coast Guard District Boating Safety Division.

### Discussion of Regulations

The 22nd Annual Charleston Sternwheel Regatta includes sternwheel races, a power boat race, a parade from C&P ramp to levee, towboat shoving contest, fireworks, and a lighted boat parade. Regulation is required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during portions of the effective periods to all vessel traffic except participants, official regatta vessels, and patrol craft. Actual river closures will not exceed three hours in duration. Mariners will be afforded enough time between closure periods to transit the area. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35. They supersede the regulations concerning the same event at 33 CFR 100.201.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

### Regulations

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.325.

2. A temporary section 100.35-T0207 is added, to read as follows:

**§ 100.35-T0207 2nd Annual Charleston Sternwheel Regatta.**

(a) *Regulated Area.* The Kanawha River, mile 57.5 to mile 61.5.

(b) *Special Local Regulations.* (1) The U.S. Coast Guard and U.S. Coast Guard Auxiliary will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander. The above restriction shall not apply to patrol vessels performing assigned duties.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(6) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Dates.* These regulations are effective: 8 p.m. to 10 p.m. on August 28, 1992; 12 noon to 6 p.m. daily August 29 and 30, 1992; 7 p.m. to 11 p.m. daily August 31–September 4, 1992; 1 p.m. to 10 p.m. daily September 5 and 6, 1992.

Dated: August 18, 1992.

N.T. Saunders,

*Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.*

[FR Doc. 92-20745 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-14-M

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## 33 CFR Part 100

[CGD 09-92-19]

## Special Local Regulations: The CAN-AM Challenge, 92 COBRA Race Against Drugs, Buffalo Outer Harbor, Lake Erie, Buffalo, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** Special Local Regulations are being adopted for The Can-Am Challenge, 92 COBRA "Race Against Drugs". This event will be held on the Buffalo Outer Harbor and Lake Erie on the 19th of September 1992 from 11 a.m. (e.d.s.t.) until 2:30 p.m. (e.d.s.t.). The regulations are needed to provide for the safety of life and property on navigable waters during the event.

**EFFECTIVE DATE:** These regulations become effective from 11 a.m. (e.d.s.t.) until 2:30 p.m. (e.d.s.t.) on September 19, 1992. If the weather on September 19, 1992 is inclement, the race will be held on September 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, Search and Rescue Branch, Ninth

Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 7 August 1992, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

**Drafting Information**

The drafters of this regulation are William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

**Discussion of Regulations**

The Can-Am Challenge, 92 COBRA "Race Against Drugs" will be conducted on the Buffalo Outer Harbor and Lake Erie, Buffalo, NY, on the 19th of September 1992. This event will have an estimated 40, 24 to 40 foot, offshore race boats, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Buffalo, NY).

**Economic Assessment and Certification**

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectators into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Final Regulations**

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary section 100.35-T0919 to read as follows:

**§ 100.35-T0919 The CAN-AM Challenge, 92 COBRA Race Against Drugs, Buffalo Outer Harbor, Lake Erie, Buffalo, NY.**

(a) *Regulated Area:* That area enclosed by the following lines:

(1) From the Black Rock Canal Breakwall Light 17 (LLNR 2800), south along the Black Rock Canal Breakwall to the southern end of the breakwall.

(2) The southern end of the Black Rock Canal Breakwall due east to the main shore.

(3) From a point due east of the south end of the Black Rock Canal Breakwall, southward along the main shore, westward along the main shore, and northward along the main shore to the South Buffalo Dike Disposal Light Number 2 (LLNR 2840).

(4) From the South Buffalo Dike Disposal Light Number 2 (LLNR 2840) westward to a point defined as the intersection of a bearing 248 degrees true from the South Buffalo Dike Disposal Light Number 2 (LLNR 2840) and 197 degrees true from the Black Rock Canal Breakwall Light 17 (LLNR 2800).

(5) From a point defined as the intersection of a bearing 248 degrees true from the South Buffalo Dike Disposal Light Number 2 (LLNR 2840) and 197 degrees true from the Black Rock Canal Breakwall Light 17 (LLNR 2800), northward to the Black Rock Canal Breakwall Light 17 (LLNR 2800).

(b) *Special Local Regulations:* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 11 a.m. (e.d.s.t.) until 2:30 p.m. (e.d.s.t.) on the 19th of September 1992.

(2) If the weather on the 19th of September 1992 is inclement, the race and the regulated area will be postponed until 11 a.m. (e.d.s.t.) to 2:30 p.m. (e.d.s.t.) on the 20th of September 1992. If postponed, notice will be given on the 19th of September 1992 over the U.S. Coast Guard Radio Net.

(3) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(4) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(5) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(6) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(7) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: August 20, 1992.

**G.A. Penington,**

*Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.*

[FR Doc. 92-20747 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-14-M#

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**33 CFR Part 117**

**[CGD13-92-11]**

## Drawbridge Operation Regulations; Willamette River, OR

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule with request for comments.

**SUMMARY:** At the request of the Union Pacific Railroad Company, the Coast Guard is establishing temporary regulations governing the liftspan of the Steel Bridge, mile 12.1, at Portland, Oregon. This temporary rule is being tested because infrequent requests for openings of the upper lift span have removed the need for constant attendance by gatetenders at this bridge. This action should provide information concerning the feasibility of proposing a permanent change to the operating regulations. Depending on the nature of comments received on this action the Coast Guard may propose making this change permanent.

**DATES:** This temporary final rule is effective from September 13, 1992, through November 11, 1992, unless sooner terminated. Comments must be received on or before November 11, 1992.

**ADDRESSES:** Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments received will be available for inspection and photocopying at the above address between 7:45 a.m. and 4:15 p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to this address. Persons wishing written confirmation of receipt of their comments should enclose a stamped, pre-addressed envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch at (206) 553-5864.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The drafters of this notice are: Austin Pratt, project officer, Bridge Section and Lieutenant Laticia J. Argenti, project attorney, Thirteenth Coast Guard District Legal Office.

### Discussion of Temporary Rule

A notice of proposed rule making has not been published for this regulation. The bridge owner has requested the Coast Guard to authorize a test period for these regulations. A comment period is being provided during the entire period that the temporary regulations are in force. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for their support or opposition to the change.

The main vertical lift span of the Steel Bridge is a 211-foot steel double-deck through-truss designed so that the lower deck can be raised without effecting the upper deck. This is achieved by the telescoping of the lower deck's vertical girders into those of the upper deck. This design permits elevation of the lower deck for the passage of vessels without disrupting the roadway traffic on the upper deck. The lower deck supports a rail line. Both decks can be lifted when it is necessary to provide greater vertical clearance for the passage of vessels.

The Union Pacific Railroad Company is the owner of the entire structure. The upper deck is leased to the Oregon Department of Transportation which in turn leases part of the corridor for the light rail line for passenger transport.

Under present operation procedures, the Union Pacific is responsible for controlling the vertical lift spans. The Oregon Department of Transportation posts gate tenders at all hours on the upper deck. These tenders have the responsibility of closing the traffic gates whenever it is necessary to elevate both decks of the bridge. This seldom occurs. The lower deck alone is lifted for vessels more often than both.

This change requires one hour notice for openings of the upper deck lift Monday through Friday from 8 a.m. to 4:30 p.m. At all other times two hours notice shall be given. Notice shall be by marine radio, telephone, or other reliable means to the Union Pacific drawtender at the bridge. In order to relieve the state from the burden of having gate keepers in constant attendance on the upper deck, these temporary regulations are being put into effect for a period of sixty days beginning September 13, 1992. If the temporary regulations continue to adequately serve the reasonable needs of navigation, the Coast Guard will consider proposing this modification as a permanent change to the operating regulations for this bridge.

### Regulatory Evaluation

This temporary rule is considered to be not major under Executive Order 12291 and non significant under the Department of Transportation regulatory policies and procedures (44 FR 11304, February 26, 1979). The economic impact has been determined to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are temporary and may be withdrawn earlier than scheduled. They are not expected to have any substantial effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and the otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because this temporary rule imposes no new requirements on small business and will result in partial relief from a regulatory burden on the owner or operator of this bridge, the Coast Guard does not expect this temporary rule to have a significant economic impact on a substantial number of small entities.

### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environment

This rulemaking has been thoroughly reviewed and determined by the Coast Guard to be categorically excluded from further environmental documentation under the authority of 40 CFR 1507.3 and in accordance with paragraph 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

### List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is temporarily amended to read as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. Section 117.897 is temporarily amended by suspending paragraph (a)(1)(ii) and adding a new paragraph (a)(5) to read as follows: (This is a temporary rule and will not appear in the Code of Federal Regulations.)

**§ 117.897 Willamette River.**

(a) * * *

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(5) The draw for Steel Bridge, Portland, mile 12.1, need not be opened for the passage of vessels from 7 a.m. to

8:30 a.m. and 4 p.m. to 5:30 p.m. except Saturdays, Sundays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day or other days observed instead of these days under state law. On weekdays, Monday through Friday, from 8 a.m. to 4:30 p.m., at least one hour notice shall be given for openings of the Steel Bridge. At all other times, at least two hours notice shall be given. Notice shall be given by marine radio, telephone, or other means to the drawtender at the Steel Bridge. During Rose Festival Week or when the water elevation reaches and remains above +12 feet, the draw will open on signal without advance notice, except during the normal closed periods identified above.

* * * * *

Dated: August 10, 1992.

J. E. Vorbach,

*Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.*

[FR Doc. 92-20742 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 92-109]

## Safety Zone: New Bedford Harbor, New Bedford, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary Final Rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in New Bedford Harbor, specifically the main ship channel south of the New Bedford/Fairhaven Bridge in the vicinity of New Bedford Channel Lighted Bell Buoy 16 (LLNR 15460), during the New Bedford Labor Day fireworks display. This safety zone is needed to protect vessels in the vicinity of the display as well as personnel onboard these vessels from potential hazards associated with the fireworks display.

**EFFECTIVE DATE:** This regulation is effective between the hours of 8 p.m. and 10 p.m. on September 5, 1992, unless terminated sooner by the Captain of the Port Providence. The rain date for this event is September 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** LT]G Burke of Marine Safety Office Providence at (401) 528-5335.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The drafters of this regulation are Lieutenant (junior grade) Tina Burke, Project Manager for the Coast Guard Captain of the Port Providence, and Lieutenant Commander J. Astley, Project Counsel for the First Coast Guard District Legal Office.

### Regulatory History

As authorized by 5 U.S.C. 533, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential damage to the vessels and personnel in the vicinity of the fireworks display. In addition, the Coast Guard was informed of this event on July 29, 1992, by the sponsor, which is insufficient notice to provide for full public participation in this rulemaking effort. Since the event is centered on a national holiday, postponing the event to allow for the full rule making process would cause the event to be either meaningless or cancelled. Therefore, good cause exists for not making this temporary final rule effective thirty days after publication.

### Background and Purpose

On September 5, 1992, the city of New Bedford is sponsoring a fireworks display in celebration of Labor Day. The fireworks will be launched from a barge anchored in New Bedford Channel in the vicinity of New Bedford Channel lighted bell buoy 16 (LLNR 15460), between the hours of 9 p.m. and 10 p.m. on September 5, 1992. The raindate is September 6, 1992.

The purpose of this rulemaking is to prohibit is to prohibit vessels from transiting or anchoring in the area of New Bedford Harbor over which the fireworks will be launched, in order to protect these vessels and the persons onboard from potential damage, fire, or personal injury due to sparks and falling debris. This safety zone will be established within a 350 yard radius around the fireworks barge which will be anchored in the vicinity of New Bedford Channel lighted buoy 16 (LLNR 15460). The safety zone will be in effect between the hour of 8 p.m. and 10 p.m. on September 5, 1992, with a rain date set for 8 p.m. to 10 p.m. on September 6, 1992, and will effectively close New Bedford Channel in the vicinity of New Bedford Channel lighted buoy 16 (LLNR 15460) to all vessel traffic during this period.

### Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact to be minimal on all entities. The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water as well as fishing vessels and other commercial vessel traffic wishing to transit the area. Spectator vessels will still be able to view the fireworks from the water but will be required to do so at a distance more than 350 yards from the barge, which will not cause them undue hardship. Fishing vessels will be prohibited from transiting through the area while the zone is in effect. This will not have a significant economic impact on them because of the short duration of the zone. In addition, most of the fishermen who work out of New Bedford expect and are aware that the fireworks and accompanying safety zone will be in place the evening of September 5, 1992, because the Labor Day fireworks display is an annual event. Lastly, only one to two commercial ships transit New Bedford Channel each week. Because of the infrequency of commercial ship transits, these vessel will not experience undue hardship due to this rule. Thus, this safety zone will not cause undue hardship to any entity.

### Small Entities

For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects the economic impact of this rule to be minimal on all entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

### Federalism

The Coast Guard has analyzed this final rule in accordance with the principals and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B,

this final rule will have no significant impact and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available under "ADDRESSES."

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Records and recordkeeping requirements, Security measures, Waterways.

**Proposed Regulation**

For the reasons set out in the preamble the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.2.

2. A new section 165.T01-109 is added to read as follows:

**§ 165.T01-109 Safety Zone: New Bedford Harbor, New Bedford, MA.**

(a) *Location.* The following area is a safety zone: A 350 yard radius around the fireworks barge anchored in New Bedford Harbor, MA, in the vicinity of New Bedford Channel lighted bell buoy 16 (LLNR 15460).

(b) *Effective Date.* This regulation becomes effective between the hours of 8 p.m. and 10 p.m. on September 5, 1992, unless terminated sooner by the Captain of the Port. If the fireworks display is postponed due to inclement weather, the safety zone will be in effect between the hours of 8 p.m. and 10 p.m. on September 6, 1992.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: August 20, 1992.

**H.D. Robinson,**

*Captain, U.S. Coast Guard,*
*Captain of the Port.*

[FR Doc. 92-20743 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-14-M

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## GENERAL SERVICES ADMINISTRATION

## 41 CFR Parts 101-42, 101-43, 101-44, 101-45, 101-46, 101-48, and 101-49

**[FPMR Amendment H-183]**

**RIN 3090-AA42**

## Utilization and Disposal of Hazardous Materials and Certain Categories of Property

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** This regulation adds a new regulatory part to the Federal Property Management Regulations (FPMR) to consolidate policies and methods governing the utilization, donation, sale, and abandonment or destruction of certain types of personal property, specifically hazardous materials and other categories of property with special utilization and disposal requirements. This addition provides Federal property managers with a single FPMR part dealing exclusively with the disposition of such property.

**EFFECTIVE DATE:** August 28, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lester D. Gray, Jr., Director, Property Management Division (703-305-7240).

**SUPPLEMENTARY INFORMATION:** The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**List of Subjects in 41 CFR Parts 101-42, 101-43, 101-44, 101-45, 101-46, 101-48, and 101-49**

Government property management, Hazardous substances, Reporting and recordkeeping requirements, Surplus Government property.

Accordingly, 41 CFR part 101-42 is added and 41 CFR parts 101-43, 101-44, 101-45, 101-46, 101-48, and 101-49 are amended as follows:

1. Part 101-42 is added to Subchapter H, Utilization and Disposal, to read as follows:

## PART 101-42—UTILIZATION AND DISPOSAL OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

Sec.
101-42.000 Scope of part.
101-42.001 Definitions of terms.
101-42.002 Requests for deviations.

**Subpart 101-42.1—[Reserved]**

**Subpart 101-42.2—Utilization of Hazardous Materials and Certain Categories of Property**

101-42.200 Scope of subpart.
101-42.201 [Reserved]
101-42.202 Identification of hazardous materials.
101-42.203 Reassignment of hazardous materials.
101-42.204 Reporting requirements.
101-42.205 Exceptions to reporting.
101-42.206 Special requirements for utilization of hazardous materials and certain categories of property.
101-42.207 Transfer of hazardous materials and certain categories of property.
101-42.208 Custody of hazardous materials.
101-42.209 Cost of care and handling of hazardous materials and certain categories of property.

**Subpart 101-42.3—Donation of Hazardous Materials and Certain Categories of Property**

101-42.300 Scope of subpart.
101-42.301 General.
101-42.302 Responsibilities for donation of hazardous materials.
101-42.303 Hazardous materials distributed to donees by State agencies.
101-42.304 Special requirements for donation of certain hazardous materials.

**Subpart 101-42.4—Sale, Abandonment, or Destruction of Surplus Hazardous Materials and Certain Categories of Property**

101-42.400 Scope of subpart.
101-42.401 Sales responsibilities for hazardous materials.
101-42.402 Reporting hazardous materials for sale.
101-42.403 Sales methods and procedures.
101-42.404 Special requirements for the sale of hazardous materials.
101-42.405 Transportation of hazardous materials.
101-42.406 Abandonment or destruction of surplus hazardous materials and certain categories of property.

**Subparts 101-42.5—101-42.10—[Reserved]**

**Subpart 101-42.11—Special Types of Hazardous Materials and Certain Categories of Property**

101-42.1100 Scope of subpart.
101-42.1101 Federal supply classification (FSC) groups and classes which contain hazardous materials.
101-42.1102 Special requirements for utilization, donation, sale, and abandonment or destruction of hazardous materials and certain categories of property.
101-42.1102-1 Asbestos.
101-42.1102-2 Polychlorinated biphenyls.
101-42.1102-3 Controlled substances.
101-42.1102-4 Nuclear Regulatory Commission—controlled materials.
101-42.1102-5 Drugs, biologicals, and reagents other than controlled substances.
101-42.1102-6 Noncertified and certified electronic products.

101–42.1102–7 Lead-containing paint and items bearing lead-containing paint.
101–42.1102–8 United States Munitions List items which require demilitarization.
101–42.1102–9 Acid contaminated and explosive contaminated property.
101–42.1102–10 Firearms.

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

**§ 101–42.000 Scope of part.**

This part prescribes the special policies and procedures governing the utilization, donation, sale, exchange, or other disposition of hazardous materials, dangerous property, and other categories of property with special utilization and disposal requirements, located within the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

**§ 101–42.001 Definitions of terms.**

For the purposes of this part 101–42, the following terms shall have the meaning set forth below:

*Acid contaminated property* means property that may cause burns or toxicosis when improperly handled due to acid residues adhering to or trapped within the material.

*Biologicals* means hazardous materials which are of or pertain to the products and operations of applied biology, or any biochemical products, especially serums, vaccines, etc., produced from microorganisms.

*Certified electronic product* means any electronic product which bears the manufacturer's certification label or tag (21 CFR 1010.2) indicating that the product meets applicable radiation safety performance standards prescribed by the Food and Drug Administration under 21 CFR part 1020.

*Controlled substances* means:

(a) Any narcotic, depressant, stimulant, or hallucinogenic drug, or any other drug, other substance, or immediate precursor included in Schedules I, II, III, IV, or V of section 202 of the Controlled Substance Act (21 U.S.C. 812) except exempt chemical preparations and mixtures, and excluded substances listed in 21 CFR part 1308;

(b) Any other drug or substance that the Attorney General determines to be subject to control pursuant to Subchapter I of the Controlled Substance Act (21 U.S.C. 801 et seq.); or

(c) Any other drug or substance that by international treaty, convention, or protocol is to be controlled by the United States.

*Explosive contaminated property* means property that may ignite or explode when exposed to shock, flame, sparks, or other high temperature sources due to residual explosive material in joints, angles, cracks, or around bolts.

*Extremely hazardous material* means:

(a) Those materials which are hazardous to the extent that they generally require special handling such as licensing and training of handlers, protective clothing, and special containers and storage.

(b) Those materials which, because of their extreme flammability, toxicity, corrosivity or other perilous qualities, could constitute an immediate danger or threat to life and property and which usually have specialized uses under controlled conditions.

(c) Those materials which have been determined by the holding agency to endanger public health or safety or the environment if not rendered innocuous before release to other agencies or to the general public.

*Firearms* means any weapons (including flare and starter guns) which will, or are designed to, or may be readily converted to expel a projectile by the action of an explosive, the frame or receiver of any such weapons, or any muffler or silencer for such purposes. For purposes of this Part 101–42, firearms are considered to be dangerous property.

*Hazardous material* means property that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Materials Transportation Act (HMTA), the Resource Conservation and Recovery Act (RCRA), or the Toxic Substances Control Act (TSCA). Generally, hazardous materials have one or more of the following characteristics:

(a) Has a flash point below 200 F (93.3 C), closed cup, or is subject to spontaneous heating;

(b) Is subject to polymerization with the release of large amounts of energy when handled, stored, or shipped without adequate controls;

(c) In the course of normal operations, may produce fibers, dusts, gases, fumes, vapors, mists, or smokes which have one or more of the following characteristics:

(1) Causes 50 percent fatalities to test animals below 500 mg/kg of test animal weight when a single oral dose LD50 is used;

(2) Is a flammable solid or a strong oxidizing or reducing agent;

(3) Causes first degree burns to skin in a short time exposure, or is systematically toxic by skin contact;

(4) Has a permissible exposure limit (PEL) below 1000 p/m for gases and vapors, below 500 mg/mm3 for fumes, below 30 mmppcf (10 mg/m3), or 2 fibers/CM3 for dust;

(5) Causes occupational chemical dermatitis, which is any abnormality of the skin induced or aggravated by the work environment which includes but is not limited to primary irritant categories, allergic sensitizers, and photo sensitizers;

(d) Is radioactive to the extent it requires special handling;

(e) Is a recognized carcinogen according to Occupational Safety and Health Administration regulations at 29 CFR part 1910; or

(f) Possesses special characteristics which in the opinion of the holding agency could be hazardous to health, safety, or the environment if improperly handled, stored, transported, disposed of, or otherwise improperly used.

*Hazardous waste* means those materials or substances, the handling and disposal of which are governed by 40 CFR part 261.

(a) In general, hazardous materials are hazardous wastes when one or both of the following is true:

(1) They have passed through the disposal cycle without having successfully been reutilized, transferred, donated, or sold, and the holding agency declares an intent to discard.

(2) They are no longer usable for their intended purpose, a valid alternate purpose, or resource recovery.

(b) In general, solid (non-hazardous) wastes, as defined at 40 CFR 261.2, become hazardous wastes when:

(1) They exhibit one or more of the characteristics of ignitability, corrosivity, reactivity, or EP toxicity; or

(2) They are predetermined hazardous wastes upon generation as listed in 40 CFR part 261, subpart D.

(c) Hazardous materials having an expired shelf life shall be reclassified as hazardous wastes if required by Federal and/or State environmental laws or regulations. Before such reclassification, the shelf life may be extended if supported by results of tests and recertification performed by authorized personnel in accordance with applicable regulations.

(d) The transportation of hazardous wastes is governed by the regulations issued by the Department of Transportation, codified in 49 CFR part 171 *et seq.*

*Lead-containing paint* means paint or other similar surface coating material that contains lead or lead compounds in excess of 0.06 percent of the weight of

the total nonvolatile content of the paint or the weight of the dried paint film.

*Noncertified electronic product* means any electronic product for which there is an applicable radiation safety performance standard prescribed or hereafter prescribed by the Food and Drug Administration (FDA) under 21 CFR part 1020, and which the manufacturer has not certified as meeting such standard. The noncertification may be due to either (a) manufacture of the product before the effective date of the standard or (b) the product was exempted from the applicable standard and is so labeled.

*Nuclear Regulatory Commission—controlled materials* means those materials the possession, use, and transfer of which are subject to the regulatory controls of the Nuclear Regulatory Commission (NRC) pursuant to the Energy Reorganization Act of 1974. The materials are defined as follows:

(a) *Byproduct materials* means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material. (See 10 CFR part 30.)

(b) *Source material* means uranium or thorium, or any combination thereof, in any physical or chemical form, or ores which contain by weight one-twentieth of one percent (0.05%) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material. (See 10 CFR part 40.)

(c) *Special nuclear material* means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, any other materials which the NRC, pursuant to the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto, determines to be special nuclear material, or any material artificially enriched by any of the foregoing, but does not include source material. (See 10 CFR part 70.)

*Reagent* means any hazardous material which is used to detect or measure another substance or to convert one substance into another by means of the reactions it causes.

**§ 101-42.002 Requests for deviations.**

Deviations from the regulations in this part shall only be granted by the Administrator of General Services (or designee). Requests for deviations shall be made in writing to the General Services Administration (FB), Washington, DC 20406, with complete justification. A copy of the authorizing statement for each deviation, including the nature of the deviation, the reasons for such special action, and the Administrator's or designee's approval, will be available for public inspection under Subpart 105-60.3 of this title.

## Subpart 101-42.1—[Reserved]

## Subpart 101-42.2—Utilization of Hazardous Materials and Certain Categories of Property

**§ 101-42.200 Scope of subpart.**

This subpart prescribes the special policies and methods for the utilization and transfer of hazardous materials and other certain categories of property within the Government in addition to the requirements of part 101-43.

**§ 101-42.201 [Reserved]**

**§ 101-42.202 Identification of hazardous materials.**

(a) Current acquisition standards (Fed. Std. No. 313 and Fed. Std. No. 123) and the Federal Acquisition Regulation require that manufacturers identify and document potential hazards on material safety data sheets (MSDSs) as part of the acquisition process. Acquisition of MSDSs is also prescribed by the Occupational Safety and Health Administration (OSHA) regulations found in 29 CFR part 1910 and paragraph 1-602(c) of Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, dated February 26, 1980. GSA's Federal Supply Service (4FQ) maintains an automated data base, accessible via modem and computer terminal, that contains MSDSs for all GSA-procured hazardous materials. In addition to display of the MSDS on the terminal screen, the system allows for the addition of the MSDS to the user's local data base and the transmission of the MSDS via facsimile to the user's site. Detailed instructions on how to access this system may be obtained by sending a self-addressed envelope to General Services Administration, Federal Supply Service, Attn: MSDS Coordinator, 401 W. Peachtree St., NE, suite 3021, Atlanta, Georgia 30365.

(b) The Hazardous Materials Information System (HMIS) is a collection of MSDS information, transportation information, and disposal information that was established by the Department of Defense to assist personnel who handle, store, ship, use or dispose of hazardous materials. Each record in the data base is defined by a stock number (either national stock number or local numbers), the manufacturer's contractor and Government entity (CAGE) code, and a part number indicator which is linked to the manufacturer's part number or trade name. The data base (DoD 6050.5L) is available on microfiche and compact disc-read only memory (CD-ROM) through the Naval Computer and Telecommunication Area Master Station, Atlantic (NCTAMS LANT), Attn.: Code 911.3, Norfolk, VA 23511-5355.

(c) For items not listed or adequately described in the HMIS or on a MSDS, contact the procuring agency, the manufacturer, or your technical staff for information as to the potential hazards of the item.

(d) Some hazardous items were acquired by Federal agencies prior to implementation of the standards requiring identification of potential hazards. Identification and documentation of the hazardous nature of such items is the responsibility of the owning or holding agency. Hazardous materials are found in most Federal supply classification (FSC) classes. Section 101-42.1101 contains a table of FSC classes composed predominantly of hazardous items and a table of FSC groups and classes which contain a significant number of hazardous items. These tables are designed to assist Federal agencies in reviewing personal property inventories to identify hazardous materials.

(e) When an item has been determined hazardous, the owning Federal agency shall document the accountable inventory record accordingly. If the item has not been appropriately labeled by the manufacturer or distributor, the owning agency shall appropriately label, mark, or tag the item in accordance with OSHA requirements (29 CFR 1910.1200) regarding the actual or potential hazard associated with the handling, storage, or use of the item to include hazardous chemical(s) contained and the name of the chemical manufacturer, importer, or responsible party as defined at 29 CFR 1910.1200(c). Such information shall be maintained in the item record for use in preparation of reports of excess property, reassignment or transfer documentation, and other documentation requirements that may arise.

**§ 101-42.203 Reassignment of hazardous materials.**

When hazardous materials are reassigned within an executive agency, information on the actual or potential hazard shall be included in the documentation effecting the reassignment, and the recipient organization shall perpetuate in the inventory or control records visibility of

the nature of the actual or potential hazard.

**§ 101-42.204 Reporting requirements.**

(a) Except as set forth in this 101-42.204, excess personal property which has been identified as hazardous shall be reported promptly in accordance with this part and § 101-43.4801, with a complete description of the actual or potential hazard associated with the handling, storage, or use of the item.

(b) If the hazardous characteristics of the item are adequately described on a MSDS or HMIS record (or equivalent), the reporting document should so indicate, and a copy of the MSDS or HMIS record shall be included. If no MSDS or HMIS is available, information must be obtained by the reporting activity and furnished with the reporting document. A certification by a duly authorized agency official that the item has been clearly labeled as prescribed in § 101-42.202(e) should be included in the description of the hazard. The agency official must also certify that the containers and/or packaging meet or exceed Department of Transportation specifications for a hazardous material container (49 CFR parts 178-180).

(c) Hazardous wastes shall not be reported to GSA for disposal, and shall be disposed of by the holding agency or the reporting activity only under the Environmental Protection Agency (EPA) and State and local regulations. Holding agencies shall contact the manufacturer, the agency's technical staff, or the local State EPA office for assistance in this matter if needed.

**§ 101-42.205 Exceptions to reporting.**

(a) When the actual or potential hazard is such that an item is determined by the holding agency to be extremely hazardous property, the item shall not be reported on Standard Form (SF) 120, Report of Excess Personal Property, unless so directed by a GSA regional office or GSA Central Office. Other items identified as hazardous shall be reported to GSA on SF 120 unless otherwise excepted by §§ 101-43.304 and 101-43.305.

(b) When an item determined to be extremely hazardous property becomes excess, the holding agency shall notify the appropriate GSA regional personal property office, identify the item, and describe the actual or potential hazard associated with the handling, storage, or use of the item. On a case-by-case basis, the GSA regional office will determine the utilization, donation, sales, or other disposal requirements, and provide appropriate guidance to the holding agency.

(c) When EPA, under its authorities, transfers accountability for hazardous materials to Federal, State, and local agencies, to research institutions, or to commercial businesses to conduct research or to perform the actual cleanup of a contaminated site, the item is not required to be reported.

**§ 101-42.206 Special requirements for utilization of hazardous materials and certain categories of property.**

Special utilization requirements for certain categories of property are provided in § 101-42.1102. Many hazardous materials require special storage and handling. It is the responsibility of the holding agency to properly store hazardous materials and ensure the use of appropriate safeguards such as warning signs, labels, and use of protective clothing and equipment by utilization screeners who are inspecting excess hazardous materials.

**§ 101-42.207 Transfer of hazardous materials and certain categories of property.**

(a) Excess hazardous materials may be transferred among Federal agencies under § 101-43.309-5, except that the Standard Form (SF) 122, Transfer Order Excess Personal Property, or any other transfer order form approved by GSA, shall contain a complete description of the actual or potential hazard associated with the handling, storage, or use of the item. Such description shall consist either of a written narrative, complying with the requirements of 29 CFR 1910.1200, in block 13c or as an addendum, or an MSDS or HMIS data. In the absence of an MSDS, the HMIS data which fulfills the MSDS requirements must be attached if the receiving activity does not have the HMIS readily available. Otherwise, citation to the HMIS shall be provided. A certification by a duly authorized official that the item has been clearly labeled and its packaging meets OSHA and DOT requirements as set forth in §§ 101-42.202(e) and 101-42.204 respectively, shall be included in the description of the hazard. The transferee shall prepare the SF 122, or any other transfer order form approved by GSA, under § 101-43.4901-122.

(b) The transferee agency shall document the inventory or control record of the transferred hazardous item to clearly reflect the actual or potential hazard associated with the handling, storage, or use of the item. If available, an MSDS or a citation or copy of the HMIS data must be filed with the SF 122 or automated requisitions on approved forms. Such visibility shall be maintained in the item record and on the property (labeled) to the extent required by Federal regulations to ensure the continued identification of the item as hazardous material.

**§ 101-42.208 Custody of hazardous materials.**

Custody of extremely hazardous materials shall be the responsibility of the owning or holding Federal agency. Custody of other hazardous materials may be transferred in whole or in part to another Federal agency with that agency's consent.

**§ 101-42.209 Cost of care and handling of hazardous materials and certain categories of property.**

The special handling requirements associated with many hazardous materials often increase the cost of core and handling of hazardous materials well above the usual costs incurred while holding excess personal property pending disposition. As provided in § 101-43.310-1, each holding agency shall be responsible for, and bear the cost of, care and handling of excess property pending disposition, including those special costs associated with hazardous materials. Only the cost of transportation and handling incurred incident to the transfer of hazardous materials are borne by the transferee agency if billed by the holding agency in accordance with § 101-43.309-3.

## SUBPART 101-42.3—DONATION OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

**§ 101-42.300 Scope of subpart.**

This subpart prescribes the special policies and methods governing the donation of hazardous materials and certain categories of property in addition to the requirements of part 101-44.

**§ 101-42.301 General.**

Surplus personal property identified as hazardous material not required for transfer as excess personal property to Federal agencies shall normally be made available for donation. However, State agencies shall not acquire hazardous materials without first ensuring that there are eligible known donees for such property. Surplus property identified as hazardous may be donated provided the donee:

(a) Is informed, via MSDS, HMIS data, or written narrative, that the item is hazardous and is furnished special handling and/or other appropriate information; and

(b) Signs the following certification:

I (We) hereby certify that the donee has knowledge and understanding of the

hazardous nature of the property hereby donated and will comply with all applicable Federal, State, and local laws, ordinances, and regulations with respect to the care, handling, storage, shipment, and disposal of the hazardous material(s). The donee agrees and certifies that the Government shall not be liable for personal injuries to, disabilities of, or death of the donee or the donee's employees, or any other person arising from or incident to the donation of the hazardous material(s) or its final disposition. Additionally, the donee agrees and certifies to hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the hazardous material(s), its use, or final disposition.

**§ 101-42.302 Responsibilities for donation of hazardous materials.**

(a) *Holding agencies.* Holding agencies shall be responsible for the identification and reporting of hazardous materials as set forth in §§ 101-42.202 and 101-42.203. Pending transfer for donation, each holding agency shall be responsible for performing, and shall bear the cost of, care and handling of its hazardous materials.

(b) *State agencies.* State agencies or the donee when applicable, shall prepare Standard Form (SF) 123, Transfer Order Surplus Personal Property, under § 101-44.4901-123-1. A full description of the actual or potential hazard associated with handling, storage, or use of the item must be made available by providing an MSDS, HMIS data, or a narrative description in block 12c or included as an addendum to the SF 123. Such description shall comply with the requirements of 29 CFR 1910.1200. The State agency and/or donee shall sign the certification in § 101-42.301(b). Any applicable requirements and restrictions shall be forwarded with the SF 123 to the GSA regional office.

(c) *General Services Administration.* GSA, through its regional offices, shall be responsible for approving the transfer for donation of hazardous materials. Before approving any donation of a hazardous material, the GSA regional office shall make sure all required certifications and agreements accompany the SF 123.

**§ 101-42.303 Hazardous materials distributed to donees by State agencies.**

Donation of surplus personal property designated as hazardous material shall be accomplished by the use of State agency distribution document as set forth in § 101-44.208. In addition to the terms, conditions, and restrictions in the distribution document, the donee shall certify to the conditions in § 101-42.301(b).

**§ 101-42.304 Special requirements for donation of certain hazardous materials.**

Special donation requirements for specific hazardous materials are provided in § 101-42.1102. Many hazardous materials require special storage and handling. It is the responsibility of the Federal holding agency or State agency to properly store hazardous materials, ensure the use of appropriate safeguards, and provide instructions for personal protection to donation screeners who are inspecting surplus hazardous materials. It is the responsibility of the State agency and/or donee to comply with DOT regulations (49 CFR part 171 *et seq.*) when transporting hazardous materials. Any costs incident to repacking or recontainerization will be borne by the State agency and/or donee. State agencies and/or donees will comply with EPA's Resource Conservation and Recovery Act (40 CFR part 261 *et seq.*) including its application to transporters, storers, users, and permitting of hazardous wastes. Such requirements may be administered by various States instead of the EPA.

## SUBPART 101-42.4—SALE, ABANDONMENT, OR DESTRUCTION OF SURPLUS HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

**§ 101-42.400 Scope of subpart.**

This subpart prescribes the special policies and procedures governing the sale, abandonment, or destruction of hazardous materials and certain categories of property in addition to the requirements of part 101-45.

**§ 101-42.401 Sales responsibilities for hazardous materials.**

(a) *General Services Administration.* GSA, through its regional offices, shall be responsible for the sale of hazardous materials for holding agencies except for the Department of Defense, which is delegated authority to sell property under its control, and agencies granted approval by GSA. Holding agency sales of hazardous materials conducted in accordance with § 101-45.304 must meet or exceed the requirements in § 101-42.403.

(b) *Holding agencies.* Holding agencies shall be responsible for preparation of hazardous materials for sale as provided for in § 101-45.103-2. Pending disposal, each holding agency shall be responsible for performing and bearing the cost of care and handling of its hazardous materials, including posting appropriate warning signs and rendering extremely hazardous property innocuous, or providing adequate safeguards.

**§ 101-42.402 Reporting hazardous materials for sale.**

Holding agencies shall report hazardous materials to be sold by GSA to the appropriate GSA regional office for the region in which the property is physically located in the manner outlined below:

(a) *Reportable property.* Hazardous materials are required to be reported to the GSA regional offices for utilization screening as set forth in subparts 101-42.2 through 101-42.4 and 101-42.11. If the hazardous materials are not transferred or donated, the hazardous materials will be programmed for sale by the GSA regional office without further documentation from the holding agency.

(b) *Nonreportable property.* Under § 101-42.202, Federal holding agencies are required to identify and label hazardous materials. Hazardous materials not required to be reported for utilization screening, and for which any required donation screening has been completed, shall be reported to the appropriate GSA regional office on Standard Form (SF) 126, Report of Personal Property for Sale, as provided in § 101-45.303.

(c) *Description and certification.* The SF 126 shall contain a certification, executed by a duly authorized agency official, in block 16c or as an addendum, that the item has been clearly labeled and packaged as required in §§ 101-42.202(e) and 101-42.204. The SF 126 shall also contain or be accompanied by a full description of the actual or potential hazard associated with handling, storage, or use of the item. Such description shall be furnished by providing:

(1) An MSDS or copy thereof; or

(2) A printed copy of the record, corresponding to the hazardous material being reported, from the automated HMIS; or

(3) A written narrative, included in either block 16c or as an addendum, which complies with the requirements of 29 CFR 1910.1200.

**§ 101-42.403 Sales methods and procedures.**

Hazardous materials are sold in accordance with the provisions of § 101-45.304 and the following special methods and procedures.

(a) Sales which offer hazardous materials shall be conducted separately from other sales. Sale catalogs or listings which offer hazardous materials

shall not be mailed to all persons on the general sales mailing list but shall be sent to only those persons and entities which have expressed an interest in purchasing such materials.

(b) Sale catalogs, listings, and invitations for bids, with respect to hazardous materials, shall:

(1) Limit the materials in each lot for sale to a single Federal supply group;

(2) Indicate, in the item description, if an MSDS has been issued for the property being sold; and

(3) Indicate, in the item description, if an item is being sold only for its material content.

(c) For a bid to be considered for award, the bidder must sign the following certification:

The bidder hereby certifies that if awarded a contract under this invitation for bids, the bidder will comply with all applicable Federal, State, and local laws, ordinances, and regulations with respect to the care, handling, storage, shipment, resale, export, or other use of the material hereby purchased. The bidder will hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or other claims of any nature arising from or incident to the handling, use, storage, shipment, resale, export, or other disposition of the hazardous items purchased.

(d) MSDSs, printed HMIS records, where applicable, or a written description in compliance with the requirements of 29 CFR 1910.1200 shall be sent to purchasers of hazardous materials with their notice of award.

(e) Unless authorized by the appropriate GSA regional office, a holding agency shall not sell extremely hazardous property unless the property is rendered innocuous or adequate safeguards are provided. Such property shall be rendered innocuous in a manner so as to preserve the utility or commercial value of the property.

**§ 101-42.404 Special requirements for the sale of hazardous materials.**

Special sales requirements for certain hazardous materials are provided in § 101.42.1102. Hazardous items generally require special storage and handling. It is the responsibility of the holding agency to properly store hazardous items, to provide all necessary information to ensure that prospective bidders are informed of hazards, and to list the precautions bidders should take to protect themselves.

**§ 101-42.405 Transportation of hazardous materials.**

The transportation of hazardous materials is governed by the hazardous materials regulations (49 CFR parts 170-180) issued by the Department of Transportation. Except as otherwise provided below, an agency official, prior to the transportation of hazardous materials, shall certify on the shipping document, based on his/her own examination, that the materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation in accordance with the hazardous materials regulations. The shipper shall provide such certification in duplicate and give one copy to the originating carrier and retain the other for no less than 1 year. Hazardous materials sold by the Department of Defense (DOD) in packings not marked under the hazardous materials regulations may be shipped from DOD installations, provided DOD certifies in writing on a certificate or equivalency (COE) that the packing meets or exceeds requirements of the hazardous materials regulations.

**§ 101-42.406 Abandonment or destruction of surplus hazardous materials and certain categories of property.**

In addition to the requirements for the abandonment or destruction of surplus property prescribed in subpart 101-45.9, hazardous materials, including empty hazardous material containers, shall be abandoned or destroyed under Federal, State, and local waste disposal and air and water pollution control standards. Additional requirements for the abandonment and destruction of certain specific hazardous materials are contained in § 101-42.1102.

## Subparts 101-42.5—101-42.10—[Reserved].

## Subpart 101-42.11—Special Types of Hazardous Materials and Certain Categories of Property

**§ 101-42.1100 Scope of subpart.**

This subpart prescribes disposal procedures for certain hazardous items and lists specific Federal supply classes which may contain hazardous items

**§ 101-42.1101 Federal supply classification (FSC) groups and classes which contain hazardous materials.**

(a) Hazardous material identification is required for all material which, by virtue of its potentially dangerous nature, requires controls to assure adequate safety to life, property, and the environment, and which is therefore defined as a hazardous material.

(b) The tables in paragraph (c) of this section list those FSC classes composed predominantly of hazardous materials and those FSC classes which contain a significant number of hazardous materials. Those classes that contain munitions list items (MLI) which require demilitarization are not identified in the tables because the items in those classes must be identified by the appropriate demilitarization code and processed under the procedures in § 101-42.1102-8.

(c) The tables as listed in Federal standard 313 are as follows:

**Federal Supply Classes Composed Predominantly of Hazardous Items**

*Federal Supply Class (FSC)*

6810 Chemicals
6820 Dyes
6830 Gases: Compressed and liquified
6840 Pest control agents and disinfectants
6850 Miscellaneous chemical specialties
7930 Cleaning and polishing compounds and preparations
8010 Paints, dopes, varnishes, and related products
8030 Preservative and sealing compounds
8040 Adhesives
9110 Fuels, solid
9130 Liquid propellants and fuels, petroleum case
9135 Liquid propellant fuels and oxidizers, chemical base
9140 Fuel oils
9150 Oils and greases: Cutting, lubricating, and hydraulic
9160 Miscellaneous waxes, oils, and fats

**Federal Supply Classes and Groups Which Contain a Significant Number of Hazardous Items**

Note: If an item is determined to be hazardous as defined in § 101-42.001, a material safety data sheet (or equivalent) should accompany the item even though the Federal supply class is not listed in this table.

| Federal supply class/grp | Title | Examples of hazardous materials requiring identification |
|---|---|---|
| 1370 | Pyrotechnics | Warning fuse, fire starter. |
| 1375 | Demolition materials | Explosive device. |
| 2520 | Vehicular power transmission components | Items containing asbestos. |
| 2530 | Vehicular brake steering, axle, wheel, and track components. | Items containing asbestos. |
| 2540 | Vehicular furniture and accessories | Items containing asbestos. |
| 2640 | Tire rebuilding and tire and tube repair materials | Items containing flammable or toxic compounds. |

| Federal supply class/grp | Title | Examples of hazardous materials requiring identification |
|---|---|---|
| Group 28 | Engines, turbines, and components | Engine valves containing metallic sodium. |
| Group 29 | Engine accessories | Engine valves containing metallic sodium. |
| Group 30 | Mechanical power transmission equipment | Equipment containing hazardous hydraulic fluids including PCBs. |
| Group 34 | Metalworking machinery | Equipment containing hazardous hydraulic fluids including PCBs. |
| 3433 | Gas welding, heat cutting, and metalizing equipment | Compressed gases. |
| 3439 | Miscellaneous welding, soldering and brazing supplies and accessories. | Hazardous items such as cleaners, acids, flux and supplies that contain or produce hazardous fumes. |
| 3610 | Printing, duplicating, and bookbinding equipment | Flammable or toxic lithographic solutions. |
| 3655 | Gas generating and dispensing systems, fixed or mobile | Items that produce hazardous fumes. |
| 3680 | Foundry machinery, related equipment and supplies | Flammable or toxic casting compounds. |
| 4240 | Safety and rescue equipment | Items which involve oxygen, or compressed gases, or contain emitting charges. |
| 5610 | Mineral construction materials, bulk | Hazardous items such as cutback asphalt, deck and floor covering, deck and surface underlay compound, sealing compound, flight deck compound. |
| 5660 | Wallboard, building paper, and thermal insulation materials | Asbestos cloth which has loose fibers or particles that may become airborne and materials containing formaldehyde. |
| 5820 | Radio and television communication equipment, except airborne. | Circuit cooler items that contain gases that are regarded as hazardous to the earth's ozone layer. |
| 5835 | Sound recording and reproducing equipment | Recording tape cleaners that contain hazardous cleaning fluids. |
| 5910 | Capacitors | Items that contain polychlorinated biphenyls (PCBs) or sulfuric acid. |
| 5915 | Filters and networks | Items that contain polychlorinated biphenyls (PCBs). |
| 5920 | Fuses and lightning arresters | Items that contain radioactive material. |
| 5925 | Circuit breakers | Items that contain radioactive material. |
| 5930 | Switches | Items containing radioactive materials. |
| 5935 | Connectors, electrical | Kits that contain flammable chemicals. |
| 5950 | Coils and transformers | Items containing polychlorinated biphenyls (PCBs). |
| 5960 | Electron tubes and associated hardware | Tubes which contain radioactive isotopes and require warning labels and megnetron tubes which require special precautions when being prepared for air shipment. |
| 5965 | Headsets, handsets, microphones, and speakers | Items containing magnetic material. |
| 5970 | Electrical insulators and insulating materials | Items containing flammable solvents. |
| 5975 | Electrical hardware and supplies | Items containing asbestos. |
| 5985 | Antennas, waveguide, and related equipment | Kits that contain flammable chemicals. |
| 5999 | Miscellaneous electrical and oxide electronic components | Contact plates that contain beryllium. |
| Group 61 | Electric wire and power and distribution equipment | Power factor capacitors containing PCBs. |
| 6120 | Transformers: Distribution and power station | Transformers containing PCBs. |
| 6135 | Batteries, primary | Lead-acid, lithium and mercury batteries and alkaline (with electrolyte). |
| 6140 | Batteries, secondary | Items that are wet or moist containing corrosive or other hazardous compounds. |
| 6145 | Wire and cable, electrical | Insulated wire containing asbestos. |
| 6220 | Electric vehicular lights and fixtures | Items that contain mercury. |
| 6230 | Electric portable and hand lighting equipment | Items that contain wet batteries. |
| 6240 | Electric lamps | Items that contain mercury. |
| 6260 | Nonelectrical lighting fixtures | Items that contain mercury. |
| 6350 | Miscellaneous signal and security detection systems | Items that contain wet batteries or radioactive material. |
| 6505 | Drugs, biologicals and official reagents | Hazadous items as defined in § 101-42.001. |
| 6508 | Medicated cosmetics and toiletries | Hazardous items as defined in § 101-42.001 subject to DOT Hazardous Materials Regulations. |
| 6510 | Surgical dressing materials | Items containing flammable solvents. |
| 6520 | Dental instruments, equipment, and supplies | Items containing flammable solvents, mercury, or asbestos. |
| 6525 | X-ray equipment and supplies: medical, dental, veterinary | Items containing hazardous chemicals, solvents. |
| 6625 | Electrical and electronic properties measuring and testing instruments. | Items containing radioactive materials. |
| 6640 | Laboratory equipment and supplies | Items containing flammable compounds, mercury, or asbestos. |
| 6685 | Pressure, temperature, and humidity and measuring and controlling instruments. | Items containing mercury or compressed gases. |
| 6740 | Photographic | Items containing radioactive compounds. |
| 6750 | Photographic supplies | Items containing hazardous chamicals, solvents, thinners, and cements. |
| 6780 | Photographic sets, kits and outfits | Items containing hazardous chemicals, solvents, thinners, and cements. |
| 7360 | Sets, kits, and outfits; food preparation and serving | Items containing compressed gases such as fire extinguishers. |
| 7510 | Office supplies | Hazardous items, such as thinners, cleaning fluids, flammable inks, and varnishes. |
| 8405 | Outerwear, men's | Maintenance kits containing flammable solvents. |
| 8410 | Outerwear, women's | Maintenance kits containing flammable solvents. |
| 8415 | Clothing, special purpose | Maintenance kits containing flammable solvents. |
| 8465 | Individual equipment | Maintenance kits containing flammable solvents. |
| 8510 | Perfumes, toilet preparations, and powders | Shipping containers, and pressurized containers with flammable or nonflammable propellents. |
| 8520 | Toilet soap, shaving preparations, and dentifrices | Shipping containers, pressurized containers with flammable or nonflammable propellants. |
| 8720 | Fertilizers | Items containing weed and pest control or other harmful ingredients or because of their composition, are hazardous. |
| 9390 | Miscellaneous fabricated nonmetallic materials | Items containing fammable solvents or asbestos. |
| 9920 | Smokers' articles and matches | Ligher fuel and matches only. |
| 9930 | Memorials; cemeterial and mortuary equipment and supplies. | Items containing formaldehyde or its solutions. |

**§ 101-42.1102 Special requirements for utilization, donation, sale, and abandonment or destruction of hazardous materials and certain categories of property.**

**§ 101-42.1102-1 Asbestos**

(a) *General.* (1) Asbestos is the common name for a group of natural minerals that occur as masses of compact or relatively long silky fibers. The Environmental Protection Agency classified asbestos as a hazardous air pollutant in 1972.

(2) Friable asbestos materials contain more than one percent asbestos by weight and can, by hand pressure, be crumbled, pulverized, or reduced to powder, thus allowing for potential release of asbestos fibers into the air.

(3) Nonfriable asbestos materials cannot, when dry, be crumbled, pulverized, or reduced to powder by hand pressure and contain asbestos which is bonded or otherwise rendered unavailable for release into the atmosphere through normal usage. However, cutting, sanding, crushing, or performing some other disruptive action on items containing nonfriable asbestos can release asbestos fibers into the air.

(4) As noted in this § 101-42.1102-1, property containing friable asbestos normally shall not be transferred, donated, or sold. Notwithstanding these provisions, holding agencies may, on a case-by-case basis, request approval from the GSA Central Office (which will consult with EPA) to transfer, donate, or sell such property if, in the judgement of the holding agency, special circumstances warrant such action.

(b) *Utilization requirements.* (1) Excess personal property known to contain friable asbestos shall not be reported to GSA nor transferred among Federal agencies except as noted in § 101-42.205(c) or paragraph (a)(4) of this section. GSA regional offices shall return any reports of excess property containing friable asbestos to the holding agency with instructions to dispose of the property under paragraph (e) of this section.

(2) Excess personal property containing nonfriable asbestos shall be reported and processed in the normal manner, as provided for in part 101-43, except that:

(i) The Standard Form (SF) 120, Report of Excess Personal Property, and SF 122, Transfer Order, Excess Personal Property, and any other appropriate documentation shall include the following warning:

**Warning**

This property contains asbestos. Inhaling asbestos fibers may cause cancer. Do not release fibers by cutting, crushing, sanding, disassembling, or otherwise altering this property. End users and new owners, if transferred, should be warned. OSHA standards for personnel protection are codified at 29 CFR 1910.1001. EPA disposal standards are codified at 40 CFR part 763.

(ii) Immediately after excess determination, all items of personal property known to contain nonfriable asbestos shall be labeled with a warning substantially as follows:

**Warning**

This property contains asbestos. Inhaling asbestos fibers may cause cancer. Do not release fibers by cutting, crushing, sanding, disassembling, or otherwise altering this property.

(c) *Donation requirements.* (1) Surplus personal property containing friable asbestos shall not be donated. Such property shall be disposed of under paragraph (e) of this section.

(2) Surplus personal property containing nonfriable asbestos may be donated in the normal manner as provided for in part 101-44, except that:

(i) The Standard Form (SF) 123, Transfer Order Surplus Personal Property, and any other appropriate documentation shall include the warning as provided by paragraph (b)(2)(i) of this section.

(ii) All items of personal property to be donated which contain nonfriable asbestos shall be labeled as provided by paragraph (b)(2)(ii) of this section.

(d) *Sales requirements.* (1) Surplus personal property containing friable asbestos shall not be sold. Such property shall be disposed of under paragraph (e) of this section.

(2) Surplus personal property containing nonfriable asbestos may be sold as provided for in part 101-45, except that:

(i) Any documentation which lists the property to be sold and which is prepared incident to the sale, and any printed matter which advertises the sale of personal property containing nonfriable asbestos shall include the warning as provided by paragraph (b)(2)(i) of this section.

(ii) All items of personal property to be sold which contain nonfriable asbestos shall be labeled as provided by paragraph (b)(2)(ii) of this section.

(e) *Abandonment and destruction.* (1) Excess or surplus personal property which contains friable asbestos shall be disposed of by burial in a site which meets the requirements of 40 CFR 61.156. Holding agencies should contact the nearest office of the Environmental Protection Agency for assistance with regard to disposal of asbestos containing materials (with the exception of Department of Defense activities which should contact the Defense Logistics Agency).

(2) Personal property containing nonfriable asbestos which is not transferred, donated, or sold shall be abandoned or destroyed as provided for in subpart 101-45.9. However, if the holding agency judges that the nonfriable asbestos contained in the property has the potential of becoming friable for any reason during the process of abandonment or destruction, such property shall be disposed of as provided in paragraph (e)(1) of this section.

**§ 101-42.1102-2 Polychlorinated biphenyls.**

(a) *General.* (1) Polychlorinated biphenyls (PCBs) are one member of a class of chlorinated aromatic compounds which have been determined to be hazardous to health and the environment. They are used, among other things, as insulators and coolants for electric cables and components such as transformers and capacitors, as additives for extreme pressure lubricants, and as coatings in foundry use.

(2) Substances containing PCBs are divided into three classes according to the concentration of PCBs present, as measured by parts per million (ppm).

(i) Zero through 49 ppm is classified as an *excluded PCB product.*

(ii) Fifty through 499 ppm PCB is classified as *PCB item.*

(iii) Five hundred or greater ppm PCB is classified as *PCB.*

(3) Excluded PCB products (0-49 ppm PCB) are not subject to Federal restrictions and may be transferred, donated, sold, or otherwise processed under parts 101-43 through 101-46 of this chapter provided such processing conforms to the provisions of this section and all applicable State and local laws. Some States regulate PCB concentrations at a stricter level than does the Federal Government.

(4) All PCBs and PCB items to be transferred, donated, or sold shall be labeled or marked conspicuously with a warning substantially as follows:

Caution—This item contains PCBs (polychlorinated biphenyls), a toxic environmental contaminant requiring special handling and disposal in accordance with the U.S. Environmental Protection Agency regulation (40 CFR 761), applicable State laws, and 41 CFR 101-42.1102-2. For proper disposal information, contact the nearest EPA office. For transportation requirements, see 49 CFR Parts 171-180.

(5) Unmarked or unlabeled items containing PCBs or PCB items with an unknown level of concentration of PCBs shall not be transferred, donated, or sold.

(b) *Utilization requirements.* (1) PCBs and PCB items are reported for utilization screening in accordance with § 101-42.204.

(2) Transfers of excess PCBs or PCB items shall not be approved by GSA unless:

(i) The items are intact, non-leaking, and totally enclosed.

(ii) The SF 122, Transfer Order Excess Personal Property, or other transfer document cites the specific provision in 40 CFR Part 761 that permits continued use of the item, and contains a certification that the property has been inspected by the transferee and complies with all the use, inspection, labeling, and other provisions of 40 CFR part 761.

(3) When a PCB or PCB item is transferred as excess to another agency, the receiving agency shall annotate its property accountability records to reflect the nature and extent of the PCB content and shall list the provisions of 40 CFR part 761 authorizing use of the item. If tests are conducted to ascertain the nature and extent of PCB contamination, the receiving agency shall furnish the GSA regional office with a copy of the test results. Such information shall be perpetuated on any notification or release documents when the agency disposes of the property.

(c) *Donation requirements.* (1) No PCB or PCB-contaminated items shall be approved by GSA for donation under part 101–44 unless:

(i) The certification required by § 101–42.1102(a)(4) appears on the SF 123, Transfer Order Surplus Personal Property;

(ii) The specific donee has been determined; and

(iii) A justification from the recipient is attached stating the proposed use of the property and citing the specific provision in 40 CFR part 761 that permits continued use of the item.

(2) All PCBs and PCB items must be in usable condition and in working order to be eligible for donation. Such items that are not in usable condition will not be approved for donation.

(3) Items to be donated must be intact, totally enclosed, and non-leaking.

(4) If PCBs or PCB items are donated to service educational activities or to public airports, the Department of Defense or the Federal Aviation Administration, respectively, shall obtain the following signed warning and certification from the donee. State agencies for surplus property shall have the warning and certification typed or stamped on the face of each copy of the distribution document and signed and dated by the authorized representative of the donee organization at the time the property is issued.

Warning and certification:

The donee is aware that the item(s) listed as containing polychlorinated biphenyls (PCBs), a toxic environmental contaminant, require(s) special handling and disposal in accordance with U.S. Environmental Protection Agency regulation (40 CFR part 761) and U.S. Department of Transportation regulations codified in 49 CFR parts 171–180. The donee certifies that this item will be handled and disposed of in accordance with applicable Federal statutes and regulations and applicable State laws.

(d) *Sales requirements.* (1) Surplus PCBs or PCB items normally shall not be sold by GSA or holding agencies. These items are regarded as extremely hazardous and are to be disposed of by the holding agency under the Environmental Protection Agency regulations.

(2) Agencies may request the authority to sell, or that GSA sell, a specific PCB or PCB item. Such requests shall cite the provision in 40 CFR part 761 that authorizes sale and continued use of the specific item. Any such requests shall also include a justification for sale of the item rather than disposal under the EPA regulations.

(3) If PCBs or PCB items are to be sold, the corresponding invitation for bids (IFB), any Standard Form (SF) which lists such items, and any printed matter which advertises the sale of such items shall contain the warning as provided in paragraph (a)(4) of this section.

(e) *Abandonment and destruction.* (1) PCBs and PCB items of personal property not disposed of via utilization, donation, or sale shall be destroyed or otherwise disposed of in accordance with the Environmental Protection Agency regulation (40 CFR part 761) and applicable State laws.

(2) Holding agencies shall contact the nearest office of the EPA for assistance in complying with the provisions of 40 CFR part 761.

**§ 101–42.1102–3 Controlled substances.**

(a) *Utilization requirements.* (1) Excess controlled substances are not required to be reported to GSA, but are subject to the utilization screening requirements of § 101–43.311–2. Holding agencies shall make reasonable efforts to obtain utilization of excess controlled substances by offering them to those Federal agencies which certify that they are registered with the Drug Enforcement Administration (DEA), Department of Justice, and are authorized to procure the particular controlled substances requested for transfer. The certification shall include the registration number on the DEA Form 223, Certificate of Registration, issued by DEA.

(2) Holding agencies shall arrange for transfers of controlled substances under §§ 101–43.309–5 and 101–42.207.

(3) All controlled substances that a holding agency determines to be excess shall become surplus after the holding agency has complied with the utilization requirements of paragraph (a)(1) of this section.

(b) *Donation requirements.* Controlled substances shall not be donated.

(c) *Sales requirements.* Surplus controlled substances which are not required to be destroyed as provided in paragraph (d) of this section may be offered for sale by sealed bid under subpart 101–45.3 provided:

(1) The invitation for bids (IFB):

(i) Consists only of surplus controlled substances;

(ii) Requires the normal bid deposit prescribed in § 101–45.304–10;

(iii) Is distributed only to bidders who are registered with the DEA, Department of Justice, to manufacture, distribute, or dispense the controlled substances for which the bid is being submitted; and

(iv) Contains the following special condition of sale:

The bidder shall complete, sign, and return with his/her bid the certificate as contained in this invitation. No award will be made or sale consummated until after this agency has obtained from the Drug Enforcement Administration, Department of Justice, verification that the bidder is registered to manufacture, distribute, or dispense those controlled substances which are the subject of the award.

(2) The following certification shall be made a part of the IFB (and contract) to be completed and signed by the bidder and returned with the bid:

The bidder certifies that he/she is registered with the Drug Enforcement Administration, Department of Justice, as a manufacturer, distributor, or dispenser of the controlled substances for which a bid is submitted and that the registration number is _____.

_____

Name of bidder (print or type)

_____

Signature of bidder

_____

Address of bidder (print or type)

_____

City, State, Zip code

(3) As a condition precedent to making an award for surplus controlled substances, the following shall be submitted to the Drug Enforcement Administration (DEA), Department of Justice, Washington, DC 20537, Attn: Regulatory Support Section (ODR):

(i) The name and address of the bidder(s) to whom an award is proposed

to be made and the bidder(s) registration number(s);

(ii) The name and address of both the holding activity and the selling activity;

(iii) A description of the controlled substances, how those substances are packaged, and the quantity of substances proposed to be sold to the bidder;

(iv) The identification of the IFB by its number, and date on which such bid(s) expire(s); and

(v) A request for advice as to whether the bidder is a registered manufacturer, distributor, or dispenser of controlled substances.

(d) *Destruction of controlled substances.* Controlled substances shall not be abandoned, and destruction of controlled substances must be accomplished in accordance with the terms and conditions applicable to drugs, biologicals, and reagents under § 101–42.1102–5(d).

(1) The following shall be destroyed by the holding agency or State agency:

(i) Controlled substances determined surplus at one time and one place with an acquisition cost of less than $500;

(ii) Controlled substances in a deteriorated condition or otherwise unusable;

(iii) Controlled substances for sale in accordance with § 101–42.1102–3(c) but for which no satisfactory or acceptable bids were received.

(2) In addition to the requirements set forth herein, each executive agency and State agency shall comply with the DEA regulations, 21 CFR 1307.21, which provide procedures for disposing of controlled substances, or with equivalent procedures approved by DEA.

(3) Destruction of controlled substances shall be performed by an employee of the holding agency or State agency in the presence of two additional employees of the agency as witnesses to that destruction unless the special agent in charge (SAC) of the DEA Divisional Office directs otherwise.

**§ 101–42.1102–4 Nuclear Regulatory Commission-controlled materials.**

(a) *General.* The Nuclear Regulatory Commission (NRC) has exclusive control over licensing, use, transfer, and disposition of NRC-controlled materials.

(b) *Transfer of NRC-controlled materials.* NRC-controlled materials shall not be reported to GSA as excess personal property, nor shall they be made available for excess and surplus screening as nonreportable property. Transfer and disposition of such materials do not require GSA approval and shall be accomplished only under the applicable regulations of the NRC (see 10 CFR parts 30 through 35, 40, and 70).

(c) *Information and inquiries.* All inquiries for further information or specific instructions regarding the licensing, use, transfer, or disposition of NRC-controlled materials shall be directed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**§ 101–42.1102–5 Drugs, biologicals, and reagents other than controlled substances.**

In addition to the requirements of subparts 101–42.2 through 101–42.4, drugs, biologicals, and reagents which are fit for human use shall be reported as provided in this § 101–42.1102–5. Drugs, biologicals, and reagents that are controlled substances are subject to the provisions of § 101–42.1102–3.

(a) *Utilization requirements.* Excess drugs, biologicals, and reagents shall be reported or otherwise made available to GSA as provided in § 101–42.204 and subpart 101–43.3. Drugs, biologicals, and reagents other than controlled substances may be separately packaged or may be components of a drug kit. Drug kits shall be clearly labeled to identify components unfit for human use. The holding agency shall destroy, as provided in paragraph (d) of this section, both separately packaged items and kit components which have been determined by the holding agency to be unfit for human use. However, items determined unfit because of expired shelf life may be transferred for animal experimental use on a case-by-case basis subject to prior approval by GSA.

(b) *Donation requirements.* Surplus drugs, biologicals, and reagents other than controlled substances which are not required to be destroyed as provided in paragraph (d) and which are not transferred pursuant to paragraph (a) of this section may be donated to eligible organizations as provided in subpart 101–42.3 and part 101–44. Drugs, biologicals, and reagents which are unfit for human use will not be offered for donation. However, items determined unfit because of expired shelf life may be donated for animal experimental use on a case-by-case basis subject to prior approval by GSA.

(1) When surplus drugs, biologicals, and reagents are considered for donation, a letter of clearance shall be obtained by the State agency or designated donee from the Food and Drug Administration (FDA) indicating that the items requested may be safely donated. The letter of clearance must accompany the SF 123. Items which do not fall within the purview of FDA, or which FDA indicates are unsuitable, will not be considered by GSA for donation.

(2) For purposes of obtaining the letter of clearance from FDA, the State agency or designated donee shall be responsible for obtaining samples from the holding agency, providing these samples to FDA, and ensuring the security of the samples while in transit. Before laboratory examinations are undertaken by FDA, an estimate of the expected cost of the quality assurance examination shall be furnished by FDA to the State agency or donee. Payment of any costs for laboratory examinations for quality assurance of samples shall be arranged by the State agency or donee.

(3) Surplus drugs, biologicals, and reagents requested for donation by State agencies shall not be transported by the State agency or stored in its warehouse prior to distribution to donees. Arrangements will be made by the State agency for the donee to make direct pickup at the holding agency after approval by GSA and after notification by the holding agency that the property is ready for pickup.

(4) Standard Forms 123 from a State agency requesting surplus drugs, biologicals, and reagents for donation shall not be processed or approved by GSA until it has been determined by the GSA donation representative that the specific donee is legally licensed to administer, dispense, store, or distribute such property.

(5) The SF 123 shall also contain a statement that:

(i) The property is being requested for donation to a specific donee whose complete name and address, including the name and telephone number of the donee's authorized representative, appear on the front of the SF 123 in block 12, and that a copy of the donee's license, registration, or other legal authorization to administer, dispense, store, or distribute such property is attached and made a part of the SF 123;

(ii) The items will be distributed only to institutions licensed and authorized to administer and dispense such items or to organizations authorized to store such items; and

(iii) In addition to the normal certifications required to be executed by authorized representatives of donee institutions or organizations when property is acquired by donation, the State agency shall obtain a certification from the donee indicating that:

(A) The items transferred to the donee institution or organization will be safeguarded, dispensed, and administered under competent supervision;

(B) Adequate facilities are available to effect full accountability and proper storage of the items under the Federal,

State, and local statutes governing their acquisition, storage, and accountability:

(C) The administration or use of the items requested shall be in compliance with the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301–394).

(c) *Sales requirements.* Surplus drugs, biologicals, and reagents other than controlled substances which are not required to be destroyed as provided in paragraph (d) and which are not transferred pursuant to paragraph (a) or (b) of this section may be offered for sale by sealed bid under the provisions of subparts 101–45.3 and 101–42.4. The following safeguards and instructions shall be observed to ensure stability, potency, and suitability of the product and its labeling for use in civilian channels:

(1) Before reporting the surplus drugs, biologicals, and reagents to the selling agency pursuant to the provisions of §§ 101–45.303 and 101–42.402, holding agencies shall request that an examination be made by the Field Scientific Coordination Staff, ACFA–CF–30, located in the appropriate FDA district office, of surplus unexpired drugs and reagents, having an acquisition cost of $500 or more per manufacturer's lot/batch number.

(i) When requesting such an examination, FDA requires the submission of a list and one sample of each of the drugs to be examined.

(ii) Additional samples may be requested if necessary for laboratory examination. Reimbursement for examination of the surplus drugs or reagents may be required by FDA. Before laboratory examinations are undertaken, FDA will give the inquiring agency an estimate of the expected costs. If, under subpart 101–45.9, the cost of the quality assurance is not justified by the value of the material involved, the lot or lots may be destroyed.

(iii) The reporting document prescribed in § 101–45.303(b) shall have attached to it a copy of the letter received by the reporting agency from FDA stating that the articles offered have been reviewed and may appropriately be distributed or sold, subject when necessary to specified limitations.

(2) Surplus drugs, biologicals, and reagents normally shall not be physically transferred to the selling agency but should remain at the holding agency for precautionary and safety measures.

(3) Surplus drugs, biologicals, and reagents shall be sold only to those entities which are legally qualified to engage in the sale, manufacture, or distribution of such items.

(4) Sales of surplus drugs, biologicals, and reagents other than controlled substances shall be processed as follows:

(i) The invitation for bids (IFB) shall:

(A) Consist only of surplus drugs, biologicals, and reagents;

(B) Contain the expiration date of material being offered for sale;

(C) Describe the composition of the material being offered for sale;

(D) Require the normal bid deposit prescribed in § 101–45.304–10; and

(E) Contain the following special condition of sale:

The bidder shall complete, sign, and return with his/her bid the certification as contained in this invitation. No award will be made or sale consummated until after this agency has determined that the bidder is legally licensed to engage in the manufacture, sale, or distribution of drugs.

(ii) The following certification shall be made a part of the invitation for bids (and contract), to be completed and signed by the bidder, and returned with the bid with a copy of his/her license. Failure to sign the certification may result in the bid being rejected as nonresponsive.

The bidder certifies that he/she is legally licensed to engage in the manufacture, sale, or distribution of drugs, and proof of his/her license to deal in such materials is furnished with this bid.

_____

Name of bidder (print or type)

_____

Signature of bidder

_____

Address of bidder (print or type)

_____

City, State, ZIP code

(d) *Destruction of surplus drugs, biologicals, and reagents.* (1) Surplus drugs, biologicals, and reagents shall not be abandoned under any circumstances. The following shall be destroyed by the holding agency under the provisions of this paragraph (d):

(i) Surplus drugs, biologicals, and reagents determined by the holding agency to be unsafe because of deterioration or overage condition, in open or broken containers, recommended for destruction by FDA, unfit for human consumption, or otherwise unusable; and

(ii) Surplus drugs, biologicals, and reagents which have been offered for sale under the provisions of paragraph (c) of this section but for which no satisfactory or acceptable bid or bids have been received.

(2) When surplus drugs, biologicals, and reagents are required to be destroyed by the holding agency or State agency, they shall be destroyed in such a manner as to ensure total destruction of the substance to preclude the use of any portion thereof. When major amounts are to be destroyed, the action shall be coordinated with local air and water pollution control authorities.

(3) Destruction of surplus drugs, biologicals, and reagents shall be performed by an employee of the holding agency or State agency in the presence of two additional employees of the agency as witnesses to that destruction.

(i) Disposal of Resource Conservation and Recovery Act (RCRA) regulated, noncontrolled, condemned hazardous substances in Federal supply class (FSC) 6505 shall be destroyed without the witnessing by two employees of the agency. The controls which the Environmental Protection Agency places upon the disposal of RCRA regulated noncontrolled drugs, 40 CFR part 260 *et seq.*, are sufficiently stringent to ensure that these drugs will be destroyed without agency witnessing.

(ii) It is the holding agency's responsibility to take all necessary measures to ensure that contractor performance is in accordance with the provisions of this § 101–42.1102–5.

(4) When surplus drugs, biologicals, and reagents have been destroyed, the fact, manner, and date of the destruction and type and quantity destroyed shall be so certified by the agency employee charged with the responsibility for that destruction. The two agency employees who witnessed the destruction shall sign the following statement, except as noted in paragraph (d)(3) of this section, which shall appear on the certification below the signature of the certifying employee:

I have witnessed the destruction of the (drugs, biologicals, and reagents) described in the foregoing certification in the manner and on the date stated herein:

| | |
|---|---|
| Witness | Date |
| Witness | Date |

(5) Items mentioned parenthetically in the statement contained in paragraph (d)(5) of this section which are not applicable at the time of destruction shall be deleted from the statement. The signed certification and statement of destruction shall be made a matter of record and shall be retained in the case files of the holding agency or State agency.

**§ 101-42.1102-6 Noncertified and certified electronic products.**

(a) *Utilization requirements.*(1) Excess electronic items for which radiation safety performance standards are prescribed by FDA under 21 CFR Part 1000 shall be reported or otherwise made available for transfer to Federal agencies under subparts 101-43.3 and 101-42.2. Excess reports shall identify noncertified electronic products and shall contain a statement that the items may not be in compliance with applicable radiation safety performance standards prescribed by FDA under 21 CFR Part 1000. Certified electronic products may be reported and transferred under the procedures in part 101-43.

(2) Transfers of noncertified electronic products among Federal agencies shall be accomplished as set forth in §§ 101-42.207, 101-43.309, and paragraph (a) of this section. The transfer order must contain a certification that the transferee is aware of the potential danger in using the item without a radiation test to determine the acceptability for use and/or modification to bring it into compliance with the radiation safety performance standard prescribed for the item under 21 CFR Part 1000 and agrees to accept the item from the holding agency under these conditions.

(b) *Donation requirements.* (1) Surplus noncertified and certified electronic products not required for transfer as excess personal property to Federal agencies under paragraph (a) of this section shall be made available for donation screening as provided in subpart 101-42.3 and part 101-44 and as follows:

(i) Under paragraph (b)(2) of this section in the case of:

(A) Noncertified color television receivers;

(B) Certified and noncertified diagnostic X-ray systems and their major components;

(C) Certified and noncertified cabinet X-ray systems;

(D) Noncertified laser products; or

(E) Any other electronic products subject to an FDA performance standard.

(ii) Only under conditions of destructive salvage in the case of noncertified cold-cathode gas discharge tubes, noncertified black and white television receivers, and noncertified microwave ovens.

(2) Donation of electronic products designated in paragraph (b)(1)(i) of this section shall be accomplished as provided in § 101-44.109 provided the State agency, Department of Defense (DOD), or Federal Aviation Administration (FAA):

(i) Provides the applicable State radiation control agency (see § 101-45.4809) with a copy of the SF 123 and the name and address of the donee; and

(ii) Requires the donee to certify on the SF 123 that it:

(A) Is aware of the potential danger in using the product without a radiation test to determine the acceptability for use and/or modification to bring it into compliance with the radiation safety performance standard prescribed for the item under 21 CFR part 1000, and agrees to accept the item from the holding agency for donation under those conditions;

(B) Agrees the Government shall not be liable for personal injuries to, disabilities of, or death of the donee or the donee's employees, or any other person arising from or incident to the donation of the item, its use, or its final disposition; and

(C) Agrees to hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the item, its use, or its final disposition.

(c) *Sales requirements.* (1) The sale of the following certified and noncertified surplus electronic products which are not required for transfer or donation shall be accomplished under § 101-45.304, subpart 101-42.4, and the special conditions of sale in this paragraph (c).

(i) Noncertified color and black and white television receivers;

(ii) Noncertified microwave ovens;

(iii) Noncertified and certified diagnostic X-ray systems and their major components;

(iv) Noncertified and certified cabinet X-ray systems;

(v) Noncertified laser products;

(vi) Noncertified cold-cathode gas discharge tubes under conditions of scrap or destructive salvage; and

(vii) Any other noncertified electronic product for which FDA may promulgate a performance standard.

(2) The IFB shall contain a notice to bidders substantially as follows:

Purchasers are warned that the item purchased herewith may not be in compliance with Food and Drug Administration radiation safety performance standards prescribed under 21 CFR part 1000, and use may constitute a potential for personal injury unless modified. The purchaser agrees that the Government shall not be liable for personal injuries to, disabilities of, or death of the purchaser, the purchaser's employees, or to any other persons arising from or incident to the purchase of this item, its use, or disposition. The purchaser shall hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to purchase or resale of this item. The purchaser agrees to notify any subsequent purchaser of this property of the potential for personal injury in using this item without a radiation survey to determine the acceptability for use and/or modification to bring it into compliance with the radiation safety performance standard prescribed for the item under 21 CFR part 1000.

(3) Within 30 calendar days following award, the selling agency shall provide the State radiation control agency for the State in which the buyer is located (see § 101-45.4809) with a written notice of the award that includes the name and address of the purchaser and the description of the item sold.

(d) *Abandonment or destruction.* Noncertified and certified electronic products shall be abandoned under the provisions of subpart 101-45.9 and § 101-42.406.

**§ 101-42.1102-7 Lead-containing paint and items bearing lead-containing paint.**

(a) *General—(1) Health hazard.* Lead is a cumulative toxic heavy metal which, in humans, exerts its effects on the renal, hematopoietic, and nervous systems. Lead poisoning occurs most commonly when lead-containing paint chips in the environment are chewed or ingested by children or when lead-containing paint is burned off.

(2) *Banned hazardous products.* The following consumer products, in accordance with 16 CFR part 1303 and exemptions stated therein unless exempted by 16 CFR part 1303, are banned hazardous products:

(i) Paint and other similar surface coating materials for consumer use which are included within the definition of lead-containing paint.

(ii) Toys and other articles intended for use by children that bear lead-containing paint.

(iii) Furniture articles that bear lead-containing paint.

(3) *Disposal of banned hazardous products.* When a banned hazardous product described in paragraph (a)(2) of this section becomes excess to a holding agency, it shall be destroyed under paragraph (e) of this section except that those furniture articles that bear lead-containing paint may be stripped and refinished with a nonhazardous coating in lieu of destruction. Stripping shall be in conformance with Occupational Safety and Health Administration (OSHA) regulations at 29 CFR 1910.1025 which specify maximum permissible levels of exposure to airborne concentrations of lead particles and set forth methods of protection.

(4) *Exemptions.* (i) The categories of products listed in paragraph (a)(4)(ii) of this section are exempted from the scope of the ban established by 16 CFR Part 1303, provided that before any utilization, donation, or sales action:

(A) These products bear on the main panel of their label, in addition, to any labeling that may be otherwise required, the signal word *Warning* and the following statement: *Contains Lead. Dried Film of This Paint May be Harmful If Eaten or Chewed.*

(B) These products also bear on their label the following additional statement or its practical equivalent:

Do not apply on toys and other children's articles, furniture, or interior surfaces of any dwelling or facility which may be occupied or used by children. Do not apply on exterior surfaces of dwelling units, such as window sills, porches, stairs, or railings, to which children may be commonly exposed.

Keep Out of Reach of Children

(C) The additional labeling requirements contained in 16 CFR 1303.3 and 16 CFR 1500.121 are followed.

(ii) The following products are exempt from the scope of the ban established by 16 CFR part 1303, provided they comply with the requirements of paragraph (a)(4)(i) of this section:

(A) Agricultural and industrial equipment refinish coatings.

(B) Industrial (and commercial) building and equipment maintenance coatings, including traffic and safety marking coatings.

(C) Graphic art coatings (i.e., products marketed solely for application on billboards, road signs, and similar uses and for identification marking in industrial buildings).

(D) Touchup coatings for agricultural equipment, lawn and garden equipment, and appliances.

(E) Catalyzed coatings marketed solely for use on radio-controlled model-powered aircraft.

(iii) The following products are exempt from the scope of the ban established by 16 CFR part 1303 (no cautionary labeling is required):

(A) Mirrors which are part of furniture articles to the extent that they bear lead-containing backing paint.

(B) Artists' paints and related materials.

(C) Metal furniture articles (but not metal children's furniture) bearing factory-applied (lead) coatings.

(b) *Utilization requirements.* (1) Excess lead-containing paint and consumer products bearing lead containing paint which are exempt from the scope of the ban and are properly labeled as required by 16 CFR part 1303 and paragraph (a)(4) of this section shall be reported or otherwise made available to GSA under §§ 101–43.311 and 101–42.204.

(2) Lead-containing paint and consumer products bearing lead-containing paint available for further Federal use as provided in paragraph (b)(1) of this section may be transferred under §§ 101–43.309 and 101–42.207. The warning statement on the transfer order shall be substantially the same as the label statements required by paragraphs (a)(4)(i) (A) through (C) of this section, and such information shall be made a part of the accountable record of the transferee agency.

(c) *Donation requirements.*

(1) Surplus lead-containing paint and consumer products bearing lead-containing paint which are exempt from the scope of the ban, and are properly labeled as required by 16 CFR part 1303 and paragraph (a)(4) of this section may be donated.

(2) The hazardous warning statement on the SF 123 shall be the same as the label statements required by paragraphs (a)(4)(i) (A) through (C) of this section. The recipient shall maintain the hazardous warning statements in the inventory records for the property and furnish appropriate warning information to subsequent recipients. The SF 123 and any other transaction documentation for such property shall contain a certification substantially as follows:

The property requested herein shall be used only as specified in 16 CFR 1303.3 and in no case shall be contacted by children. I agree the Government shall not be liable for personal injuries to, disabilities of, or death of the donee's employees, or any other person arising from or incident to the donation of this property, its use, or its final disposition; and to hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions or claims of any nature arising from or incident to the donation of this property, its use, or its final disposition.

(d) *Sales requirements.* (1) Lead-containing paint and consumer products bearing lead-containing paint which are exempt from the scope of the ban and are properly labeled as required by 16 CFR part 1303 and paragraph (a)(4) of this section may be sold under § 101–45.304, Subpart 101–42.4, and the special requirements of this paragraph (d).

(2) IFBs for such property shall clearly state the hazardous warning statements contained in paragraphs (a)(4)(i) (A) through (C) of this section and appropriate agreement clauses. The bid page shall contain a certification substantially as follows which must be properly executed. Failure to sign the certification may result in the bid being rejected as nonresponsive.

I certify that I have read and fully comprehend the aforementioned terms and conditions of this sale. I shall comply with the applicable Consumer Product Safety Commission regulations set forth in 16 CFR part 1303 if I am the successful bidder. I further agree the Government shall not be liable for personal injuries to, disabilities of, or death of any persons arising from or incident to the sale of this property, its uses, or its final disposition; and to hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the sale of this property, its use, or its final disposition.

(3) Lead-containing paint and consumer products bearing lead-containing paint shall not be sold under the limited sales by holding agencies authority in § 101–45.304.

(e) *Abandonment and destruction.* In no case shall lead-containing paint or consumer products bearing lead-containing paint be abandoned in a manner that would allow acquisition and use of such property. Such products shall be disposed of under § 101–42.406. Empty cans/drums in which lead-containing paint was stored shall also be disposed of in accordance with this § 101–42.1102–7.

**§ 101–42.1102–8 United States Munitions List items which require demilitarization.**

(a) *General.* The United States Munitions List is located in 22 CFR part 121. A system of demilitarization codes has been developed and an appropriate code assigned to each Munitions List Item (MLI) to describe what, if any, restrictions or actual demilitarization requirements apply to each item. These codes, in addition to demilitarization policy and procedures for all surplus military items which are owned, procured by, or under the control of the Department of Defense, are contained in the Defense Demilitarization Manual (DoD 4160.21–M–1). This § 101–42.1102–8 applies only to MLIs and is to be used in conjunction with guidance in parts 101–42, 101–44, and 101–45.

(b) *Utilization requirements.* (1) Federal agencies acquiring MLIs which require demilitarization shall perpetuate the demilitarization codes in their property records and on subsequent reports of excess personal property submitted to GSA. Demilitarization shall be a condition of transfer of excess MLIs.

(2) Utilization without demilitarization of other than classified material is authorized only under the conditions cited in the Defense Demilitarization Manual, DoD 4160.21–M–1.

(c) *Donation requirements.* (1) Donation without demilitarization of

other than classified material is authorized only under the conditions cited in the Defense Demilitarization Manual, DoD 4160.21-M-1.

(2) A State agency requesting the transfer of donation of MLIs identified as requiring demilitarization shall include the appropriate demilitarization code on the SF 123, and a statement that the State agency will obtain from the donee a certification that prior to further disposition, demilitarization of the property shall be performed by the donee under the demilitarization instructions for the code as set forth in the Defense Demilitarization Manual, DoD 4160.21-M-1. In the case of MLIs requested for donation by service educational activities or public airports pursuant to the provisions of subparts 101-44.4 and 101-44.5 respectively, the donee shall include a statement on the SF 123 certifying that appropriate demilitarization of the property will be accomplished under the requirements of the codes before further disposition.

(3) Before disposing of MLIs identified as requiring demilitarization, donees may request demilitarization instructions from GSA through the State agency if the donation was made pursuant to subpart 101-44.2. Demilitarization instructions for such items donated to public airports, under subpart 101-44.5, may be requested through the Federal Aviation Administration. Demilitarization instructions for such items donated to service educational activities under subpart 101-44.4 may be obtained directly from the Item Technical Manager within DOD for the item involved.

(4) Demilitarization of property to be donated to public bodies under subpart 101-44.7 shall be accomplished in a manner to preserve so far as possible any civilian use or commercial value of the property, as prescribed in the minimum demilitarization requirements of the Defense Demilitarization Manual, DoD 4160.21-M-1.

(d) *Sales requirements.* (1) Except for sales authorized by statute, sales of "explosives" and "ammunition components" authorized by paragraphs (d) (2) and (3) of this section, or specialized sales authorized by the Secretary of Defense, MLIs identified as requiring demilitarization shall not be reported for public sale without first being demilitarized under the requirements of the assigned code in the Defense Demilitarization Manual, DoD 4160.21-M-1 or requiring demilitarization under the terms and conditions of sale. GSA will, as necessary, refer technical questions on demilitarization to the Department of Defense.

(2) *Explosives.* For the purpose of this section, the term *explosive* means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters, and any other items appearing in the explosives list issued by the Secretary of the Treasury (18 U.S.C. 841(d)). The explosives list is published and revised at least annually in the Federal Register by the Director, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, as required by 27 CFR 55.23. The following procedures shall apply in any disposal of explosives:

(i) All explosives offered for sale shall be properly identified in the offering with respect to their hazardous characteristics.

(ii) All explosives shall be labeled by the holding agency before shipment so that their hazardous or dangerous character will be immediately evident upon inspection.

(iii) Purchasers of explosives shall be required, as a condition of sale, to execute the following certification:

> It is hereby certified that the purchaser will comply with all applicable Federal, State, and local laws, ordinances, and regulations with respect to the care, handling, storage, shipment, resale, export, and other use of the materials, hereby purchased, and that he/she is a user of, or dealer in, said materials and will comply with all applicable Federal, State, and local laws. This certification is made in accordance with and subject to the penalties of Title 18, Section 1001, the United States Code, Crime and Criminal Procedures.

(3) *Ammunition components.* The term "ammunition components" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm. The transportation of primers or propellent powder is governed by the Hazardous Materials Regulations (49 CFR parts 170-189) promulgated by the Department of Transportation. Purchasers of such materials are responsible to certify, based on their own examination, that the materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation in accordance with the Hazardous Materials Regulations. So that bidders will be notified of the special requirements concerning the purchase and transportation of usable ammunition components, the following statement shall be included in the IFBs and shall be made a part of the contract by including in it the bid form to be submitted by the bidders:

> Item No. _____ contains ammunition components offered for sale in this invitation. The undersigned certifies that he/she will comply with all applicable local, State, and Federal laws and regulations concerning ammunition components.

(4) *Scrap ammunition components.* Ammunition components not usable or suitable for reuse as components of ammunition shall be reported and may be sold as scrap (for basic material content). With regard to such sale, the following statement shall be included in the invitation for bid and shall be made a part of the contract:

> I, , certify that ammunition components purchased by me as Item No. _____, will not be used for the original manufactured purpose.

(e) *Abandonment and destruction requirements.* Besides the requirement of subpart 101-45.9, surplus munitions list items which require demilitarization shall be abandoned or disposed of under the requirements of § 101-42.406, but only after performance of demilitarization under the requirements of the assigned code in the Defense Demilitarization Manual, DoD 4160.21-M-1.

**§ 101-42.1102-9 Acid contaminated and explosive contaminated property.**

(a) *Utilization requirements.* (1) Acid contaminated or explosive contaminated property shall be considered extremely hazardous property, and as such is not to be reported to GSA as excess personal property. Such property may be available for transfer to qualified recipients; i.e., those who are able to submit valid justifications as required by paragraph (a)(3) of this section.

(2) Excess acid contaminated or explosive contaminated property shall be properly labeled under the labeling requirements of § 101-42.204.

(3) With the authorization of the appropriate GSA regional office, holding activities may transfer acid contaminated or explosive contaminated property in conformance with the requirements of §§ 101-43.309-5 and 101-42.207. In addition, the requesting agency must submit a written justification with the transfer order explaining the specific need for and the anticipated uses of the requested acid or explosive contaminated property, and certify that personnel in contact with the property shall be informed of the hazard and shall be qualified to safely handle or use it.

(4) The degree of decontamination and the responsibility for performance and costs of any decontamination shall be upon such terms as agreed to by the owning agency and the receiving agency.

(5) The receiving agency is responsible for all transportation arrangements and costs of acid contaminated or explosive contaminated property approved for transfer. Such property shall be transported in compliance with § 101-42.405.

(b) *Donation requirements.* Acid contaminated and explosive contaminated property may be donated only with the authorization of the appropriate GSA regional office.

(c) *Sales requirements.* (1) With the authorization of the appropriate GSA regional office, holding activities may sell acid contaminated or explosive contaminated property under § 101-45.304, subpart 101-42.4, and the additional special requirements of this paragraph (c). Agencies shall include in reports of such property for sale on SF 126, a statement of the degree of contamination and any decontamination that has been performed, such as a washdown.

(2) Acid or explosive contaminated property shall be considered extremely hazardous property as defined in § 101-42.001, and shall be described as such in sales offerings. Normally, acid or explosive contaminated property shall be sold with a condition that the purchaser sufficiently decontaminate the property to the degree that it is no longer extremely hazardous.

(3) IFBs for acid or explosive contaminated property shall clearly state the specific hazards associated with the items offered, along with known special handling, transportation, and personnel protection requirements. The bid page shall contain a certification substantially as follows which must be properly executed by the bidder in order for the bid to be responsive:

CERTIFICATION: It is hereby certified that the purchaser will comply with all the applicable Federal, State, and local laws ordinances and regulations with respect to the care, handling, storage, and shipment, resale, export, and other use of the materials, hereby purchased, and that he/she is a user of, or dealer in, said materials and will comply with all applicable Federal, State, or local laws and regulations. This certification is made in accordance with and subject to the penalties of Title 18, Section 1001, the United States Code, Crime and Criminal Procedures.

(d) *Abandonment and destruction.* Acid contaminated or explosive contaminated property shall not be abandoned, and when destroyed, such destruction shall be accomplished under the provisions of subparts 101-45.9 and § 101-42.406.

**§ 101-42.1102-10 Firearms.**

(a) *Utilization requirements.* (1) Excess firearms shall be reported or otherwise made available to GSA following the requirements of subpart 101-43.3.

(2) Firearms may be transferred only to those Federal agencies authorized to acquire firearms for official use. Such transfers shall be executed under §§ 101-43.309-5, 101-42.207, and, when applicable, 101-42.1102-8(b). Transfer requests for firearms will be carefully reviewed by the GSA regional offices before approval, and additional written justification from the requesting agency may be required.

(b) *Donation requirements.* Surplus firearms, and firearms ammunition shall not be donated.

(c) *Sales requirements.* Surplus firearms may be sold only for scrap after total destruction by crushing, cutting, breaking, or deforming to be performed in a manner to ensure that the firearms are rendered completely inoperative and to preclude their being made operative. Such sale shall be conducted under subpart 101-45.3.

(d) *Foreign gifts of firearms.* Firearms reported to GSA as foreign gifts may be offered for transfer to Federal agencies, including law enforcement activities. Foreign gifts of firearms shall not be donated. Such gifts not required for Federal use may be sold only to the gift recipient at the discretion of GSA. A certification that the purchaser shall comply with all State and local laws regarding purchase and possession of firearms must be received by GSA prior to release of such firearms to the purchaser. Firearms not transferred to a Federal agency or sold to the recipient shall be disposed of in accordance with paragraph (c) or (e) of this section.

(e) *Abandonment and destruction of firearms.* Firearms shall not be abandoned. Destruction of firearms is subject to the requirements set forth in paragraph (c) of this section. Such destruction shall also be accomplished under the provisions of subpart 101-45.9, § 101-42.406 and, when applicable, § 101-42.1102-8.

(f) *Abandoned and forfeited firearms.* In addition to the requirements of this part 101-42, forfeited or voluntarily abandoned firearms shall be subject to the provisions of part 101-48.

## PART 101-43—UTILIZATION OF PERSONAL PROPERTY

2. The authority citation for part 101-43 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

3. Section 101-43.000 is revised to read as follows:

**§ 101-43.000 Scope of part.**

This part prescribes the policies and methods governing the economic and efficient utilization of personal property located within and outside the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands, except that part 201-23 of the Federal Information Resources Management Regulations (FIRMA) (41 CFR part 201-23) prescribes the policies and procedures governing the worldwide utilization of excess automatic data processing equipment (ADPE) by the Federal Government. Additional guidelines regarding reutilization of hazardous materials are prescribed in part 101-42.

**§ 101-43.001-3 [Reserved]**

4. Section 101-43.001-3 is removed and reserved.

**§ 101-43.001-22 [Reserved]**

5. Section 101-43.001-22 is removed and reserved.

## Subpart 101-43.3—Utilization of Excess

6. Section 101-43.305 is revised to read as follows:

**§ 101-43.305 Property not required to be formally reported.**

(a) Excess property which is not required to be formally reported to GSA under § 101-43.304 is a valuable source of supply for Federal agencies. Regional offices and area utilization officers of GSA are responsible for local screening of such property, for making it available to Federal agencies, and for its expeditious transfer. Holding agencies shall cooperate with GSA representatives in making information available and in providing access to the nonreportable excess personal property. Federal agency employees shall be permitted access to holding installations for screening purposes upon presentation of a valid Federal agency employee's identification card. Holding agencies shall make reasonable efforts to obtain utilization among other

Federal agencies of property not covered by GSA utilization screening processes. In the case of controlled substances, solicitation shall be limited to those agencies authorized for transfer under § 101-42.1102-3 provisions.

(b) Unless otherwise directed by GSA, the following excess personal property shall not be reported:

(1) Perishables, defined for purposes of this section as any foodstuffs which are subject to spoilage or decay;

(2) Property dangerous to public health and safety (see paragraph (d) of this section);

(3) Scrap and/or salvage, provided the property strictly conforms to the definitions for scrap and/or salvage (§§ 101-43.001-28 and 101-43.001-29);

(4) Property determined by competent authority to be classified or otherwise sensitive for reasons of national security;

(5) Other items excepted from the requirement to be reported as listed in § 101-43.4801;

(6) Otherwise reportable property which, prior to reporting as required in § 101-43.304, is transferred directly between Federal agencies as provided in § 101-43.309-5(a) or by prearrangement with GSA to fill a known need;

(7) Trading stamps and bonus goods (see § 101-25.103-4); and

(8) Nonappropriated fund property (see § 101-43.307-7).

(c) Nuclear Regulatory Commission-controlled materials are exempt from reporting to GSA as excess personal property. Transfers of such materials shall be made under provisions under § 101-42.1102-4 and applicable NRC regulations. (See 10 CFR parts 30, 40, and 70.)

(d) In the case of hazardous materials, all the restrictions, limitations, and guidelines prescribed in part 101-42 shall apply.

7. Section 101-43.307-2 is revised to read as follows:

**§ 101-43.307-2 Hazardous materials.**

Special handling requirements for hazardous materials and certain other categories of property are prescribed in part 101-42.

**§ 101-43.307-8 [Reserved]**

8. Section 101-43.307-8 is removed and reserved.

**§ 101-43.307-11 [Reserved]**

9. Section 101-43.307-11 is removed and reserved.

10. Section 101-43.311-4 is added to read as follows:

**§ 101-43.311-4 Hazardous materials.**

Hazardous materials shall be reported to GSA in accordance with part 101-42.

## PART 101-44—DONATION OF PERSONAL PROPERTY

11. The authority citation for part 101-44 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

12. Section 101-44.000 is revised to read as follows:

**§ 101-44.000 Scope of part.**

This part prescribes policies and methods governing the donation of surplus personal property located within the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and the donation of foreign excess personal property designated for return to the United States. Additional guidelines regarding the donation of hazardous materials and certain categories of property are prescribed in part 101-42.

### Subpart 101-44.1—General Provisions

13. Section 101-44.108-1 is revised to read as follows:

**§ 101-44.108-1 Medical materials and supplies and shelf-life items.**

(a) Medical materials and supplies consisting of drugs, biologicals, reagents, or controlled substances shall be donated in accordance with the provisions of §§ 101-42.1102-3 and 101-42.1102-5.

(b) Non-restricted medical materials and supplies may be donated in accordance with the provisions of this part 101-44.

(c) In the case of restricted medical materials and supplies (medical items that must be dispensed or used only by a licensed, registered, or certified individual) requested by a State agency, the SF 123 shall contain a statement that:

(1) The listed property will be transferred from the holding agency directly to the designated donee;

(2) The intended donee is licensed and authorized to administer and dispense such items or is authorized to store the items; and

(3) The State agency will obtain a certification from the donee indicating that:

(i) The items transferred to the donee institution or organization will be safeguarded, dispensed, and administered under competent supervision;

(ii) Adequate facilities are available to effect full accountability and proper storage of the items in accordance with Federal, State, and local statutes governing their acquisition, storage, and accountability; and

(iii) The administration or use of the items requested will comply with the provisions of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301-394).

(d) A State agency shall not pick up or store in its distribution center, surplus restricted medical materials and supplies. This property shall be transferred from the holding agency directly to the designated donee.

(e) Shelf-life items and medical materials and supplies held for national emergency purposes, and determined to be surplus in accordance with § 101-43.307-13, shall be made available for donation screening as provided in § 101-44.109.

**§ 101-44.108-4 [Reserved]**

14. Section 101-44.108-4 is removed and reserved.

**§ 101-44.108-8 [Reserved]**

15. Section 101-44.108-8 is removed and reserved.

**§ 101-44.108-10 [Reserved]**

16. Section 101-44.108-10 is removed and reserved.

### Subpart 101-44.7—Donations of Property to Public Bodies

17. Section 101-44.700 is amended by revising paragraph (b) to read as follows:

**§ 101-44.700 Scope of subpart.**

* * * * *

(b) Controlled substances (as defined in § 101-42.001) and combat material (as defined in § 101-46.001-2).

18. Section 101-44.702-3 is revised to read as follows:

**§ 101-44.702-3 Hazardous materials.**

When hazardous materials as defined in part 101-42 are donated to a public body in accordance with this subpart, the head of the agency or designee authorized to make the donation shall be responsible for the safeguards, notifications, and certifications required by part 101-42, and compliance with all other requirements therein.

## PART 101-45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

19. The authority citation for part 101-45 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), §§ 101-45.400 to 101-45.405 also issued under Sec. 307, 49 Stat. 880; 40 U.S.C. 304/.

20. Section 101-45.000 is revised to read as follows:

**§ 101-45.000 Scope of part.**

This part prescribes policies and methods governing the disposal by public sale, or abandonment or destruction of personal property (including salvage, scrap, and waste materials) owned by the Government except foreign excess property and the recovery of precious metals. Additional guidelines regarding the sale, abandonment, or destruction of hazardous materials are prescribed in part 101-42.

**§ 101-45.001-3 [Reserved]**

21. Section 101-45.001-3 is removed and reserved.

### Subpart 101-45.3—Sale of Personal Property

22. Section 101-45.309-2 is revised to read as follows:

**§ 101-45.309-2 Hazardous materials.**

In addition to the requirements of this part 101-45, the sale of hazardous materials shall be accomplished in accordance with the provisions of part 101-42.

**§ 101-45.309-4 [Reserved]**

23. Section 101-45.309-4 is removed and reserved.

**§ 101-45.309-6 [Reserved]**

24. Section 101-45.309-6 is removed and reserved.

**§ 101-45.309-7 [Reserved]**

25. Section 101-45.309-7 is removed and reserved.

**§ 101-45.309-11 [Reserved]**

26. Section 101-45.309-11 is removed and reserved.

### Subpart 101-45.9—Abandonment or Destruction of Surplus Property

27. Section 101-45.900 is revised to read as follows:

**§ 101-45.900 Scope of part.**

This subpart prescribes the policies and methods governing the disposition of personal property by abandonment or destruction by executive agencies and by a State agency. Additional guidelines regarding the abandonment or destruction of hazardous materials are prescribed in part 101-42.

**§ 101-45.903 [Removed]**

28. Section 101-45.903 is removed.

**§ 101-45.4809 [Removed]**

29. Section 101-45.4809 is removed.

## PART 101-46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

30. The authority citation for part 101-46 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

31. Section 101-46.000 is revised to read as follows:

**§ 101-46.000 Scope of part.**

This part prescribes policies and methods governing the use by executive agencies of the exchange/sale authority of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)). It is applicable to all U.S. Government-owned personal property worldwide. In addition to the requirements of this part 101-46, the exchange/sale of hazardous materials shall be accomplished in accordance with the procedures in part 101-42.

### Subpart 101-46.2—Authorization

32. Section 101-46.202 is amended by revising paragraphs (b)(6) and adding (b)(7) as follows:

**§ 101-46.202 Restrictions and limitations.**

* * * * *

(b) * * *

(6) The transfer, exchange, or sale of Nuclear Regulatory Commission-controlled materials except in accordance with § 101-42.1102-4.

(7) The sale or exchange of controlled substances, except in accordance with § 101-42.1102-3.

* * * * *

## PART 101-48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PROPERTY

33. The authority citation for part 101-48 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

34. Section 101-48.000 is revised to read as follows:

**§ 101-48.000 Scope of part.**

This part prescribes the policies and methods governing the utilization, donation, and disposal of abandoned and forfeited personal property under the custody or control of any Federal agency in the United States, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. In addition to the requirements of this part 101-48, the disposition of abandoned and forfeited hazardous materials shall be accomplished in accordance with part 101-42.

## PART 101-49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

35. The authority citation for part 101-49 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 515, 91 Stat. 862 (5 U.S.C. 7342).

**§ 101-49.108 Hazardous materials.**

### Subpart 101-49.1—General Provisions

36. Section 101-49.108 is revised to read as follows:

**§ 101-46.108 Hazardous materials.**

In addition to the requirements of this part 101-49, the disposition of foreign gifts and decorations that are hazardous materials shall be accomplished in accordance with the provisions of subparts 101-42.2 through 101-42.4.

Dated: January 29, 1992.

**Richard G. Austin,**

*Administrator of General Services.*

**Editorial note:** This document was received at the Office of the Federal Register August 19, 1992.

[FR Doc. 92-20136 Filed 8-27-92; 8:45 am]

BILLING CODE 6820-24-M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 675

**[Docket No. 920520-2120]**

### Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency interim rule; extension of effective date.

**SUMMARY:** An emergency rule that implements management measures to

control Pacific halibut bycatch in the Bering Sea and Aleutian Islands area (BSAI) pollock fishery is in effect through August 25, 1992. NMFS extends the emergency rule for an additional 90-day period (through November 23, 1992) to maintain Pacific halibut bycatch within the bycatch limit established for the BSAI trawl fisheries. This action is intended to further the goals and objectives contained in the fishery management plans for the groundfish fisheries off Alaska.

**EFFECTIVE DATES:** The interim regulations published on May 27, 1992 (57 FR 22182) are extended from August 26, 1992, through November 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Susan J. Salveson, Fisheries Management Division, NMFS, 907/586-7228.

**SUPPLEMENTARY INFORMATION:** On May 21, 1992, the Secretary of Commerce (Secretary) implemented an emergency interim rule (57 FR 22182, May 27, 1992) under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The emergency rule implemented the following measures for a 90-day period (through August 25, 1992):

1. Included the BSAI pollock fishery under the vessel incentive program to reduce halibut bycatch rates in this fishery when directed fishing for pollock with non-pelagic trawl gear is prohibited; and

2. Prohibited the use of non-pelagic trawl gear by vessels participating in the directed fishery for BSAI pollock.

These measures are intended to control halibut bycatch in the 1992 BSAI pollock fishery and to maintain total bycatch amounts within the bycatch limit established for the 1992 trawl gear fisheries. Public comment has been received on a proposed rule (57 FR 22695, May 29, 1992) that would implement a final rule controlling halibut bycatch in the BSAI pollock fishery. A final rule might not be effective until late in 1992. Therefore, the Secretary, with the agreement of the North Pacific Fishery Management Council, extends the effectiveness of the emergency rule for an additional 90 days under section 305(c)(3)(B) of the Magnuson Act. Additional information is contained in the preamble of the original emergency rule.

The emergency rule is exempt from the normal review procedures of Executive Order 12291, as provided in section 8(a)(1) of that order. This rule was reported to the Director of the Office of Management and Budget with an explanation of why following the usual procedures of that order was not possible.

**List of Subjects in 50 CFR Part 675**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 24, 1992.

**Samuel W. McKeen,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 92-20648 Filed 8-24-92; 3:31 pm]

BILLING CODE 3510-22-M

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**50 CFR Part 675**

**[Docket No. 911172-2021]**

## Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Prohibition of fishing.

**SUMMARY:** NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear other than pelagic trawl gear (non-pelagic trawl gear) and vessels using hook-and-line gear in the Aleutian Islands subarea (AI). This action is necessary because the overfishing level for the shortraker/rougheye species group (SRRE) has been reached.

**EFFECTIVE DATES:** Effective 12 noon, Alaska local time (A.l.t.), August 25, 1992, through 12 midnight, A.l.t., December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907/586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

Overfishing is defined at § 602.11(c)(1) to be a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce its maximum sustainable yield on a continuing basis. The 1992 overfishing level for SRRE in the AI is established by the final notice of specifications (57 FR 3952, February 3, 1992) as 1,220 metric tons (mt). The directed fishery for SRRE in the AI was closed on June 29, 1992 (57 FR 27710, June 22, 1992). Retention of SRRE in the AI was prohibited effective June 29, 1992 (57 FR 29656, July 6, 1992). Groundfish fisheries since June 29, 1992, have caught 154 mt of SRRE as bycatch, for a total harvest of 1,213 mt as of August 16, 1992.

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(10), that directed fishing for groundfish, other than SRRE, will lead to overfishing of SRRE. The Regional Director has further determined that closing all directed fisheries for groundfish by vessels using non-pelagic trawl gear and hook-and-line gear is the least restrictive measure that will prevent overfishing of SRRE. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using non-pelagic trawl gear and vessels using hook-and-line gear in the AI effective from 12 noon, A.l.t., August 25, 1992, through 12 midnight, A.l.t., December 31, 1992.

**Classification**

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

**List of Subjects in 50 CFR Part 675**

Fisheries, Reporting and recordkeeping requirements.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: August 25, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-20789 Filed 8-25-92; 4:22 pm]

BILLING CODE 3510-22-M

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**50 CFR Part 675**

**[Docket No. 911172-2021]**

## Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for rock sole and "other flatfish" by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1992 secondary bycatch allowance of Pacific halibut for the rock sole/"other flatfish" fishery in the BSAI has been caught.

**EFFECTIVE DATES:** Effective 12 noon, Alaska local time (A.l.t.), August 25, 1992, through 12 midnight, A.l.t., December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, NMFS, 907/586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1992 secondary bycatch allowance of Pacific halibut to the rock sole/"other flatfish" fishery, which is defined at § 675.21(g)(4)(ii)(B), was set at 755 metric tons by emergency rule (57 FR 11433, April 3, 1992, and extended 57 FR 29223, July 1, 1992).

The Regional Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(h)(1)(iv), that U.S. vessels fishing with trawl gear have caught the 1992 secondary bycatch allowance of Pacific halibut for the rock sole/"other flatfish" fishery. Therefore, NMFS is prohibiting directed fishing for rock sole and "other flatfish" in the aggregate by vessels using trawl gear in the BSAI from 12 noon, A.l.t., August 25, 1992, until 12 midnight, A.l.t., December 31, 1992.

After the effective date of this closure, in accordance with §§ 675.21(h)(1)(iv) and 675.20(h)(8), operators of vessels fishing with trawl gear, other than pelagic trawl gear, in the BSAI may not retain rock sole and "other flatfish" in the aggregate at any time during a trip in an amount equal to or greater than 20 percent of the amount of other fish species retained at the same time on the vessel during the same trip as measured in round weight equivalents.

Vessels fishing with pelagic trawl gear in the BSAI may not retain rock sole and "other flatfish" in the aggregate at any time during a trip in an amount equal to or greater than 7 percent of the amount of other fish or fish products retained on the vessel at the same time during a trip as measured in round weight equivalents.

## Classification

This action is taken under 50 CFR 675.21 and complies with E.O. 12291.

## List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: August 24, 1992.

David S. Crestin,

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-20683 Filed 8-25-92; 4:21 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 57, No. 168
Friday, August 28, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

[7 CFR Part 68]

### United States Standards for Whole Dry Peas, Split Peas, and Lentils

**AGENCY:** Federal Grain Inspection Service, USDA.[1]

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the United States Standards for Whole Dry Peas, Split Peas, and Lentils are currently under review. The Federal Grain Inspection Service (FGIS) believes these standards are meeting the needs of producers, warehouse managers, shippers, and all others who handle or market peas and lentils. No changes to these standards are planned. Public comments are being requested before a final decision is made.

**DATES:** Comments must be received by October 27, 1992.

**ADDRESSES:** Written comments must be submitted to George Wollam, FGIS, USDA, room 0632 South Building, P.O. Box 96454, Washington, DC, 20090–6454; FAX (202) 720–4628.

All comments received will be made available for public inspection in room 0632 USDA South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** George Wollam, address as above, telephone (202) 720–0292.

**SUPPLEMENTARY INFORMATION:** The review of the United States Standards for Whole Dry Peas, Split Peas, and Lentils, found at 7 CFR 68.401 through 68.611, is being conducted according to the requirements of Executive Order 12291. No changes to these standards are planned. Comments including data, views, and arguments concerning this review are solicited from interested persons.

**Authority:** Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

**David R. Galliart,**
*Acting Administrator.*

[FR Doc. 92–20615 Filed 8–27–92; 8:45 am]

BILLING CODE 3410-EN-M

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

### Agricultural Marketing Service

7 CFR Part 1065

[DA-92-21]

### Milk in the Nebraska-Western Iowa Marketing Area; Proposed Revision of Supply Plant Shipping Percentage

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed revision of rules.

**SUMMARY:** This action invites written comments on a proposal to revise certain provisions of the Nebraska-Western Iowa Federal milk marketing order for an indefinite period beginning with September 1992. The proposed revision would reduce the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool plant status. The shipping standard would be 20 percent in all months. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. Mid-Am contends that the action is necessary to prevent uneconomical and inefficient movements of milk.

**DATES:** Comments are due no later than September 4, 1992.

**ADDRESSES:** Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 6456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1366.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–6120 requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed revision has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c (15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1065.7(b) of the order, the revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for an

indefinite period beginning with the month of September 1992.

All persons who want to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures to make the action effective for September 1992.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The provisions proposed to be revised are the supply plant shipping percentages set forth in § 1065.7(b). The revision would lower the shipping percentage for supply plants by either 10 or 20 percentage points, depending on the month, to 20 percent of receipts for an indefinite period, beginning with the month of September 1992. The revision would continue the current application of a 20 percent shipping standard for supply plants that is due to expire after August 1992.

Pursuant to the provisions of § 1065.7(b)(3) of the Nebraska-Western Iowa milk order, the Director of the Dairy Division may increase or decrease the supply plant shipping percentage as set forth in § 1065.7(b) by up to 20 percentage points during any month. The adjustment can be made to help encourage additional milk shipments or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order.

Under the Nebraska-Western Iowa order, the stated supply plant shipping percentage is 40 percent or more of the total receipts of Grade A milk received from dairy farmers and cooperative associations. A revision signed October 3, 1989 (54 FR 41240) reduced the supply plant shipping percentage by 10 percentage points (from 40 percent to 30 percent of receipts) indefinitely for the months of September through March. A more recent revision, signed January 29, 1992 (57 FR 4150), reduced the shipping standard for just the months of January through August 1992 to 20 percent. This action would set the shipping standard at 20 percent of receipts for an indefinite period for all months, beginning September 1992.

This action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk to the market. Mid-Am has projected that there will be ample supplies of direct-ship producer milk located in the general area of the Nebraska-Western Iowa distributing plants to meet the fluid needs of such plants. Absent a revision, Mid-Am contends that costly and inefficient movements of milk would have to be made in order to maintain pool status of the milk of its members who have historically supplied the fluid needs of the market.

Therefore, it may be appropriate to relax the aforementioned provisions of § 1065.7(b) for an indefinite period beginning with the month of September 1992 to prevent uneconomic shipments of milk, and to assure that dairy farmers long associated with the fluid milk market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

**List of Subjects in 7 CFR Part 1065**

Milk marketing orders.

The authority citation for 7 CFR part 1065 continues to read as follows:

**Authority:** (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Dated: August 24, 1992.

**W.H. Blanchard,**

*Director, Dairy Division.*

[FR Doc. 92-20662 Filed 8-27-92; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Part 1065**

**[DA-92-22]**

## Milk in the Nebraska-Western Iowa Marketing Area; Proposed Suspension of Certain Provisions of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This action invites written comments on a proposal to suspend certain provisions of the Nebraska-Western Iowa Federal milk marketing order for an indefinite period beginning with the month of September 1992. The proposed suspension would continue a current suspension that reduces the amount of milk that must be transferred from supply plants to pool distributing plants and removes the requirement that a producer's milk be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. Continuation of the suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. Mid-Am contends that the action is necessary to prevent uneconomical and inefficient movements of milk.

**DATES:** Comments are due no later than September 4, 1992.

**ADDRESSES:** Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 6456, Washington, DC 20090-6456.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1366.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c (15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has

jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for an indefinite period beginning with the month of September 1992:

In § 1065.6, the words "during the month";

In § 1065.7(b)(1), the words "not more than one half of"; and,

In § 1065.13, paragraph (d)(1).

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures for September 1992.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The proposed action would suspend certain provisions of the order for an indefinite period beginning with September 1992. The action would continue a suspension that reduces the amount of milk that must be transferred from supply plants to pool distributing plants and allows milk to be diverted to a nonpool plant without being physically received at a pool plant during the month. The current suspension expires August 1992.

The order defines a supply plant as a plant from which Grade A milk is shipped to a pool distributing plant. The order provides that to qualify as a pool supply plant, the supply plant must transfer or divert a specified percentage of its receipts of milk to pool distributing plants. The order further provides that a supply plant must ship milk to a distributing plant each month and that not more than one-half of the qualifying shipments may be met through the direct shipment of milk from farms to pool distributing plants. The order also provides that a dairy farmer's milk is not eligible for diversion during a month unless at least one day's production is physically received at a pool plant. The current suspension removes the requirement that milk be transferred from a supply plant to a distributing plant each month, allows all direct-shipped milk to count as a qualifying shipment, and removes the requirement that a dairy farmer's milk be physically received at a pool plant each month.

A continuation of the action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk to the market. Mid-Am contends that the marketing conditions that led to the current suspension will continue to exist for some time. Mid-Am projects that there will be ample supplies of direct-ship producer milk located in the proximity of the distributing plants to meet the fluid milk needs of the market. As a result, Mid-Am contends that it is impractical to require producer milk located some distance from pool plants to be physically received once during the month, when the milk can more economically be diverted directly to manufacturing plants in the production area. In addition, Mid-Am contends that it would be inefficient to require that milk be transferred from supply plants to distributing plants when the fluid milk needs of the market can be supplied by the direct shipment of milk from farms to distributing plants. Absent a continuation of the suspension, Mid-Am contends that costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the fluid milk needs of the market.

In view of the expressed uncertainty over the anticipated duration of the supply/demand situation, consideration should be given to whether the action should be taken for a fixed period of time or for an indefinite period as proposed.

**List of Subjects in 7 CFR Part 1065**

Milk marketing orders.

**PART 1065—[AMENDED]**

The authority citation for 7 CFR part 1065 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: August 24, 1992.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 92–20666 Filed 8–27–92; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 1124**

**[DA-92-19]**

## Milk in the Pacific Northwest Marketing Area; Proposed Temporary Revision of Diversion Limitation Percentage

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed temporary revision of rule.

**SUMMARY:** This notice invites public comments on a proposal to temporarily ease a supply plant shipping requirement that at least 30 percent of producer milk physically received be shipped to a distributing (bottling) plant in order to qualify the supply plant for pooling under the Pacific Northwest order. The proposed revision would reduce the shipping requirement to 20 percent during the months of September 1992 through February 1993. This action was requested in order to prevent the uneconomic movement of milk by a cooperative association that represents producers regularly associated with the market.

**DATES:** Comments are due no later than September 14, 1992.

**ADDRESSES:** Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4829.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed temporary revision of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule. Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1124.7(c) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Pacific Northwest marketing area is being considered for the months of September 1992 through February 1993.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 15th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to fifteen days because a longer period would not provide the time needed to complete the required procedures and include September in the revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

**Statement of Consideration**

In order for a supply plant to maintain its pool status, the Pacific Northwest order requires, as set forth in § 1124.7(b), such plants to ship to pool distributing plants a minimum of 30 percent of the total quantity of milk physically received at the supply plant. The order also, in § 1124.7(c), provides authority for the Director of the Dairy Division to increase or decrease this supply plant shipping requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments or to prevent uneconomic shipments.

The supply plant shipping standard was reduced to 20 percent for all milk marketed during September 1991 through February 1992. This temporary revision was issued because it was determined that market conditions would have resulted in uneconomic shipments of milk for the purpose of maintaining pool supply plant status. The order provides in § 1124.7(b)(2) that a supply plant which qualifies as a pool plant in each month of September through February shall be a pool plant in each of the following months of March through August.

The Tillamook County Creamery Association (TCCA), a cooperative association that represents a number of the market's producers, has requested that the temporary easing of the total minimum quantity of milk that a supply plant must ship to a distributing (bottling) plant in order for the supply plant to maintain pool plant status be continued. TCCA has asked in essence that the Director of the Dairy Division repeat last year's temporary revision. This temporary revision would be effective from September 1992 through February 1993.

TCCA asserts that due to continuing supply/demand conditions, it continues to be uneconomic to move adequate quantities of milk to the market in order to maintain the delivery percentages under the order. They maintain that this reduction in shipping requirements will not affect TCCA's willingness to supply spot loads of milk to the Portland bottling market as has been traditionally done. Under current market conditions, TCCA contends that it would be impossible for them to qualify as a pool supply plant at the present shipping percentages without uneconomic and quality deteriorating movements of milk between plants solely for the purpose of meeting those requirements.

Therefore, it may be appropriate to again reduce the pool supply plant shipping percentages.

**List of Subjects in 7 CFR Part 1124**

Milk marketing orders.

The authority citation for 7 CFR part 1124 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed: August 24, 1992.

**W.H. Blanchard,**

*Director, Dairy Division.*

[FR Doc. 92-20698 Filed 8-27-92; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Part 1126**

**[DA-92-20]**

## Milk in the Texas Marketing Area; Proposed Suspension of Certain Provisions of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This notice invites written comments on a proposal that would continue the suspension of segments of the pool plant and producer milk definitions of the Texas order, for the months of August 1992 through July 1993. Associated Milk Producers, Inc. and Mid-America Dairymen, Inc., cooperative associations that represent a substantial proportion of the producers who supply milk to the market, have requested the continuation of the suspension. The cooperatives assert that continuation of this suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from pooling.

**DATES:** Comments are due no later than September 4, 1992.

**ADDRESSES:** Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-4829.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule. Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Texas marketing area is being considered for the months of August 1992 through July 1993.

1. In 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In 1126.13(e)(1), the words, "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In 1126.13(e)(2), the paragraph references "(a), (b), (c) and (d)".

5. In 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

All persons who desire to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The comment period is limited in order to facilitate completion of the required procedures in time to include August 1992 in the suspension period if it is concluded that the proposal should be adopted.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The proposed suspension would continue the current suspension of segments of the pool plant and producer milk definitions for the Texas order. This proposed suspension would be in effect from August 1992 through July 1993. The current suspension will expire in July 1992. The proposed action would continue the suspension of: (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the restrictions on the types of pool plants at which milk must be received to establish the maximum amount of milk that a cooperative may divert to nonpool plants; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be met by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order permits a cooperative association plant located in the marketing area to be a pool plant, if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at handlers' pool plants. The order also provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. The proposed action would continue to inactivate the 60 percent delivery standard for plants operated by a cooperative association, allow a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed, and remove the diversion limitation applicable to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. The requested action would continue the current suspension of these performance standards for an additional twelve months for August 1992 through July 1993 for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. The proposed action would continue to keep these requirements suspended.

The continuation of the current suspension was requested by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc., cooperative associations that represent a substantial share of the dairy farmers who supply the Texas market. The cooperatives assert that the continuation of the current suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from such pooling. The cooperatives maintain that the suspension would also continue to provide handlers the flexibility needed

to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers supplying the market.

**List of Subjects in 7 CFR Part 1126**

Milk marketing orders.

The authority citation for 7 CFR part 1126 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 24, 1992.

**Kenneth C. Clayton,**

*Deputy Administrator for Marketing Programs.*

[FR Doc. 92–20661 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–02–M

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**7 CFR Part 1137**

**[DA–92–26]**

## Milk in the Eastern Colorado Marketing Area; Proposed Suspension of Certain Provisions of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This notice invites written comments on a proposal that would continue the suspension of certain provisions of the Eastern Colorado Federal milk order. These provisions have been suspended for the same periods for the previous six years. This proposal would suspend for September 1992 through February 1993, the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February period. The "touch-base" requirement that each member-producer's milk be received at least three times each month at a pool distributing plant to be eligible for diversion would be suspended from September 1992 through August 1993. The percentage limits on the amount of milk that a cooperative may divert to surplus milk outlets would also be suspended from September 1992 through August 1993. The request for the continued suspension of these provisions was made by Mid-America Dairymen, Inc. (Mid-Am). Mid-Am is a cooperative association which represents producers who have been historically associated with the Eastern Colorado order. Mid-Am requested this suspension in order to prevent the uneconomic movement of milk under the order.

**DATES:** Comments are due no later than September 4, 1992.

**ADDRESSES:** Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4829.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lesson the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule. Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered:

1. For the months of September 1992 through February 1993: In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and the words "of March through August"; and

2. For the months of September 1992 through August 1993: In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence "30% in the months of March, April, May, June, July, and December and 20 percent in order months of", as well as the word "distributing".

All persons who desire to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The comment period is limited in order to facilitate completion of the required procedures in time to include September 1992 in the suspension period if it is concluded that the proposal should be adopted.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The proposed suspension was requested by Mid-America Dairymen, Inc. (Mid Am). Mid-Am is a cooperative association that has pooled milk from producers located in western Kansas and western Nebraska on the Eastern Colorado order for several years. Mid-Am has requested the continued suspension of certain provisions in order to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers historically associated with the Eastern Colorado order.

Mid-Am requests for the months of September 1992 through February 1993, that the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February period be suspended. Mid-Am also requests the suspension of the touch-base and diversion limitation requirements during the months of

September 1992 through August 1993. These latter requirements have been suspended since September 1985.

These provisions have been suspended previously in order to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. Mid-Am asserts that it has made a commitment to Western Dairymen Cooperative, Inc., that milk pooled by Mid-Am will be available to meet the fluid requirements of fluid distributing plants if the suspension action is issued. Without the suspension action, Mid-Am contends that it would be necessary to ship milk from western Nebraska and western Kansas to Denver area distributing plants. This would displace locally produced milk that would then have to be shipped from the Denver area to surplus handling plants.

Mid-Am maintains that the suspension of the touch-base provisions of the Eastern Colorado order will not allow additional milk supplies to be pooled, but rather will provide for more efficient disposition of producer milk not needed for fluid requirements of Eastern Colorado distributing plants. By suspending the touch-base provision, producer milk would not be required to be delivered to pool plants for the sole purpose of meeting provisions of the Eastern Colorado order.

Mid-Am contends that the conditions that existed when the provisions were suspended previously still continue. Mid-Am projects that there will be ample supplies of locally produced milk to meet the requirements of Eastern Colorado distributing plants without requiring that each producer's milk be received at least three times each month at a pool distributing plant and without restricting the amount of milk that can be diverted to non-pool plants.

Therefore, it may be appropriate to suspend the aforesaid provisions for the months requested.

**Lsit of Subjects in 7 CFR Part 1137**

Milk marketing orders.

The authority citation for 7 CFR part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 24, 1992.

Daniel Haley,

*Administrator.*

[FR Doc. 92–20701 Filed 8–27–92; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 1139**

**[Docket No. AO-309-A31; DA-90-21]**

## Milk in the Great Basin Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and To Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This decision recommends changes in the Great Basin order. It would relax the diversion provisions and would lower the amount of milk that a cooperative association would have to deliver to a distributing plant in order to pool its manufacturing plant. The decision would relax the limit on the amount of milk that producer-handlers may receive from pool plants and other order plants. Other revisions would change the due date for payments to the producer-settlement fund, make several technical changes to component pricing provisions and change the application of location adjustments on diverted milk. The recommended changes are based on the record of a public hearing held in Salt Lake City, Utah, on August 27–28, 1990. These changes are warranted due to changes in marketing conditions and to assure orderly marketing in the area.

**DATES:** Comments are due on or before September 28, 1992.

**ADDRESSES:** Comments (four copies) should be filed with the Hearing Clerk, room 1081, South Building, United States Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior document in this proceeding:

Notice of Hearing: Issued August 14, 1990; published August 20, 1990 (55 FR 33915).

**Preliminary Statement**

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Great Basin marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 30th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Salt Lake City, Utah, on August 27–28, 1990, pursuant to

a notice of hearing issued August 14, 1990 (55 FR 33915).

The material issues on the record of hearing relate to:

1. Pooling standards for a cooperative's reserve milk supply;
2. Pooling standards for a cooperative manufacturing plant;
3. Limits on producer-handler receipts from pool plants and other order plants;
4. Application of location adjustments in determining the obligation of a partially-regulated distributing plant;
5. Application of location adjustments in paying producers for milk that is diverted;
6. Due date for payment of handler obligations to the producer-settlement fund;
7. Handler payments to cooperative associations for plant milk and bulk tank receipts from producer-members; and
8. Technical changes in order provisions relative to component pricing:
(a) Handler protein price.
(b) Location and zone differentials.
(c) Protein accounting by plant operators.

**Findings and Conclusions**

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

*1. Pooling Standards for a Cooperative's Reserve Milk Supply*

The order should not be amended to provide an additional option for pooling a cooperative association's milk supply. This decision provides, as an alternative, that the order's diversion limitations for cooperatives be relaxed. The diversion limitations are increased from 60 percent for the period of April through August and 50 percent in all other months to 75 percent during all months of the year.

Western Dairymen Cooperative, Inc. (WDCI), proposed the "cooperative reserve supply unit" as an additional option in pooling a cooperative's milk supply. Their proposal, modified at the hearing, would have required a cooperative to meet the following requirements:

(1) The cooperative must file an application with the market administrator for a "cooperative reserve supply unit status" no less than 15 days prior to the first day of the month such status is requested;

(2) The cooperative must qualify as a handler of bulk tank milk or diverted milk of its member producers during the month and as a handler of producer milk during each of the 12 preceding months;

(3) Each member producer of the cooperative must deliver at least one day's production each month to a pool distributing plant;

(4) The cooperative must be qualified to receive payments for producer milk;

(5) The cooperative has producer members, the majority of whom are producing milk or farms located within 175 miles of a pool distributing plant located within the market area;

(6) The cooperative has not entered into an agreement with another cooperative association to have its allowable diversions computed on a combined basis;

(7) The cooperative would not be able to operate a pool plant located in the marketing area (initially WDCI proposed that a cooperative not operate a milk plant;

(8) The cooperative must ship milk to pool distributing plants during the month in an amount equal to not less than 25 percent of its producer milk (initially WDCI proposed a 35 percent requirement);

(9) The cooperative reserve supply unit supplies fluid milk products to a distributing plant located within 175 miles (initially 100 miles) of the majority of the cooperatives member producers in accordance with instructions from the market administrator calling for a minimum level of shipments to pool distributing plants; and

(10) The market administrator may require shipments of bulk fluid milk from the reserve supply unit whenever the market administrator determines, as the result of an investigation, that additional milk supplies are needed to any pool distributing plant(s) in order to serve the fluid needs of the market.

The WDCI proposal provided that an investigation may be undertaken either at the market administrator's own initiative or on the basis of a request from a pool distributing plant. If the market administrator finds that the investigation that it is necessary to issue an instruction requiring shipments of milk, the market administrator shall issue a notice stating that a shipping instruction is being considered and inviting data, views and arguments with respect thereto, which will be considered in making his determination.

A cooperative association, after qualifying as a reserve supply unit, shall continue to have that status until it fails to meet all of the previously described conditions, or until it applies for termination thereof, in which case such status shall be withdrawn on the first day of the month following the application.

If a cooperative association holding such reserve supply unit status fails to comply with any shipping requirements or takes any action which evades the intent of any shipping requirements, the market administrator shall report these facts to the Director of the Dairy Division who may suspend the cooperative from qualification. The suspension would cover a period of not more than 12 months during which the association has qualified as a handler of bulk tank milk or of diverted milk of its members.

The first witness for WDCI testified that the association is a marketing cooperative with members located in 10 states. He said that the association is operating four manufacturing plants and three fluid milk plants in the Great Basin marketing area.

The spokesman for WDCI said that milk production is increasing and commercial use remains flat. He said that because of the increase in milk production, cheese plants are interested in acquiring manufacturing plants. WDCI, he contended, will be committed more to manufacturing operations and utilizing these manufacturing facilities at optimum levels of production.

The WDCI witness said that the association has signed a letter of intent with another company which could result in a significant change in the status of WDCI's manufacturing plants and in the use of its member milk for manufacturing. He said the association wants to see that the fluid needs of the market are served from the closest possible supply source. The witness indicated the cooperative's proposal would accomplish that objective.

At the hearing the WDCI witness requested that the Department waive a recommended decision on this issue. In their post-hearing brief, however, they withdrew this request.

At the hearing WDCI made several modifications to its proposal. Under the first modification a cooperative would not be permitted to operate a pool plant located in the marketing area. Initially, WDCI has proposed that a cooperative may not operate a milk plant. Another modification provided for shipments to pool distributing plants of not less than 35 percent of the cooperative's member-producer monthly milk production instead of 25 percent. A third modification would require that a member producer deliver at least one day's production each month to a pool distributing plant.

The second witness for WDCI said the proposal is similar to a provision in the Pacific Northwest order. He said that the proposed standards assure that the association will not "ride" the pool but is there to serve the needs of the market.

At the hearing a witness for two cooperative associations, Magic Valley Milk Producers, Inc. (MVMP), and Quality Milk Producers, Inc. (QMP), and witnesses for Gossner Foods (Gossner), a proprietary handler, presented testimony in opposition to the WDCI proposal.

The witness for MVMP said that the WDCI proposal would not benefit MVMP. He said that for June and July 1990, MVMP was only able to ship about 21 percent of its grade A milk to pool distributing plants located in the Great Basin marketing area (monthly production of members for June and July 1990 approximately 21 million pounds).

The MVMP spokesman said that the proposed 75-mile limitation by WDCI would eliminate MVMP from qualifying under the proposed "cooperative reserve supply unit" even though about 30 percent of their members are located within the Great Basin marketing area. He testified that MVMP has been serving this market for about three years. MVMP, he said, delivers a substantial amount of milk to the Meadow Gold distributing plant at Pocatello, Idaho. If that plant were to close, the cooperative's members' farms would be located about 240 to 270 miles from a pool distributing plant in the marketing area.

The witness for MVMP proposed several modifications to the WDCI proposal. He said that a cooperative in order to qualify under this proposal should (1) not operate a pool distributing plant rather than a milk plant within the marketing area (2) have producers whose milk is currently pooled on the Great Basin order or are located within 175 miles of a pool distributing plant located within the marketing area and (3) ship to pool distributing plants 25 percent during the months of September through April and 20 percent during the months of May through August of the cooperative associations members' monthly milk production. Also, the qualified cooperative association should not lose its status as a "cooperative reserve supply unit" because of the closing of the closest pool distributing plant to the majority of its producers.

Two witnesses for Gossner testified in opposition to the WDCI proposal. The second Gossner witness said his testimony was also presented on behalf of KDK Dairy, Banquet Foods and Chappel Cheese.

The first Gossner witness said that the present provisions are adequate for WDCI to pool its members' milk on the Great Basin order without operating a bottling plant or a cheese plant. He said that if WDCI is going out of the fluid milk business, then this proposal would encourage WDCI to sign on as many new producers as possible with the intent of controlling the entire milk supply.

This Gossner witness testified, that even though they have their own independent producers, they are concerned about the possibility of other sources of milk not being available because of the adverse effect that WDCI's proposal would have on the market. He said that Gossner operates an aseptic milk plan that engages substantially in supplying military contracts. The witness indicated that this type of business requires that milk always be available at a reasonable price. Gossner, he said, would have less objection to the WDCI if the monthly shipping percentages were increased from 25 to 35 percent.

The second witness for Gossner and other handlers said that the WDCI proposal will further increase the dominance of WDCI as the principal buyer of milk in the Great Basin market. He said that Gossner and other handlers are all heavily dependent upon Grade B milk and that the WDCI 25 percent shipping standard will accelerate the conversion of Grade B milk to Grade A milk.

This spokesman for Gossner and other handlers said that the proprietary cheese plants are already operating at less than capacity and any further reduction in milk supplies could result in the closing of some cheese plants in the marketing area. He said that if the cheese plants were to close, this could result in the closure of bottling operators because of their dependence on the cheese plants to take their diverted milk.

A witness for QMP said that the association supports the modifications proposed by MVMP. He said that members of the association produce approximately 11 to 12 million pounds of milk per month and the milk pooled by the association goes to a distributing plan at Pocatello, Idaho. The members of the association, he said, are located within the southern Idaho counties of Twin Falls, Gooding, and Jerome and, therefore, the proposed mileage standards by WDCI would eliminate their organization from qualifying under the WDCI proposal.

As indicated previously, the "cooperative reserve supply unit" proposed as modified, should not be adopted. The relaxation of the diversion provisions as provided for in this decision will enable the proponent of the "cooperative reserve supply unit" proposal to efficiently provide for the fluid needs of the market, and, at the same time, accommodate the movement of more milk for manufacturing in recognition of changes in supply and demand for milk in this market.

The 75 percent diversion limitation provision provided for in this decision, will enable WDCI to move milk directly from the farm to manufacturing plants in amounts equal to WDCI's proposed 25 percent monthly shipping requirements contained in their proposal. The 75 percent diversion provision would require (reciprocal) shipments to pool plants of 25 percent.

The 75 percent diversion provision, coupled with the provision that authorizes the Director of the Dairy Division to increase or decrease these limitations by 10 percentage points, should provide flexibility in the event that market conditions substantially change.

As indicated previously, there was substantial opposition to the WDCI proposal even with the proposed modifications. The modified proposal leaves some doubt as to whether other cooperatives, besides WDCI, would be able to meet all the requirements of this provision. The relaxation of the diversion provisions should accommodate the changed marketing conditions that WDCI was concerned about and at the same time provide other cooperative associations with the ability to more efficiently move milk supplies where needed.

*2. Pooling Standards for a Cooperative Manufacturing Plant*

The order should provide that a cooperative association must ship 25 percent of its member producer milk to a pool distributing plant to qualify its manufacturing plant for a pool status. The order should also continue to provide that the Director of the Dairy Division may increase or decrease such percentage by 10 percentage points.

Currently, the order provides that a cooperative association must ship 35 percent of its member-producer milk to a pool distributing plant to qualify its manufacturing plant for pool status. However, when the Great Basin and Lake Mead orders were merged on April 1, 1988, the order provided for a 45 percent shipping requirement. The 45 percent standard was lowered to 40 percent effective May 1, 1989—official notice is taken of a **Federal Register** document, Revision of Cooperative Manufacturing Plant Shipping Requirements (54 FR 30881). The standard was further lowered to 35 percent effective June 1, 1989—official notice is taken of a **Federal Register** document, Revision of Cooperative Manufacturing Plant Shipping Requirements (54 FR 25446). Both of the

reductions were made by the Director of the Diary Division at the request of WDCI.

A witness for MVMP said that a decrease in the shipping requirements to 25 percent is necessary to reflect the fact that Class I milk movements on the Great Basin order have decreased about 14 percent when compared to the first 7 months of 1989. He said that if the shipping standard had been 25 percent rather than 35 percent the association would have saved about $132,000 for the period of March 1990 through July 1990.

The MVMP proposal was opposed by WDCI and Gossner. The witness for WDCI said that the association is delivering approximately 40 percent of its milk supply to pool distributing plants. The WDCI witness said the association does not want this shipping provision to be established any lower than 35 percent.

The witness for Gossner said that the company's opposition to this proposal is similar to their opposition to the WDCI proposal to establish a cooperative reserve supply unit. He said that the MVMP proposal could result in the elimination of proprietary manufacturing plants because this proposal would increase the conversion of Grade B milk to Grade A milk.

As previously noted, the shipping requirement for a cooperative association to pool its manufacturing plant should be 25 percent. This comports with the level of shipment that WDCI would have to make under the diversion allowance adopted for cooperative associations. Such level of shipments should enable MVMP to pool the milk of its member producers according to the testimony by the MVMP's witness. If marketing conditions change to warrant a higher shipping percentage, this can be done under the Director's authority provided in the order.

*3. Limits on Producer-Handler Receipts From Pool Plants and Other Order Plants.*

The order should be amended to provide a producer-handler with more flexibility in acquiring fluid milk products from pool plants or other order plants in order to supplement the producer-handler's own production. The amended order would allow a producer-handler to acquire unlimited quantities of fluid milk products during the months of December through August provided the producer-handler met the following requirements during the months of September through November. During the period of September through November, the producer-handler's purchases of fluid milk products (excluding flavored and cultured fluid milk products) would be limited to 15,000 pounds (3 month total) or 5 percent of the producer-handler's disposition (3 month total), whichever in greater. The order would also provide that if the producer-handler exceeded this limitation during the months of September through November, the producer-handler's purchases of fluid milk products (excluding flavored or cultured milk products) could not exceed 5,000 pounds each month or 5 percent of the producer-handler's monthly disposition, whichever is greater.

The order presently provides that a producer-handler may purchase fluid milk products each month from pool plants or there order plants in an amount not in excess of the larger of 5,000 pounds or 5 percent of the producer-handler's Class I disposition.

At the hearing, WDCI abandoned a proposal that would have permitted a producer-handler to purchase from a pool plant or other order plant during each of the months of May through August fluid milk products amounting to 10,000 pounds or 5 percent of its Class I disposition, whichever is larger, and during the months of September through April, the larger of 5,000 pounds a month or 5 percent of its monthly Class I disposition.

At the hearing, Mr. Glen Brown who is part owner and the manager of Brown Dairy, Inc. (Brown), located at Coalville, Utah, testified in support of the change in the producer-handler provision that is adopted herein.

Mr. Brown said that the present order provisions make it unreasonably difficult to manage his operation in an orderly manner. He said that anyone who has had any experience with cows knows that a cow's production will vary more than 5 percent per day and per month with month-to-month variations of more than 5 percent. Therefore, he said, that the only logical way to provide a producer-handler a means to market his production is to remove the unreasonable restrictions contained in the order.

Mr. Brown said that a three-month qualifying period during the historically low production period should alleviate the market disruption concerns that producers and handlers may have. He said that his proposal would, for the most part, eliminate the need to dump onto the market surplus milk.

A producer-handler, according to Brown, does not know what his Class I sales will be until the month is over. As a consequence, the producer-handler does not know until the month is over, the volume of milk that can be purchased under the 5 percent allotted under the order. He said that his proposed three-month qualifying period should help solve this problem. In addition, the current provision, he says, make it very difficult at times to provide fluid milk products to special groups such as the Boy Scouts in their own immediate area. He said the fluid milk demands of the Boy Scouts and other youth groups, exceed the current 5 percent of Class I sales that producer-handlers are permitted to obtain from pool plants or other order plants.

Mr. Brown said that the amount of milk attributable to producer-handlers in this market has declined from previous decades and has stayed very stable during the last few years. He said also that at least two-thirds of the Federal orders have no limitations on purchases of fluid milk products by producer-handlers.

Mr. Brown testified that the prices he obtains for his packaged fluid milk do not adversely affect the market. His prices, he says, when taking all products into consideration, are not the lowest or the highest in the market. He said, too, that he has to pay the Class I price for his purchases. For this reason he believed that no producer in the market would be adversely affected by his purchases of supplemental milk.

Mr. Brown said that his proposal would have a positive impact on small entities, especially in rural areas where the economy and employment are struggling. He said that a suspension of this provision for the period of December 1989 through August 1990, to the best of his knowledge, did not have an adverse effect on this market.

Mr. Brown also proposed that the limitation on the quantity of fluid milk products that a producer-handler may purchase should not include flavored and cultured fluid milk products. He said that today's high technology and capital-intensive machinery dictate that processors cooperate in order to accommodate the consumer.

At the hearing another producer-handler (Ideal Dairy) briefly testified in support of the Brown proposal. Winder Dairy, in a brief, stated that it also supports the Brown proposal.

The witness for Ideal Dairy said that in his operation he has to have a surplus averaging about 30 percent of the dairy farm's milk production. Some months it can vary from a low of 5 percent to a high of 40 percent. He said that his demand for milk is higher during the 8 or 9 months that the schools are operating rather than in the summer. He indicated that his own production and purchases from pool plants are higher than last year.

In its brief, Winder Dairy stated that the prior suspension of the limitations on purchases by producer-handlers has not been disruptive and that this greater flexibility in purchases can be useful to the market.

At the hearing a witness for WDCI testified in opposition to the Brown proposal. He said that before the merger of the Great Basin and Lake Mead orders the producer-handler limitation in the Great Basin order was the higher of 3,000 pounds or 5 percent of its Class I sales. He said that the cooperative proponent of the merger proposed the increase to 5,000 pounds per month in recognition of the general trend towards higher milk production.

The spokesman for WDCI said that the Department of Agriculture (Department) has always taken the position that producer-handlers are small volume farmers marketing their own milk and carrying the burden of their own reserve supply. Producer-handlers, he said, are allowed to market their own milk for Class I purposes without sharing it with the producers so long as they market their own reserve supply and do not transfer the burden of carrying the reserve supply to other producers.

The WDCI witness said that the Department has permitted producer-handlers to acquire limited quantities of milk from pool sources so that they could supplement their own farm production during the low production months and make other Class I products available to customers. He said that it is unfair to require regulated handlers to pay the Class I price for all fluid milk distribution while their competitors, the producer-handlers, can offer milk for sale without regard to the Class I price.

The WDCI spokesman said that during the suspension for the period of December 1989 through August 1990, substantial quantities of reserve milk were shifted from producer-handlers to other producers and that fully regulated handlers lost sales. He said that purchases of fluid milk products by producer-handlers increased from 67,000 pounds a year ago to 430,000 pounds and that these purchases displaced sales by fully regulated handlers.

A limit should apply on purchases of supplemental milk by producer-handlers during the months of September through November. A producer-handler should be permitted to purchase fluid milk products (excluding flavored and cultured fluid milk products) from pool plants and other order plants during the months of September through November in an amount not to exceed 15,000 pounds for the 3-month period or 5 percent of the producer-handler's Class I disposition during such 3-month period, whichever is greater.

A limit on supplemental milk purchases by producer-handlers is needed to preclude a producer-handler from shifting to pool producers the burden of carrying the producer-handler's reserve milk supply. Without any limit on purchases a producer-handler could be expected to obtain Class I sales accounts in an amount equal to the volume of milk produced in the seasonally high production months. During seasonally low production months, a producer-handler could supplement its lack of production with purchases from pool sources.

By limiting a producer-handler's purchases during the months of seasonally low production, September through November, other producers in the Great Basin market will have some assurance that a producer-handler is responsible for producing enough milk to supply 95 percent of the producer-handler's Class I sales during such 3-month period.

The producer-handler's request that flavored fluid milk products and cultured fluid milk products not be included in the purchase limits during the months of September through November should also be granted. This will enable a producer-handler to offer a more complete line of milk products to customers without the capital outlay that would otherwise be required to process and package such items.

The application of a limit on purchases of supplemental milk supplies by producer-handlers during the months of December-August tends to impose an unnecessary burden on certain producer-handler operations in the market. Some producer-handler plants are located within close proximity to summer camps and winter recreational facilities that have a short-duration demand for milk in the months of seasonally high production. The limit on supplemental purchases tends to either effectively preclude producer-handlers from serving such accounts or encourage producer-handlers to produce an unnecessary surplus of milk to serve such accounts.

Removal of the limit on purchases of supplemental milk by producer-handlers during the market's seasonally high production months would tend to provide an incentive for producer-handlers to shift their production pattern so that it would peak during the market's low production months of September through November in order to service their year-round sales accounts and retain producer-handler status.

*4. Application of Location Adjustments in Determining the Obligation of a Partially Regulated Distributing Plant*

No change should be made in computing the obligation of the operator of a partially-regulated distributing plant.

Under the present provisions of the Great Basin order, a partially-regulated distributing plant operator regulated under a State order has two options under which the operator's pool obligation may be determined:

(a) The plant operator incurs no payment obligation if the operator purchases from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area. Such purchases, however, may not be used to offset any obligation under another order.

(b) The plant operator may choose to pay to the producer-settlement fund the value of the fluid milk products distributed in the marketing area determined by the difference between the appropriate class prices applicable at the location of the partially-regulated distributing plant (but not to be less than zero) as announced by the State order and the value of such milk as determined pursuant to the class prices and component prices established under the Great Basin milk order.

A witness for WDCI, who also represented the Borden Company, proposed that the obligations of a handler operating a partially-regulated distributing plant be revised to eliminate the location adjustment on packaged fluid milk products distributed in the Great Basin marketing area. In describing the proposal to eliminate location adjustments, proponent stated that the proposal retains all of the provisions of section 76 (obligation of a handler operating a partially regulated distributing plant) with the exception that the location adjustment on packaged fluid milk products distributed in the Great Basin marketing area by partially regulated distributing plants subject to State regulation would be eliminated. Proponent contended that elimination of the location adjustment from section 76 will place the partially-regulated distributing plants on an equal footing with plants subject to full regulation by the Great Basin order or any other Federal milk marketing order with respect to fluid milk product disposition in the Great Basin market.

The brief submitted on behalf of WDCI makes it clear that the cooperative association is proposing the elimination of the location adjustment in

computing the obligation of a partially-regulated distributing plant that is regulated under a State order.

Proponent indicated that location adjustments in Federal milk marketing orders are designed to equalize the cost of transporting milk from farms to fluid milk processing plants, whether shipped directly from farms or through supply plants. Location adjustments are not intended, according to proponents, to underwrite the cost of transporting packaged fluid milk products from one location to another.

Proponents contended that the purpose of the payment to the market administrator by the operator of the partially-regulated distributing plant is to equate the cost of packaged fluid milk products distributed in the Great Basin marketing area by such partially-regulated distributing plants with that of plants subject to full regulation by the Great Basin order. The witness for WDCI indicated that the price (cost) determined under the State program at the location of the partially regulated distributing plant should be equated with the Great Basin zone price in which packaged fluid milk products are distributed, rather than such zone price minus the Great Basin location differential.

The WDCI witness said that the use of location adjustments to determine the obligation of a partially-regulated distributing plant was never intended by the Department and is inconsistent with the treatment afforded other plants regulated by other Federal marketing orders. He said that the proper basis for determining the obligation of a partially-regulated distributing plant is the cost difference established under the terms of the Great Basin order and the cost established by the State government at the plant location. This, he said, is consistent with the decision of the Supreme Court in the Lehigh Valley Farmers Cooperative vs. the Secretary court case.

The spokesman for WDCI on cross-examination indicated that there are times when the California Class I price at Los Angeles is lower than the Great Basin Class I price and this is when the partially-regulated distributing plants would be required to make a compensatory payment. He said that he could not conceive of any circumstances when there could be a pool plant in Los Angeles fully regulated under the Great Basin order with a location adjustment back to Los Angeles that could in any way compete with other plants regulated under the State program.

At the hearing there was no testimony in opposition to the WDCI proposal. Winder Dairy in its brief only indicated that they were opposed to the proposal and that the provision has worked well. In a brief, MVMP and Quality indicated that they supported the WDCI proposal.

The two options that are available to the operator of a partially-regulated distributing plant that is also regulated under a State order in payment of the plant's obligation to the Great Basin pool for sales of fluid milk products in the Great Basin marketing area attempt to equalize the costs of the raw milk utilized in such sales that are incurred by the unregulated handler with the costs incurred by the fully regulated handler. The option of purchasing from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area assures that a partially-regulated distributing plant has no competitive advantage over a fully regulated handler.

Under the second option, the operator of the partially regulated distributing plant is required to pay to the producer-settlement fund the difference in the value under the State order and the value under the Great Basin order of the raw milk f.o.b. the plant on the fluid milk products distributed in the Great Basin marketing area by the partially-regulated plant. This option also attempts to assure that the operator of the partially regulated distributing plant pays as much for the plant's raw product as the operator of a distributing plant that is fully regulated by the Great Basin milk order and is located at the site of the partially regulated distributing plant. To accomplish this, it is necessary that the operator of the partially-regulated distributing plant pay to the producer-settlement fund the amount by which the value of the raw product under the State order is less than the value of the raw product under the Great Basin order at the location of the plant. In determining the value of the raw milk under the Great Basin order at the plant's location, it is necessary to look at the value of such milk under the Great Basin order at the central market location that is nearest to the partially regulated distributing plant (Las Vegas or Salt Lake City) and then deduct the location adjustment applicable under the Great Basin order to establish the value of the raw milk at such plant's location.

The proponents who are advocating that a location adjustment not apply in computing the obligation of a partially-regulated distributing plant are, in effect, proposing that one ignore the location of the plant and determine the value of the raw milk at its point of sale in the marketing area.

Under proponent's assessment of what constitutes competitive equity, a handler fully regulated under a Federal milk order who is selling packaged fluid milk in a no-location adjustment zone but whose plant is located in a minus location adjustment zone should have to pay into the producer-settlement fund the difference in zone prices on the volume of milk that is sold in the higher-priced areas. Likewise, a handler fully regulated under a Federal milk order who is selling packaged fluid milk products in another Federal order marketing area in which handlers are required to pay a higher Class I differential on fluid milk sales should have to pay into the producer-settlement fund the difference in Class I differentials on the volume of milk that is sold in the higher-priced zone.

For the reasons previously set forth, the operator of a partially-regulated distributing plant should continue to pay to the producer-settlement fund on the plant's sales of fluid milk products in the Great Basin market the amount by which the value of raw milk under the Great Basin order f.o.b. the plant exceeds the value of the raw milk f.o.b. the plant under the State order. Accordingly, the proposal that location adjustments not be applicable in computing the obligation of a handler operating a partially-regulated distributing plant that is regulated by a State order which provides for marketwide pooling is hereby denied.

*5. Application of Location Adjustments in Paying Producers for Milk That Is Diverted*

The order should be amended to provide that the weighted average differential payable to a producer shall be adjusted based on the location of the plant to which the milk is delivered but should not be adjusted below the weighted average differential based on the location of the county seat or the county courthouse of the county in which the producer's farm is located.

The order currently provides that the weighted average differential payable to producers shall be adjusted based on the location of the plant to which the milk is diverted.

WDCI proposed that the order be amended to place a floor on the amount of location adjustment to be deducted from the weighted average differential payable to a producer. Under WDCI's proposal, the amount of the location adjustment would be floored by the location of the producer's farm even though a greater location adjustment applies at the location of the plant to which the milk is diverted.

A witness for WDCI said that the expected consolidation of WDCI manufacturing plants from many small and inefficient country plants to a few large volume plants will substantially change the operation of the cooperative in many ways. He said that the pressures of the market will increase transportation costs on some of the milk produced in the outlying areas. Producers, he said may be forced at times to ship their milk to distant plants in order to minimize WDCI losses on the milk.

The spokesman for WDCI said that their proposal would place a maximum location adjustment based on the location of the dairy farm. This proposal, he said, should lessen the need to incur the extra costs of transferring milk through supply plants or transfer facilities. He said that many of WDCI members are located substantial distances from a market and the provision would apply mostly to "distress" milk.

In briefs, Winder Dairy, MVMP and QMP stated that they were opposed to the proposal. Winder Dairy stated only that the present provisions have worked well.

The joint brief filed by MVMP and QMP stated that the WDCI proposal would provide that any producer whose farm is located in a zero location zone could have his milk shipped to the most remote plant and incur no location differential. The brief stated that the proposal would require other cooperatives to subsidize the increased costs of transportation for the cooperative shipping milk in this manner.

Location adjustments are designed primarily to equalize the net return received by a producer who transports milk from the farm to a distributing plant located in the market center or to a distributing plant located between the producer's farm and the market center. Location adjustments, however, are an impediment to the movement of producer milk when it is necessary to transport such milk to a manufacturing plant that is located in the opposite direction of the market-center plants from the farm. In such instance, the producer or the producer's cooperative association incurs the cost of moving the milk from the farm location to the manufacturing plant but also receives a price that is reduced by the amount of the location differential applicable at the manufacturing plant's location.

What WDCI's proposal attempts to accomplish is to limit the costs incurred by the producer (or cooperative association) in shipping milk to a distant manufacturing plant. The producer (or cooperative association) will have to pay the cost of transporting the milk from the farm to the manufacturing plant. under WDCI's proposal, the adjustment to the producer's pay price will be limited to the location adjustment applicable at the farm's location rather than the distant manufacturing plant.

The proposal by WDCI is designed to assist cooperative associations in marketing "distress" milk and is a marketing tool that should be adopted in the Great Basin market. For the most part, producers and cooperative associations will continue to ship milk to local plants whenever possible to obtain the higher pay prices. In the event that there is not a sufficient demand for milk locally, then those producers whose milk must be shipped to a more distant market outlet would be assured by the adoption of WDCI's proposal that their pay price will not be depressed below the pay price that would apply at a plant located in the same county as the individual producer's farm.

The location adjustment structure of the Great Basin order provides for three price zones within the marketing area. A zero location adjustment zone applies to the northern two-thirds of Utah. A minus 25 cent location adjustment is applicable in southern Idaho and northeastern Nevada. A minus 30 cents is applicable in the remainder of the marketing area. Outside the marketing area a location adjustment is applicable at a rate of minus 1.5 cents per hundredweight for each 10 miles of distance from the nearer of Salt Lake City, Utah or Las Vegas, Nevada.

The record reflects that from time to time, WDCI has incurred loses in diverting milk from a producer located in the Meridian area of Idaho to a manufacturing plant in Chehalis, Washington. Also, milk is diverted from producers in the area of Mesquite, Nevada and from a producer in the area of Kingman, Arizona to manufacturing plants in California. This milk is diverted away from the market centers where the milk is pooled and in the case of the Meridian producer, results in a minus location adjustment of approximately $1.50.

WDCI is diverting this milk, is providing an economic service of handling reserve milk supplies (balancing) for the market which benefits all producers associated with the Great Basin order. WDCI incurs significant hauling costs in diverting milk to distant manufacturing outlets for Class III use. No location adjustment applies to the Class III price. Producer milk diverted to nonpool plants should not receive an order pay price that is depressed below the order pay price that would apply at a plant located in the same county as the individual producer's farm.

*6. Due Date for Payment of Handler Obligations to the Producer-Settlement Fund*

The order should be amended to provide that a handler's payment to the producer-settlement fund must be received by the market administrator by the 14th day of the month. The order presently provides that if the payment by a handler is postmarked by the 14th day of the month, the payment date has been met. The order should also provide that if the 14th day of the month falls on a Saturday or Sunday or on any Monday that is a national holiday, the monthly payment would have to be received on the next day on which the market administrator's office is open for public business. A similar conforming change should be made in the section of the order dealing with the market administrator's payments to handlers from the producer-settlement fund.

The market administrator testified in support of WDCI's proposal that would require the monthly handler obligation to the producer-settlement fund to be received by the market administrator on or before the second day after the handler has been notified of the handler's obligation, but in any event no later than the 14th day of the month. The witness said that currently, handlers are required to pay the producer-settlement fund on or before the 14th day after the end of the month, but if the payment is in the mail on the 14th, the order requirement has been met. If the 14th falls on a holiday, or a Saturday or Sunday, then handlers may wait until the next business day to mail the payment.

The witness said that it takes at least two days for a payment mailed by a Utah or Idaho handler to reach his office in Phoenix, Arizona. In addition, Arizona banks will not permit the withdrawal against any out-of-state check until a minimum of two-days' deposit has been met. For March 1990 milk, he said, the money paid by handlers to the producer-settlement fund was not available until April 20. However, the order requires his office to make payment on or before the 15th day after the end of the month to those handlers who are due payments out of the producer-settlement fund.

The witness said that the monthly handler obligations to producers and to the producer-settlement fund are computed by the 12th day of the month

and that handlers are immediately informed of their obligation to the producer-settlement fund. He said that with the modern way of transmitting payments such as express mail and by wire, the WDCI proposal is not likely to cause any hardship to any handler.

The witness testified that at the present time some handlers are paying their obligation by wire transfer. He said that very month he cannot make timely payments out of the producer-settlement fund because not all the monies received are free to be withdrawn.

The witness said that handlers are notified of their producer-settlement fund obligation between the 9th and the 12th of the month. He testified that his office could compute the handler obligations and notify them by the 10th day of the month 90 percent of the time.

There appears to be no other alternative to requiring that payment to the market administrator must be in the form of spendable funds and must be received by the market administrator by the 14th day of the month. Under the current provisions, the market administrator is required to make payments to cooperatives and certain handlers the day after the payments are due to him from all handlers. Time will not permit the clearance of out-of-state checks through the Phoenix, Arizona, bank prior to the withdrawal of money from the producer-settlement fund on the 15th of the month if such checks are deposited on the 14th day of the month. If a handler insists on making payment by check, such check should be submitted enough in advance of the 14th of the month so that a withdrawal may be made against such check on the 15th of the month. Another alternative that handlers may want to consider is the use of wire transfers for payment of handler obligations.

*7. Handler Payments to Cooperative Associations for Plant Milk and Bulk Tank Receipts From Producer-Members*

The order should be amended to provide that each handler shall pay a cooperative association for milk received from a pool plant operated by such association or by transfer from such association based on the value of such milk at class prices under the order. The dates for making the partial payment and the final payment should be the 3rd day prior to the last day of the month and the 16th day after the end of the month, respectively.

The order should also provide that such handler shall pay a cooperative association for milk received from its member producers at the producer prices, i.e., the weighted average differential and the butterfat and producer protein prices.

Currently, the order provides that a handler who buys milk from a pool plant operated by a cooperative association or who buys bulk tank milk from members producers of a cooperative association shall make payment for such milk at the rate of payment specified for producer milk.

In paying for bulk tank receipts from a cooperative association, the order should continue to provide for payment at the Class III price (or basic formula price) times 1.2 for milk received from producers during the first 15days of the month. However, payment for plant milk from a cooperative during the first 15 days of the month should be at the Class III price (or basic formula price). In most instances, transfers from the cooperative's pool plant appears to be made for Class III uses. Hence, payment at the Class III prices times 1.2 would represent an overpayment in most instances for milk received during the first 15 days of the month.

The payment procedures adopted herein were proposed by WDCI. The principal change in the payment for milk received from a cooperative association deals with milk received from a pool plant operated by a cooperative association. Payment for such milk should be based on the value at class prices under the order to assure that the cooperative is neither overpaid or underpaid by the handler receiving such milk. As previously noted, transfers from the cooperative's pool plant appear to be made primarily for Class III uses. Hence, payment for such milk at the prices due for producer milk would result in an over-payment to the cooperative association. The payment procedure adopted herein will also assure that cooperatives receive the full value for milk that is utilized in Class I uses.

The current dates for partial and final payment for milk received from a cooperative's pool plant should be advanced by one day in order for cooperatives to make payment to their member producers on the same date that other producers are paid for their milk.

*8. Technical Changes in Order Provisions Relative to Component Pricing*

(a) Handler protein price. The order should be amended to provide for the computation of a "handler protein price" based upon the protein content of producer milk for the current month. The "handler protein price" would be announced by the 12th day after the end of the month.

The order presently provides for the computation of a "milk protein price" which is based upon the average percentage of protein in all producer milk for the preceding month. This price is announced by the 5th day after the end of each month.

The spokesman for WDCI said the proposed changes to the section of the order dealing with class prices and component prices of the order would fix the price charged handlers for protein in producer milk assigned to Class II and III in a manner that will cause it to be aligned more directly each month with skim milk values reflected in the Minnesota-Wisconsin (M–W) price. This change will mean that the price charged Great Basin handlers for protein will follow along with the costs incurred for the nonfat component of milk by handlers elsewhere throughout much of the nation. He said that the present provisions are deficient in this respect.

The WDCI witness said that at the time component pricing was adopted in this market, the market administrator had to use the average protein test for the prior month in lieu of the current month. He said that the one month lag was not expected to make a great deal of difference in most months. It was expected that the pluses and minuses would cancel out each other with a small degree of error.

The witness for WDCI said that this approach has not worked out as well as assumed. He said that variations in protein tests have averaged out quite well over the years, except for a possible trend upward, but the effect on handler costs for individual months has varied more from the revenue neutral figures than was expected. It is now obvious that the industry underestimated the problem associated with price distortions caused by using the previous month's protein tests. Also, the industry overestimated the need to announce the handler protein price concurrently with butterfat and skim milk prices.

The WDCI witness said that monthly differences in handler costs of plus $100,000 to minus $250,000 in using a protein price based upon the percent of protein content in the prior month's receipts versus the percent of protein content in the current month's receipts are the result of more than one factor. One factor is the seasonal variation and the other is the month-to-month variations in the average protein tests. He said that a second factor is the larger and more frequent fluctuations in the basic milk prices during the past two or three years in comparison to the prices the industry has been accustomed to

receiving in the past decades. He said that the distortion in the cost to Great Basin handlers tends to be cumulative over a period of months because of the seasonal nature of the variation in the protein content of producer milk. Protein tests tend to increase in the fall and decrease in the spring and this means that the use of the previous month's protein tests may increase the handler protein price during the fall months of the year and decrease it in the spring.

The spokesman for WDCI said that the timing of the price announcement is not critical to handlers. He said that WDCI is the handler for a substantial majority of Class II and III milk pooled on the Great Basin order. WDCI will not be seriously inconvenienced if the announcement of the "handler protein price" is not announced until the weighted average differential price has been computed.

The witness for WDCI said that at a prior hearing involving Federal Orders 33, 36, and 49, proponents for component pricing said the Department should announce the protein content in the milk received in the Minnesota-Wisconsin plants that is used in computing the monthly basic formula price. He said that WDCI requests a similar amendment and that this would avoid the need to call a separate hearing in order to make such a procedure effective in the Great Basin order. He said that this would expedite the realization of equity in setting the level of protein prices here based directly on central market values. Also, the protein price could then be announced on the 5th day after the end of the month.

Proponent's arguments for computing the current month protein price and announcing such price on or before the 12th of the month are persuasive. As proponent points out, such procedure will cause the protein price to be more directly aligned with the skim milk values reflected in the Minnesota-Wisconsin price. WDCI's request that the protein price for the Great Basin market be based upon the protein content of the milk received at the plants that are included in determining the Minnesota-Wisconsin price should not be adopted. It appears at this time that the M-W price will be subject to revision in the near future. Accordingly, the use of a protein price based directly upon the Minnesota-Wisconsin price series appears to be premature at this time.

(b) Location and zone differentials. The section of the order dealing with location and zone differentials for producer and nonpool milk should be amended to provide that the weighted average differential at any location shall not be less than zero. Under the provision, as amended, the market administrator in adjusting the weighted average differential price by the amount of the plant location adjustment would not end up with a negative weighted average differential for producers.

WDCI proposed the change to assure that the price to be paid any producer would not be less than the basic formula price for the month.

The proposed change is appropriate and is adopted herein. The basic formula price represents the value of manufacturing grade milk f.o.b. plants in Minnesota and Wisconsin. Grade A milk that is delivered to a pool plant under the Great Basin order and classified as Class III milk is priced to the handler at the Class III price. Accordingly, any producer who delivers milk to a pool plant should not be required to receive any less than the basic formula price (or Class III price) for such milk.

(c) Protein accounting by plant operators. WDCI's proposal to require complete protein accounting in plants operated by fully regulated handlers should not be adopted.

The WDCI witness said that the cooperative's proposal would provide the market with needed additional assurance that the valuable ingredients in producer milk are being measured accurately and that the volume of milk disposed of in fluid milk products by handlers will be fully accounted for.

The spokesman for WDCI spoke at great length on the origin of the present system, the need for improvement in plant accounting and the importance of accounting for concentrated milk items. He said the additional testing necessary under this proposal is nothing more than any prudent plant operator should want to know in any case. He said that there will be no need under this proposal for any additional collection of samples in any plant for which a proper butterfat testing program is in place. In most cases the only additional testing activity will be nothing more than a simple matter of reading and recording protein contents of the samples which are being tested for butterfat content.

At the hearing, witnesses for KDK and Gossner Foods testified in opposition to the proposal. Winder Dairy filed a brief and stated that this proposal will be very detrimental to their ability to remain profitable.

Both witnesses in opposition to this proposal said that they object to the added cost that would occur in testing and accounting for the protein in all receipts and utilizations of milk and milk products.

The Gossner witness said that they cannot extract the protein from receipts of milk and that they assume that the percentage of protein in the bulk milk that they receive from the farm will remain relatively constant and be uniformly distributed throughout the milk receipts. He said that automated in-plant accounting of milk components, especially finished products, is still not economically available to small businesses.

The need for plant accounting for protein as a separate component was not sufficiently demonstrated on this record. As opponents pointed out, handlers have no means of separating protein from milk. As a consequence, the protein content of the finished products is not expected to differ from the protein content of the incoming milk supply.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Great Basin order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Great Basin marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

**List of Subjects in 7 CFR Part 1139**

Milk marketing orders.

## PART 1139—[AMENDED]

1. The authority citation for 7 CFR part 1139 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Revise § 1139.7(d) to read as follows:

**§ 1139.7 Pool plant.**

* * * * *

(d) Any manufacturing plant, or other plant not defined in paragraphs (a), (b), or (c) of this section, located within the marketing area at which milk is received from producers and which is owned and operated by a cooperative association or federation which delivers at least 25 percent of its producer milk (including that in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the amount in producer milk actually received at such plant) to pool distributing plants during the current month or the 12-month period ending with the current month, if the cooperative association or federation requests pool plant status for such plant in writing before the first day of any month for which such status is to be effective.

* * * * *

3. Revise § 1139.10(b)(1)(ii) to read as follows:

**§ 1139.10 Producer-handler.**

* * * * *

(b) * * *

(1) * * *

(ii) From pool plants by transfer or diversion, or from other order plants, excluding flavored and cultured fluid milk products in an amount that is not in excess of the larger of 5,000 pounds or 5 percent of such person's Class I disposition during the month except, such monthly limit shall not apply during the following months of December through August to a producer-handler who received an amount excluding flavored and cultured fluid milk products not in excess of the larger of 15,000 pounds or 5 percent of such person's Class I disposition during the previous period of September through November.

* * * * *

4. § 1139.13, paragraphs (d)(1) and (2) are revised to read as follows:

**§ 1139.13 Producer milk.**

* * * * *

(d) * * *

(1) The weighted average differential applicable to such milk shall be adjusted based on the location of the plant to which delivered, but it shall not be adjusted to a lower figure than is applicable at the location determined pursuant to § 1139.52 (a) or (b) based on the location of the county seat or the county courthouse of the county in which such producer's farm is located.

(2) A cooperative association or federation may divert for its account the milk of any of its producers from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk diverted by a cooperative association during any month may not exceed 75 percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of the producer milk which the cooperative associations cause to be delivered to pool plants or diverted pursuant to this section if each association has filed a request in writing with the market administrator before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative association according to a method approved by the market administrator.

5. Revise § 1139.50 (d), (e) and (f) to read as follows:

**§ 1139.50 Class prices and component prices.**

* * * * *

(d) The skim milk price per hundredweight shall be the basic formula price for the month less an amount computed by multiplying the butterfat differential computed pursuant to § 1139.51(a) by 35.

(e) The butterfat price per pound shall be the total of:

(1) The skim milk value per hundredweight for the month, computed pursuant to paragraph (d) of this section, divided by 100; and

(2) the butterfat differential for the month, computed pursuant to § 1139.51(a) multiplied by 10.

(f) Handler protein price. The handler protein price shall be computed by multiplying the total hundredweight of skim milk in producer milk received during the month by the skim milk price, and dividing the value so arrived at by the total pounds of protein in such milk.

6. Revise § 1139.53 to read as follows:

**§ 1139.53 Announcement of class and component prices.**

The market administrator shall announce publicly on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th day of each month, the Class II price for the following month;

(c) The 5th day after the end of each month, the Class III price, and the prices for skim milk and butterfat computed pursuant to § 1139.50(d) and (e) respectively; and

(d) The 12th day after the end of each month the handler protein price computed pursuant to § 1139.50(f) for such month.

7. Amend § 1139.71 by revising paragraph (a) introductory text and adding a new paragraph (c) to read as follows:

**§ 1139.71 Payments to the producer-settlement fund.**

(a) Each handler whose obligation computed pursuant to paragraph (a)(1) of this section exceeds such handler's credit computed pursuant to paragraph (a)(2) of this section shall pay to the market administrator on or before the second day after the handler has been notified of its obligation, but no later than the 14th of the month, an amount equal thereto:

* * * * *

(c) The following conditions shall apply with respect to the payment prescribed in paragraph (a) of this section:

(1) Payments due the market administrator shall be deemed not to have been made until the money owed has been received at the market administrator's office, or deposited into the market administrator's bank account; and

(2) If the date by which the payment must be received by the market administrator falls on a Saturday or Sunday or on any Monday that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

8. Revise § 1139.72 to read as follows:

**§ 1139.72 Payments from the producer-settlement fund.**

On or before the 15th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1139.71(a)(2) exceeds the amount computed pursuant to § 1139.71(a)(1). If the date by which such payments are to be made falls on a Saturday or Sunday or any Monday that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as funds are available.

9. In § 1139.74, revise paragraph (c) introductory text and paragraph (e) to read as follows:

**§ 1139.74 Payments to producers and to cooperative associations.**

* * * * *

(c) Payment shall be made in the manner set forth in paragraphs (c)(1) and (2) of this section to a cooperative association for milk received from such association pursuant to § 1139.13(a)(2) or from its member producers pursuant to § 1139.13(a)(1) and notifies the handler and the market administrator in writing of its desire to make such collection:

* * * * *

(e) Each handler shall pay a cooperative association for milk received from a pool plant operated by such association or by transfer from such association on the basis of the classification thereof assigned by the market administrator as follows:

(1) On or before the 3rd day prior to the last day of the month for milk received during the first 15 days of the month at the Class III price (or basic formula price) for the previous month; and

(2) On or before the 16th day after the end of the month for milk received during the month at the following rates:

(i) The butterfat price per pound for the butterfat contained in such milk, plus

(ii) The milk protein price per pound for the protein contained in such milk; plus

(iii) The difference between the Class I adjusted pursuant to § 1139.52 and Class III prices multiplied by the hundredweight of such milk classified as Class I; plus

(iv) The difference between the Class II and Class III prices multiplied by the hundredweight of such milk classified as Class II; plus

(v) The amount assessed by the market administrator with respect to such milk pursuant to 1139.85; less

(vi) Payments made pursuant to paragraph (e)(1) of this section.

10. Revise 1139.75(a) to read as follows:

**§ 1139.75 Location and zone differentials for producers and nonpool milk.**

(a) In making payments computed pursuant to § 1139.72 and in crediting handlers for payment due pursuant to § 1139.71(a)(2)(i) the market administrator shall adjust the weighted average differential price by an amount equal to the plant location adjustment specified in § 1139.52 applicable at the plant where the milk was first received from producers, except that the weighted average differential applicable at any location shall not be less than zero.

* * * * *

Dated: August 24, 1992.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 92-20665 Filed 8-27-92; 8:45 am]

BILLING CODE 3410-02-M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 92-ASO-10]**

## Proposed Revision of Transition Area, Wilkesboro, NC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise the Wilkesboro, NC Transition Area. The existing 700-foot transition area is centered on the Wilkes County Airport and overlies the Swan Creek Airport located approximately 11 miles east. The airport manager of Swan Creek Airport has requested the airspace in vicinity of the airport be excluded from the transition area since it unnecessarily restricts aircraft in the traffic pattern and local training flights. This action proposes to exclude the airspace within a 2.5-mile radius of Swan Creek Airport from the transition area.

**DATES:** Comments must be received on or before October 13, 1992.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 92-ASO-10, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ASO-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Wilkesboro, NC Transition Area. This proposed action would exclude that airspace within a 2.5-mile radius of the Swan Creek Airport from the existing 700-foot transition area. This proposed action is taken at the request of the Swan Creek Airport Manager in order to minimize impact on local aircraft operations and aircraft operating in the traffic pattern. Transition areas are published in Section 71.181 of Handbook 7400.7 effective November 1, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition area.

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

**§ 71.181 Designation**

* * * * *

ASO NC TA Wilkesboro, NC [Revised]
Wilkesboro, Wilkes County Airport, NC (lat. 36°13'21" N. long. 81°05'56" W)
Swan Creek Airport (lat. 36°12'08" N, long. 80°52'06" W)
Wilki NDB (lat. 36°06'46" N, long. 81°05'54' W)

The airspace extending upward from 700 feet above the surface within an 11-mile radius of Wilkes County Airport and within 3 miles each side of the Runway 1 localizer course, extending from the 11-mile radius to 8 miles south of the Wilki NDB; excluding that airspace within the West Jefferson, NC, and Elkin, NC, Transition Areas, and that airspace within a 2.5-mile radius of Swan Creek Airport.

* * * * *

Issued in East Point, Georgia, on August 18, 1992.

James G. Walters,
*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 92-20717 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 71

**[Airspace Docket No. 92-ASO-11]**

## Proposed Revision of Transition Area, Elkin, NC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise the Elkin, NC Transition Area. The existing 700-foot transition area is centered on the Elkin Municipal Airport and partially overlies the Swan Creek Airport located approximately 6.1 miles south. The airport manager of Swan Creek Airport has requested the airspace in vicinity of the airport be excluded from the transition area since it unnecessarily restricts aircraft in the traffic pattern and local training flights. This action proposes to exclude the airspace within a 2.5-mile radius to Swan Creek Airport from the transition area.

**DATES:** Comments must be received on or before: October 23, 1992.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 92-ASO-11, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ASO-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530),

Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Elkin, NC Transition Area. This proposed action would exclude that airspace within a 2.5-mile radius of the Swan Creek Airport from the existing 700-foot transition area. This proposed action is taken at the request of the Swan Creek Airport Manager in order to minimize impact on local aircraft operations and aircraft operating in the traffic pattern. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Incorporation by reference, Transition areas.

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

**§ 71.181 Designation**

* * * * *

**Elkin NC TA Elkin, NC [Revised]**

ASO NC TA Elkin, NC
Elkin Municipal Airport, NC (lat. 36°16'48"N, long. 80°47'11"W)
Swan Creek Airport (lat. 36°12'08"N, long. 80°52'06"W)
Zephyr NDB (lat. 36°18'47"N, long. 80°43'25"W)

That airspace extending upward from 700 feet above surface within a 6.3-mile radius of Elkin Municipal Airport and within 2.7 miles each side of the 057° bearing from Zephyr NDB, extending from the 6.3-mile radius to 7 miles northeast of the NDB, excluding that airspace within a 2.5-mile radius of Swan Creek Airport.

* * * * *

Issued in East Point, Georgia, on August 21, 1992.

**James G. Walters,**

*Acting Manager, Air Traffic Division Southern Region.*

[FR Doc. 92-20716 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 175

## Receipt of Domestic Interested Party Petition Concerning Classification of Load Roller Products for Fork Lift Trucks

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Notice of receipt of domestic interested party petition; solicitation of comments.

**SUMMARY:** Customs has received a petition submitted on behalf of a domestic interested party concerning the classification of certain load roller products for fork lift trucks. Customs has held that the products were classified as parts of fork lift trucks subject to a free rate of duty. The petitioner contends that the products should be classified as ball bearings subject to a rate of duty of 11 per cent, *ad valorem*. This document invites comments concerning the correctness of the determination that the products are classified as parts of fork lift trucks.

**DATES:** Comments must be received on or before September 29, 1992.

**ADDRESSES:** Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229 (202-566-8237).

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Schmitt, Metals and Machinery Classification Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2938).

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), a petition has been filed by a domestic interested party concerning the classification of certain load roller products for fork lift trucks in subheading 8431.20.00, HTSUS, subject to a Column 1 free rate of duty.

In HQ 087775 (January 17, 1991), Customs held that certain load roller products for fork lift trucks were classified as parts of fork lift trucks in subheading 8431.20.00, HTSUS, subject to a Column 1 free rate of duty. HQ 088888 (March 25, 1992), affirmed HQ 087775. The products were described in HQ 088888 as steel tires into which assemblies containing rolling elements are incorporated. The tires are designed to turn in the channels of fork lift mast uprights. The products are manufactured in two configurations. The first configuration is comprised of a separate, reinforced tire into which inner and outer rings containing rolling elements are installed. The steel tire of the second configuration is manufactured integrally with the outer ring section it incorporates.

In HQ 088888, Customs noted that the products are referred to by many names including "load rollers", "wheels", "bearings", "guide wheels", "mast guide bearings" and "rollers". Customs found that the products are similar in form and function to certain lifting and handling equipment components which are not described as ball bearings. Customs also noted that the products may incorporate bearing components, but as a whole the products are not mere ball bearings.

The petitioner contends that the products are classified as ball bearings in subheading 8482.10.50, HTSUS, subject to a Column 1 rate of duty of 11 per cent, *ad valorem*. The petitioner's arguments include that the products are ball bearings of special configuration described by Heading 8482, that Customs placed undue emphasis on the outer tire component of the products, and that the products are excluded from Heading 8431 by HTSUS Chapter XVI Note 2.

**Comments**

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on this issue. The petition of the domestic interested party, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Ave., NW., Washington, DC 20229.

**Authority**

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

**Drafting Information**

The principal author of this document was Christopher M. Schmitt, Metals and Machinery Classification Branch, U.S. Customs Service. Personnel from other Customs offices participated in its development.

**Michael H. Lane,**

*Acting Commissioner of Customs.*

Dated: August 13, 1992.

Approved:

**Peter K. Nunez,**

*Assistant Secretary of the Treasury.*

[FR Doc. 92-20664 Filed 8-27-92; 8:45 am]

BILLING CODE 4820-02-M

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## DEPARTMENT OF STATE

## Bureau of Consular Affairs

## 22 CFR Part 51

**[Public Notice 1682]**

## Passports

**AGENCY:** Bureau of Consular Affairs, Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends the regulations at 22 CFR part 51, subpart B in two different respects. First, it generally narrows the categories of persons who are eligible to apply for passports without personal appearance by raising the generally applicable age limit to 18. The amendment is proposed because we have found that the generally applicable age limit of 16 introduced in 1986 has caused some inefficiencies and confusion in service to the public. Second, however, the proposed rule will in certain circumstances permit use of mail-in procedures for persons under the age of 18 residing abroad.

**DATES:** Comments must be submitted on or before September 28, 1992.

**ADDRESSES:** Mail public comments to William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, Passport Office, 1425 K Street NW., room 300, Washington, DC 20522-1705.

**FOR FURTHER INFORMATION CONTACT:** William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, telephone (202) 326-6172.

**SUPPLEMENTARY INFORMATION:** Until 1986, paragraphs (c) and (d) of 22 CFR 51.21 specified that personal appearance was not required when applying for a renewal of a U.S. passport if: (i) The most recently issued passport was issued when the citizen was 18 years of age or older; (ii) the renewal application was made within 8 years from the date on which the previous passport was issued; and, (iii) the citizen presented that passport with his or her application for a new passport.

Present regulations allow a U.S. citizen to apply for a renewal of a U.S. passport without appearing in person before a person authorized to accept such applications if: (i) The most recent passport was issued when the citizen was 16 years of age or older; (ii) the application is made within 12 years from the date on which the previous passport was issued; and, (iii) the citizen presents that passport with his or her application for a new passport. The revised regulations will partially reinstate the pre-1986 rules, allowing a person who has previously been issued a passport to use the mail-in procedure within 12 years of the date on which the passport was issued if the expired passport was issued when the applicant was 18 years of age or older.

This change is proposed because: (i) The Department did not experience significant use of the mail-in procedures by individuals whose previous passports were issued when they were between 16 and 18 years of age; (ii) the Department did, however, experience an increase in inefficiency and administrative costs when processing the forms, in that use of the form by those between the ages of 16 and 18 introduces additional decisions about fees and the passport validity period (which is longer for persons over 18 than for persons 16-18) resulting in increased use of personnel resources to determine eligibility; and, (iii) because age 18 is the age of majority, the Department believes that use of 18 is more sensible. Under limited conditions, an exception to the requirement of personal appearance by minors is provided for an application made abroad by a person under 18 years of age. The proposed regulation would establish the Secretary's authority to select certain foreign service posts to waive entirely the requirement for personal appearance of minors on a carefully controlled individual basis. This waiver is deemed necessary to enhance consular efficiency at those posts.

**List of Subjects in 22 CFR Part 51**

Administrative practice and procedure, Drug traffic control, Passports and visas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 22 CFR part 51 is proposed to be amended as follows:

## PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

**Authority:** 22 U.S.C. 211a, as amended, 22 U.S.C. 2658, 3926; sec. 122(d)(3), Pub. L. 98-164, 97 Stat. 1017; E.O. 12295, 36 FR 10603; 3 CFR 1966-70 Comp. p. 507; Pub. L. 100-690; sec. 129, Pub. L. 102-138, 105 Stat. 661; sec. 503, Pub. L. 102-140, 105 Stat. 820, unless otherwise noted.

2. Section 51.21 is amended by revising paragraphs (c) introductory text, (c)(1), (d)(1) and paragraph (d)(4) is added to read as follows:

**§ 51.21 Execution of passport application.**

* * * * *

(c) Persons in the United States who have previously been issued a full validity passport. A person in the United States who has been issued a passport in his or her own name may obtain a new passport by filling out and mailing a specially prescribed application together with his or her previous passport, two recent photographs, and the established fee to the nearest U.S. passport agency, provided:

(1) The most recently issued previous passport was issued when the applicant was 18 years of age or older;

* * * * *

(d) * * *

(1) The most recently issued passport was issued when the applicant was 18 years of age or older;

* * * * *

(4) In a Consular district specifically authorized by the Secretary to waive personal appearance of minors in accordance with this subsection, a U.S. consular officer may waive the age requirement established for use of the

mail application, where the consular officer determines that:

(i) the minor and, if applicable, the U.S. citizen parent(s) or legal guardian are registered in that consular district;

(ii) the minor is not subject to the provisions of sections 51.27 (c) or (d);

(iii) the waiver of the age requirement is otherwise in the interest of consular efficiency; and

(iv) the waiver will not otherwise compromise the integrity of the passport application process.

Dated: August 11, 1992.

For the Secretary of State.

James L. Ward,

*Acting Assistant Secretary, Bureau of Consular Affairs.*

[FR Doc. 92-20520 Filed 8-27-92; 8:45 am]

BILLING CODE 4710-06-M

## POSTAL RATE COMMISSION

### 39 CFR Part 3001

[Docket RM91-1]

### Rules of Practice and Procedure

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Postal Rate Commission is proposing a new subpart I of its rules of practice, to implement a four-year strategic rate cycle approach to recommending changes in postal rates and fees under 39 U.S.C. ch. 36. The new rate-case format would facilitate rates keyed to long-range plans of the Postal Service, provide smaller, albeit more frequent rate changes, and would make possible a new rate format ("band rates") for categories of mail designated as "competitive," allowing limited price changes without further Commission action when needed to preserve net revenue in the face of changes in the competitive situation. The proposed rules also incorporate improvements in periodic data reporting by the Postal Service.

**DATES:** Comments responding to this document must be submitted on or before October 13, 1992.

**ADDRESSES:** Comments and correspondence should be sent to Charles L. Clapp, Secretary of the commission, Suite 300, 1333 H Street, NW., Washington, DC 20268-0001 (telephone: (202) 789-6840).

**FOR FURTHER INFORMATION CONTACT:** David F. Stover, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268-0001 (telephone: 202/789-6820).

**SUPPLEMENTARY INFORMATION:** By Order No. 926, June 2, 1992, the Commission invited preliminary comments on two aspects of Postal Ratemaking in a Time of Change, the report of the Joint Task Force on Postal Ratemaking: the four-year strategic rate cycle and the concept of band rates for certain categories of mail facing competition. A conference was held on June 12, 1992, at which interested parties presented views orally; at the request of several participants the date for submission of written preliminary comments was changed from June 15 to June 24, 1992. Twenty-three comments were filed.

The Commission has been greatly assisted by both the conference presentations and the written submissions. Despite the tight schedule on which we asked participants to present their views, the comments have for the most part been candid, detailed, and specific in identifying and describing both the features the commenters approve and those to which they object. Their assistance has made it a great deal easier to isolate the major themes that seem likely to shape the dialogue during this phase of Docket RM91-1 and to draft the present proposed rules with those themes in mind.

### Four-Year Strategic Rate Cycle

The relationship of the four-year strategic rate cycle to the problem of Postal Service cost control is one important concern emerging from the comments. It is shared by commenters who approve of the four-year cycle and commenters who do not: the former warn that even though superior in concept it will not justify the hopes placed in it unless it leads to greater accountability for cost incurrence, and the latter reject it because it contains no explicit incentives (e.g., indexation) to control costs. Several comments make the related argument that the four-year cycle should reduce or even eliminate the need for a contingency provision, and is promising for that reason.

Of the individual features of the four-year cycle proposal, the midcycle case has drawn the most comment. Discussion has focused on its scope and the nature of the rate adjustments that would be made. The comments are divided on the first issue: some commenters argue that as proposed by the Joint Task Force it covers too little to yield a satisfactory result, while others warn that if it is allowed to expand it will become an additional omnibus case and create a more costly and unwieldy process than we have now. In particular, comments have raised issues regarding how far we will go in reviewing attributable-cost changes and the related question of institutional-cost contribution.

We believe the realistic choices—given the nature and purpose of the midcycle case—are (i) to treat it as a "pure" revenue requirement adjustment, in which the earlier-projected rates are moved up or down as a unit in the interest of ultimate breakeven, and (ii) to move one step further, recognizing experienced attributable costs in the projection of such costs (calculated as they were in the initial omnibus case), but maintaining the existing profile of institutional-cost contributions (i.e., the existing markup indices). To make the midcycle case more inclusive may seem—as several commenters have observed—to endanger one of its major purposes: Simplification and expedition. Alternative (i) above would produce the simplest type of midcycle case achievable. However, while it would promote one key policy of the Postal Reorganization Act, breakeven operation, we believe it unduly neglects another: assurance against cross-subsidy. The program would be troublesome if there were disproportionate changes in the attributable cost of one or a few classes.[1] We are proposing a rule reflecting alternative (ii) because we are not prepared, when we are making a recommended rate decision under section 3624 of the Act, to risk including in it below-cost rates.

We have considered and rejected the possibility of expanding the midcycle agenda still further, in order to accommodate arguments that, for example, a sharply increased attributable cost level demands a moderation of the markup for reasons of equity or avoidance of undue impact. While we recognize that such arguments might be responsibly made, it does not follow that the limited-purpose midcycle case is the appropriate forum. As the Task Force report points out (page 37), changes of this kind "could conceivably undermine the pattern set in the omnibus case * * *. A responsive rate process needs to be flexible enough to adapt." For that reason, the Task Force recommended recognition of, and special procedures for, limited-scope rate cases filed by the Service during the rate cycle but separately from the midcycle proceeding. We are inclined to agree, and to add to the Task Force's expressed reasons the need to keep the midcycle case suitably limited and expeditious.

[1] If all such costs rose or fell in an equal proportion, alternative (i) would evidently be an adequate response.

**Testimony by a Policy Witness**

Another controversial suggestion has been the policy witness mechanism—particularly the Task Force's proposal for limited questioning. Some commenters objected strenuously, on due process grounds, to the possibility of untested, or insufficiently tested, evidence finding its way into the record.

We have taken these diverse comments into account in preparing our proposed rules defining the four-year strategic rate cycle. In our view, that mechanism cannot be expected to do more than create the climate for improved control of Postal Service costs; but this it can do, and we expect that it will. Current procedures provide no detailed benchmark other than the test year for evaluation of performance during the life of a rate schedule; and, because it is a somewhat specialized and even artificial rate-case mechanism, even the test year is not as much used for this purpose as it might be. We believe that a rate case not only providing data for the entire multi-year life of the rates but also explicitly tied to the Service's operating, investment, financial, and other plans will be much more satisfactory in this respect. For that reason, we have drafted proposed rules that do not merely require four years of estimated data, but also:

1. Call for filing of "such officially adopted or approved documents describing the Postal Service's financial, operational, investment, and other relevant plans for the period covered by the request (or any part of such period), as will materially aid in the understanding of such plans, of the request, or of the relationship between the two" [see proposed § 3001.124(p)(ii)]; and

2. Provide for the appearance of a policy witness to clarify the relation of these plans to the matters presented in the rate request [see proposed § 3001.123(b)].

We agree in large measure with the warnings of some commenters that insulating a policy witness from examination is impermissible, at least if the utterances of the witness are thought of as possibly grounding findings of fact. Our proceedings are subject to 5 U.S.C. 556(d), which confers the right "to conduct such cross-examination as may be required for a full and true disclosure of the facts." We also find considerable merit, however, in the Task Force's suggestion that the policy witness would for the most part offer clarification of policy matters whose factual aspects would be subject to on-the-record testing via the appearance of other witnesses. Reconciling the requirement of cross-examination with the explanatory purpose of the presentation seems to require making it clear that the policy witness's presentation, to the extent not subject to section 556(d) cross-examination, is not a foundation for findings of fact. Proposed § 3001.30(i) will help achieve this clarification. While we naturally hope for a comprehensive "fit" between the policy witness' presentation and the testimony forming the Service's regular direct case, we recognize that some issues raised by the former may require additional testimony from others before they are ripe for decision. We have provided for this eventuality in our proposed new § 3001.30(i).

The question of how far the Commission could change its rate-case processes to bring about stricter cost control is hardly one that can be settled in this rulemaking. As one commenter, speaking from a position of critical support for many of the Task Force's suggestions, remarked:

> Unfortunately, in our view the principal defect in the ratemaking mechanism is beyond the power of this Task Force or the PRC to change. That defect is simply that there is no device by which the Commission can design rate recommendations that will create the incentive for the Postal Service to operate more efficiently * * *.

We would agree that we cannot, by rulemaking, amend the breakeven requirement of 39 U.S.C. 3621 or reapportion the responsibility for financial management and investment decisions. However, given that these decisions, and the monitoring of their implementation in the field, are postal management's responsibility, we believe we can eliminate certain disincentives to sound, economical decisionmaking and effective implementation of the decisions made. The indeterminate nature of the present rate cycle, and the tenuity of the connections between the Service's actual plans and results and the test year data we analyze in a rate case, can be corrected by an explicitly plan-linked rate change request tied to an equally explicit cycle of years. If it is clear to all concerned—postal managers and employees, mailers, and outside observers—that by filing a rate case the Service has committed itself to achieving certain planned results and has suggested specific future rate levels tied to that plan, there will be an incentive to achieve the plan which is largely lacking in today's ratemaking practice.

**Test Periods in Midcycle Cases**

The main underlying tenet of the four-year rate cycle proposal for improving postal ratemaking is that establishing a general schedule for smaller and more predictable albeit more frequent rate adjustments will be in the best interests of both the Postal Service and its customers. It contemplates a schedule which involves setting rates which are identified initially as likely to be in effect for two years. Under this plan, there would be an omnibus rate case every fourth year, and a mid-cycle case half way through each four-year period, resulting in rate recommendations at approximately the same time every other year. Additionally, the task force contemplated that the Postal Service might seek authority to adjust certain rates annually; that is, to request two annual increases in omnibus or midcycle filings.

The advantages to mailers of such a program include both improved rate predictability, and more even and easily absorbable rate increases. The Postal Service will benefit from having increased rate flexibility, especially in areas where its services face direct competition that may endanger their contribution to institutional costs. These rules provide the Postal Service with the ability to make short-term, limited rate adjustments for its competitive services. This new authority is permissible since the fact that rates in these areas will be reviewed at regular intervals in formal public rate proceedings provides adequate safeguards to both mailers and competitors. Finally, both the Postal Service and mailers should benefit from a more efficient and less expensive rate setting process.

On the other hand, there are certain aspects of the four-year rate cycle approach which will tend to limit the Postal Service's flexibility. The Postal Service, or more precisely its Board of Governors, may see as an important problem the reduction in its currently unfettered authority to initiate rate requests at times of its choosing. The statute clearly vests the Board with exclusive discretion as to when to file rate cases and when to implement rate changes. Nothing in the Commission's rulemaking authority can limit the Board's prerogatives in this area; and the Commission has no intention of acting, or appearing to act, in any way which might be viewed as encroaching on those prerogatives in the way it goes forward with this rulemaking docket. Nonetheless, the four-year rate cycle does imply a regularity somewhat at odds with the Board's present modes of exercising its discretion.

We are, on the other hand, aware that the Board does not exercise its discretion arbitrarily or in random fashion. The Postal Service operates

according to certain long-range plans and policies which contemplate at least an approximate schedule for rate proceedings. One of the key features of the four-year rate cycle is the integration of such long-range plans into the ratemaking process itself. This is the reason for including in proposed subpart I explicit provision for filing of plan documents and presentation of a "policy witness." Thus Postal Service discretion concerning the timing of section 3622 cases becomes a known rather than an imponderable factor in the case.

This rulemaking is proceeding in developing rules implementing a four-year rate cycle approach in recognition of the fact that the unanimous task force recommendations were analyzed and then supported by the two former Governors who sat on the Task Force. The current Board of Governors has also expressed support for the goals of this initiative. Whether they will view the four-year rate cycle as an improvement in postal ratemaking which warrants their agreement to regularize rate filings remains to be seen. Certainly this concept can not be effectuated without the Board's cooperation. The proposed rules published in this notice will enable the Board and all other interested parties to understand how the four-year rate cycle might work, and to engage in a dialogue on whether this concept is likely to improve the ratemaking process.

The Commission is publishing these rules in the form of a new subpart I of the Rules of Practice and Procedure. These rules would exist in addition to current subpart B—Rules Applicable to Requests for Changes in Rates or Fees, which need not be repealed, since it is possible that the Postal Service might choose not to submit a Request pursuant to subpart I.

The fact that these rules contemplate rate adjustments on a more regular schedule does not mean that the Commission is unaware that the Board of Governors must react to actual circumstances. It is obvious that unusual events might occur which would require the Board to move forward or delay a request for an omnibus case, or an implementation date for rate changes after they have been recommended by the Commission. Thus, they might reasonably decide not to implement a major rate change while the Postal Service is operating at better than break even levels. If operating results are better than projected during the initial years following an omnibus case, the Board of Governors might be able to delay the mid-cycle case; and if results continue better than expected the mid-cycle rates also could remain in effect for longer than two years.

Also, the inclusion in this Notice of proposed rules for limited scope rate cases assumes an occasional request outside the regular four-year rate cycle schedule. But the establishment of a general schedule for rate requests and rate changes implies a willingness by the Board to circumscribe the exercise of its authority to schedule requests and implementation dates for new rates.

If, notwithstanding a lack of adequate justification for the change in plans, the Board were to decide to defer the implementation of rates recommended in a mid-cycle case so that large deficits were incurred, and subsequent increases would have to be so large as to risk significant mailer dislocations, much of the expected benefits to mailers from the four-year rate cycle would be lost. Similarly, a delay in requesting a mid-cycle rate case might undermine financial improvements expected to result from shrinking and eventually eliminating the outstanding balance of prior years' losses.

Therefore, when the Board of Governors authorizes the Postal Service to file a request for a recommended omnibus decision under subpart I, it would be expected to affirm its commitment to facilitating the swift, reliable adjustments contemplated in mid-cycle cases. Recognition could be expressed in many different ways, including amendments to bylaws, a formal resolution, or a separate statement included with the request. If the Board of Governors is unwilling to contemplate expressing its intention to follow the contemplated, regular cycle of rate adjustments in this way, the impact of that uncertainty on mailers and other interested participants should be addressed in this rulemaking.

Once rates have been developed in the context of a four year rate cycle schedule, rate adjustments would be expected to come generally at regular intervals; and participants, including the Postal Service, will be better able to develop budgets and program their allocation of resources necessary for conducting rate cases. The four-year rate cycle is not directly modeled on the practice of some other ratemaking administrative agency, and the Postal Service's experience in presenting requests under this program should be quite instructive. The Commission intends to review and revise these rules after the Postal Service and participants have had experience in litigating actual four-year rate cycle proceedings, so that these expected benefits can be fully realized.

A potential difficulty in actually implementing a four-year rate cycle may arise from proposed rule 121(b)(3)(vi), which indicates that the base period for projections in a mid-cycle case should be an entire audited fiscal year during which the rates established in the omnibus rate case have been in effect. The Commission received several comments emphasizing the desirability of basing mid-cycle rates on actual operating experience, and projections of costs, volumes, and revenues will be most accurate if they begin with audited data reflecting recent experience when existing rates are in effect. However, this circumstance will only be feasible if mid–cycle rate cases are filed some period after the close of a fiscal year.

For example, if a mid-cycle case is filed in March or April, with the expectation that mid-cycle rates will be implemented in July, costs, volumes, and revenues from the preceding fiscal year will be readily available. Any filing made after the middle of November should be able to reflect actual experience in the preceding fiscal year, subject to a limited amount of subsequent audit or other adjustments. While the Board of Governors is free to implement recommended rates at any time, it is widely believed that increasing rates in the holiday season (October 1–January 1) would cause a strongly negative public reaction, so the likelihood of a mid-cycle filing in June, July, or August seems slight. Thus, for practical purposes, this rule may be troublesome only should the Board determine to file a rate request in early autumn.

The preference for an audited fiscal year base period is not an absolute prerequisite, since requests for waivers are permitted. However, projections for future fiscal years are subject to other considerations. They are beneficial because they can be compared with actual experience—also reported in fiscal year terms—quite easily, enabling the Postal Service and the Commission to identify and correct faulty estimating techniques. Waiving the rules calling for fiscal year projections would likely occur only when circumstances made it necessary for preserving the benefits of the four-year strategic rate cycle. In establishing effective dates for rates recommended in omnibus cases under these rules, some consideration should be given to the effect of implementation dates on the ability to accurately project costs and revenues in a request for a recommended decision on mid-cycle rate adjustments. The Postal Service may wish to consider ways it can, for the most part, assure that its requests

are timed to reflect reliable cost, volume and revenue projections.

In comments on this notice, participants should address the impact of the timing of rate changes on the availability of reliable revenue, volume, and cost projections. One area which the Postal Service could usefully explore and discuss in its comments on this notice would be the ease or difficulty of adjusting current Postal Service data collection systems so that reliable projections of costs, revenues, and volumes could be developed assuming a broad variety of filing dates.

Pursuant to § 3001.102, the Postal Service currently provides the public with information on its volumes, revenues, and costs which are developed from several different data collection systems. In particular, the Postal Service currently produces systemwide cost data by class and subclass only in its annual CRA Report. It may be possible to alter some data analysis practices in a way which will facilitate hybrid year projections in rate cases. Information on whether such changes are feasible, and the time and money required to implement such changes, would provide useful context for comments on the reliability of using currently available data to develop hybrid year projections.

**Band Rates**

Some commenters suggested that the complexity of the issues involved implied that we should postpone consideration of the band rate mechanism for competitive categories. We agree that the issues (or at least the legal issues) are more novel, and seem more difficult to resolve, than those implicit in the four-year rate cycle. However, we do not believe we should at this early stage abandon the effort to develop a workable rule. In seeking a design one, we have examined carefully the comments arguing that bond rates are a statutory impossibility.

Subject to the further comments we expect to receive, we are inclined to believe that if a recommended band meets every material legal requirement for being a *rate*, many of the objections would be overcome. The purely legal objection to the proposal is, in summary, that it would allow the Postal Service to "change rates" unilaterally. Such unilateral changes would appear foreclosed by the language of *United Parcel Service, Inc.* v. *U.S. Postal Service*, 455 F. Supp. 857 (E.D. Pa. 1978), *affirmed*, 604 F.2d 1370 (3d Cir. 1979), *cert. denied*, 446 U.S. 9578 (1980).[2] On the other hand, if by selecting a different value within the band the Postal Service were merely applying a rate already recommended and accepted by the Governors (i.e., the band as a whole), there would be no unilateral change in the UPS sense.

For this to be the case, of course, it would be necessary that both extremes of the band, as well as the "baseline" level [3] on which volume, cost, and revenue calculations were made in the omnibus case, would have to be evaluated for compliance with the statute. If, for example, the Commission had not made the requisite findings with respect to the lower limit of a band, it could be argued that in moving toward that limit the Service was effectuating prices that the Commission had not evaluated under the standards of the Act. It is, in our view, of the highest importance to recognize that the reason for expediting still further [4] the process of responding to competitive price changes is to preserve as far as possible the ability of a competitive category to make its appropriate contribution to institutional costs.[5] As has been pointed out in comments, the Commission is responsible for recommending rates to produce a contribution satisfying the various (and sometimes conflicting) statutory criteria. There are several reasons why this contribution might not be achieved in actual practice. Relevant here is the possibility that competition may reduce volume (with the same result). To the extent that expeditious price changes may reduce net revenue loss from this cause, they should help to reduce the shifting of institutional cost burdens to noncompetitive categories. As long as we keep maintenance of the established contribution to institutional costs steadily in view as our essential theoretical foundation (as we expect the Service to do in practice), we believe rules can be developed which will avoid the risk of predation, exploitation of monopoly customers, and evasion of the statutory requirements. To help assure this result, our proposed rules on this subject include not only provisions of the normal kind but also a Statement of General Policy explaining the objects of the procedure, and the way in which we would expect to administer that procedure.

**Data Reporting Requirements**

Tying section 3622 rate cases to an explicit four-year plan implies a special need for easy, unambiguous comparisons between the rate case decisions and the operating results subsequently registered by the Service. For this reason, we do not believe that ad hoc inquiries will suffice to secure reports of these results that are compatible with the preceding rate decisions. In particular, as the Task Force observed, the Cost and Revenue Analysis ("CRA") report, which among other things presents actual attributable costs on an annual basis, should be available in a form which tracks the cost attribution and other relevant determinations made in the rate case.

For this reason we are proposing to amend § 3001.102(a)(1) to provide for the furnishing of a pro forma CRA report tracking the determinations made in the preceding rate decision. We recognize, of course, that the CRA is a management document and that Postal Service managers may wish to collect this information in a form different from that implied by the rate decision. Our proposal does not interfere with that option. Its objects are (i) to allow direct comparison of actual results with rate case projections, and (ii) during rate cases, to avoid the loss of time and certainty inherent in "translating" a CRA that does not conform to Commission attributions.

Similar considerations apply to the Cost Segments and Components report, and we are proposing similar changes there [§ 3001.102(a)(2)].

Besides these changes, we are also including a proposal for reporting of billing determinants on a quarterly rather than an annual basis. The continuous comparison of rate-case predictions with actual experience would be facilitated by having these data—which we understand are generated primarily through the Revenue, Pieces, and Weight System of the Postal Service—on a more frequent basis than the current § 3001.102(a)(10) requires.

**List of Subjects in 39 CFR Part 3001**

Administrative Practices and Procedure, Postal Service.

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[2] This case arose on different facts, but contains a broad discussion of the meaning of sections 3622 and 3623.

[3] The "baseline" level, in a Postal Service rate filing, is the level at which the Postal Service would propose to place the affected rate when the new rates are first implemented.

[4] Sections 3001.57 et seq. of our rules of practice provide a special mechanism for trying and deciding market-driven Express Mail rate change requests within about 90 days.

[5] The Postal Service, in the case of Express Mail, has also advanced steps to maintain the institutional-cost contribution. *See*, for example, U.S. Postal Service Petition for a Rulemaking to Establish a New Procedure for Adjusting Rates for Express Mail, Docket No. RM88-2, at 5-6, 11-12; Testimony of George A. Shipman, Docket RM88-2, at 31-32.

## PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(B), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. Add a new paragraph (i) to § 3001.30 to read as follows:

**§ 3001.30 Hearings.**

* * * * *

(i) *Policy presentation; special procedures.* The policy presentation required by § 3001.123(b) shall be the subject of a non-trial conference proceeding in which the officer sponsoring the presentation will appear for the purpose of explaining the content of the presentation and responding to questions from participants and the Commission. The presiding officer will limit and direct all questioning to matters that are both germane to the policy presentation and more appropriately directed to the officer sponsoring it than to a Postal Service witness who will be subject to normal trial-type hearing procedures. It will be the Commission's policy to schedule the policy presentation conference as early in the omnibus rate case process as is consistent with the need of participants to prepare for it. Where the conference demonstrates the existence of material questions apparently requiring trial-type procedures for their resolution but not addressed in the prepared testimony submitted by the Postal Service, the Commission will take appropriate steps to elicit such testimony on an expeditious basis.

3. Section 3001.102 is amended by revising the introductory text to the section, paragraph (a) introductory text, paragraph (a)(1) and (a)(2) and paragraph (b) introductory text; removing paragraph (a)(10) and adding paragraph (b)(4) to read as follows:

**§ 3001.102 Filing of reports.**

Each report listed in this section shall be filed with the Secretary of the Commission within two weeks of its presentation for use by postal management unless otherwise noted; except that where a report is required in a form not routinely prepared for postal management, it shall be filed within [TO BE DETERMINED] weeks of the presentation to management of the report on which it is based. The reports and information required to be provided by this subpart need not include matters exempt from disclosure by law. Whenever a specific source is cited in this section, that citation includes any successor or substituted source.

(a) *Annual reports.* The following information will be filed by the Postal Service annually.

(1) Cost and Revenue Analysis Report which will identify each change in attribution assumptions from the previous year's report. In case the report as presented to postal management does not employ the attribution assumptions used in the Commission decision in the preceding omnibus rate case, there shall also be filed a pro forma report using those assumptions. The Postal Service will file concurrently portions of LIOCATT used in the report, transportation workpapers 31 and 57 and, if changed from the previous year, data collection forms (including written formats or instructions for collection of data by electronic means) and corresponding training handbooks.

(2) *Cost Segments and Components.* In case the report as presented to postal management does not employ the attribution assumptions used in the Commission decision in the preceding omnibus rate case, there shall also be filed a pro forma report using those assumptions.

* * * * *

(b) *Quarterly reports.* The following information will be filed by the Postal Service quarterly:

* * * * *

(4) Billing determinants, at the level of detail employed in the most recent formal request for a change in rates or fees, except that the filing of billing determinant information for categories designated as competitive pursuant to § 3001.128 may be delayed for up to one year.

4. Add a new subpart I to read as follows:

**Subpart I—Rules Applicable to Requests for Changes in Rates and Fees (Four-Year Rate Cycle)**

Sec.

3001.121 General policy and description of principal types of proceedings; Applicability.
3001.122 Filing of formal requests.
3001.123 Filing of prepared direct evidence and policy presentation.
3001.124 Contents of requests in omnibus rate cases.
3001.124a Contents of formal requests in midcycle rate cases.
3001.124b Limited-scope rate cases.
3001.125 Service by the Postal Service.
3001.126 Failure to comply.
3001.127 [RESERVED]
3001.128 Designation of categories as competitive.
Appendix A to Subpart I to Part 3001—Statement of General Policy Regarding Competitive Categories and Band Rates

## Subpart I—Rules Applicable to Requests for Changes in Rates and Fees (Four-Year Rate Cycle)

**§ 3001.121 General policy and description of principal types of proceedings; Applicability.**

This subpart governs the procedure for requests of the Postal Service pursuant to section 3622 of the Act that the Commission submit a recommended decision on changes in a rate or rates of postage or in a fee or fees for postal service. This section provides a general description of the principal types of proceedings conducted by the Commission pursuant to section 3622 of the Act and specifies their applicability.

(a) *Omnibus rate cases.* An omnibus rate case is a proceeding based on a request by the Postal Service for a recommended decision on changes in rates and fees that:

(1) Incorporates an explicit four-year Postal Service planning cycle;

(2) Relates that cycle to the changes in rates and fees to be recommended;

(3) Contemplates rate and fee changes on a more frequent schedule than once at the conclusion of the rate case; and

(4) Contemplates that rates be recommended for the first two years of the cycle and projected, but not formally recommended, for the remaining two.

An omnibus rate case is an appropriate forum for the litigation and decision of all issues (other than § 3001.128) relevant to a request for a change in rates and fees under section 3622 of the Act. It is distinguished from a midcycle rate case, described in paragraph (b) of this section, and from a limited-scope rate case, described in paragraph (c) of this section.

(b) *Midcycle rate cases.* (1) A midcycle rate case is a proceeding to adjust postal rates and fees so that total estimated income and appropriations will equal as nearly as practicable total estimated costs in the final two years of the four-year cycle. Consistent with that purpose, projections in such cases will utilize, to the greatest extent feasible, audited data reflecting experience after implementation of rates recommended in the preceding omnibus rate case. It is initiated by the filing of a request for changes in rates and fees under section 3622 of the Act. As its purpose is, in part, to allow the Commission to recommend new rates and fees sufficiently soon to allow the Governors to exercise their implementation discretion as nearly as possible two years after the preceding changes, a

midcycle request should be filed approximately 18 to 20 months following the implementation of rate changes resulting from an omnibus rate case.

(2) Expeditious treatment is of particular importance in the processing of midcycle cases. Accordingly, all participants in the preceding omnibus rate case shall be deemed to have retained their status as full or limited participant, pursuant to §§ 3001.20 or 3001.20a, in a midcycle case. The Postal Service shall, on the day that it files its midcycle request, serve complete copies of its request, including its supporting evidence, on all such participants, and, in addition, on any person who has filed with the Commission and served on the Postal Service a Notice of Intervention, or Advance Notice of Intervention, in the midcycle rate case. The filing of an Advance Notice of Intervention is permitted beginning 12 months following the implementation of rate changes resulting from the preceding omnibus rate case.

(3) In the interest of expedition, the following rules for the definition of issues shall control:

(i) Cost attributions and assignments shall utilize the methodology employed by the Commission in the preceding omnibus rate case.

(ii) Cost projections shall utilize the methodology employed by the Commission in the preceding omnibus rate case, although inputs may vary to reflect revised expectations and the occurrence of events not previously reflected.

(iii) Volume projections shall utilize the methodology employed by the Commission in the preceding omnibus rate case, although inputs may vary to reflect revised expectations and the occurrence of events not previously reflected.

(iv) Revenue projections shall utilize the methodology employed by the Commission in the previous omnibus rate case, although inputs may vary to reflect revised expectations and the occurrence of events not previously reflected.

(v) The markup indices employed by the Commission in the preceding omnibus rate case shall be utilized to the extent practicable to distribute institutional cost among classes, subclasses, and services.

(vi) Subject to § 3001.124a(a)(2), the base year from which costs, volumes, and revenues are to be projected shall consist of the most recent entire audited fiscal year during which the rates established in the preceding omnibus rate case were in effect.

(vii) Projections of costs, volumes, and revenues will be adjusted to achieve consistency with rate or classification decisions implemented since the preceding omnibus rate case. Adjustments will be made to reflect any mail subject either to market test rates or to new service introduction rates during the midcycle period, using the convention that such mail recovers attributable costs.

(c) *Limited-scope rate cases.* A limited-scope rate case is a case filed under section 3622 of the Act which does not involve the initiation or midcycle adjustment of a four-year rate cycle but instead request a limited change or changes in one or a small number of rate categories or special services or in individual rates or fees within such a classification. Procedures will be appropriately varied in such cases to limit issues to those directly related to the subject matter of the request or in order to expedite consideration of such cases.

(d) *Special provisions regarding competitive categories.* Some categories of mail are designated as competitive under § 3001.128. In such categories, the Postal Service may, in filing a request under section 3622 of the act, suggest "band rates" and the Commission may, as appropriate, recommend such rates. A bank rate comprises a baseline rate value and a stated range of values above and below the baseline rate value.

**§ 3001.122 Filing of formal requests.**

Whenever the Postal Service determines to request that the Commission submit a recommended decision on changes in rates or fees subject to this subpart, the Postal Service shall file with the Commission a formal request for a recommended decision. Such request shall be filed in accordance with the requirements of §§ 3001.9 to 3001.11, 3001.121, and 3001.124, 3001.124a, or 3001.124b. Within five days after the Postal Service has filed a formal request for a recommended decision in accordance with this section, the Secretary shall file a notice with the Office of the Federal Register for publication in the **Federal Register**.

**§ 3001.123 Filing of prepared direct evidence and policy presentation.**

Simultaneously with the filing of the formal request for a recommended decision under this subpart:

(a) The Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed changes or adjustments in rates or fees are in the public interest and are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

(b) In omnibus cases and midcycle cases as defined in § 3001.121, the Postal Service shall also file a policy presentation by an officer of the Postal Service generally conversant with all substantive matters raised in the case and with the policies underlying the request and the proposed changes contained therein. The presentation shall specifically relate the request and the proposed changes to the operational, financial, and other relevant plans adopted by the Postal Service for the period covered by the rate cycle initiated in the omnibus case. The purpose of the policy presentation is to illuminate the record with respect to these plans and their relation to the particular matters presented by the other witnesses for the Postal Service. It shall include as exhibits all directives, resolutions, and other written evidences or embodiments of these plans. The policy presentation should follow to the extent feasible the form of written testimony, but shall be subject to the procedures set forth in § 3001.30(i) and, to the extent subjected only to those procedures, shall be treated as an official statement of Postal Service positions rather than as evidence of matters of fact.

**§ 3001.124 Contents of requests in omnibus rate cases.**

(a) *General requirements.* (1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (r) of this section. If the required information is set forth in the Postal Service's prepared direct evidence, it shall be deemed to be part of the formal request without restatement.

(2) If any information required by paragraphs (b) through (r) of this section is not available and cannot be made

available without undue burden, the request shall provide where reference is made to this paragraph, in lieu of such information, a statement explaining with particularity:

(i) The information which is not available or cannot be made available without undue burden;

(ii) The reason or reasons that each such item of information is not available and cannot be made available without undue burden;

(iii) The steps or actions which would be needed to make each such item of information available, together with an estimate of the time and expense required therefor;

(iv) Whether it is contemplated that each such item of information will be supplied in the future and, if so, at what time; and

(v) Whether reliable estimates are available where such information cannot be furnished and, if so, the specifics of such estimates.

(3) The provisions of paragraph (a)(2) of this section for the Postal Service to include in its formal request certain alternative information in lieu of that specified by paragraphs (b) through (r) of this section are not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of information at a time following receipt of the formal request.

(4) The Commission may request information in addition to that required by paragraphs (b) through (r) of this section.

(b) *Rates and standards information.* (1) Every formal request shall include schedules of the then-effective rate or rates of postage and fee or fees for all postal services, and, arranged in legislative format, schedules of the rate or rates of postage and fee or fees for all postal services proposed by the Postal Service, as they would appear in the Domestic Mail Classification Schedule. The schedules shall show the full rate and any proposed adjustment to such phased rates under section 3627 of the Act indicated by circumstances known at the time of filing.

(2) The schedules required by paragraph (b)(1) of this section shall, for all classes and subclasses of mail and service, be in summary fashion and tariff-like form. (For example, there shall be a specification of those rules, regulations and practices which establish the conditions of mailability and the standards of service.) As a part thereof, the schedules shall specifically be addressed to such functions as mail pick-up and delivery, pressuring and other similar functions.

(3) Subject to paragraph (a)(2) of this section, the schedules required by paragraph (b)(1) of his section shall also contain a statement identifying the degree of economic substitutability between the various classes and subclasses, e.g., a description of cross-elasticity of demand as between various classes of mail.

(4) Subject to paragraph (a)(2) of this section, the schedules required by paragraph (b)(1) of this section shall be accompanied by an identification of all nonpostal services.

(c) *Mail characteristics.* Subject to paragraph (a)(2) of this section, every formal request shall include an identification of the characteristics of the mailer and recipient, and a description of the contents of items mailed within the various classes and subclasses of mail and service.

(d) *Physical attributes of mail.* Subject to paragraph (a)(2) of this section, every formal request shall include an identification of the physical attributes of the items mailed by class and subclass, including shape, weight, and distance.

(e) *Special service arrangements.* Subject to paragraph (a)(2) of this section, every formal request shall contain, to the extent the following information is not expressly included under paragraph (b)(2) of this section, a summary statement describing special service arrangements provide to, or requested or required of, mailers by the Postal Service which bear upon the cost of service or the value of the mail service to both the sender and the recipient, e.g., services relating to mailer preparations in excess of requirements specified by the Postal Service Manual, pick-up and delivery, expedited or deferred processing, and other similar activities performed.

(f) *Total functionalized accrued costs.* (1) Subject to paragraph (a)(2) of this section, every formal request shall set forth the total actual accrued costs during the most recent fiscal year for which they are reasonably available. In the event final total actual accrued costs are not yet available for the fiscal year immediately preceding the fiscal year in which the filing is made, a preliminary or pro forma statement of such actual accrued costs shall be furnished. Any preliminary statement shall use, as appropriate, quarterly or accounting period reports for the preceding fiscal year. A final complete statement shall be substituted for any preliminary statement when the former becomes available.

(2) Subject to paragraph (a)(2) of this section, every formal request shall also set forth the estimated total accrued costs of the Postal Service for the fiscal year in which the filing is made, and the estimated total accrued costs of the Postal Service as specified in section 3621 of the Act which form the basis for proposed change in rates or fees. Estimated accrued costs referred to in paragraph (f)(2)(ii) of this section shall be for four consecutive fiscal years. The first fiscal year shall begin not more than 24 months subsequent to the filing date of the formal request. Each estimate of accrued costs called for in paragraph (f)(2) of this section shall be calculated on two bases: First, assuming the prefiling rates and fees and, second, assuming the suggested rates and fees, including, in the case of band rates suggested pursuant to § 3001.121(d), the baseline, minimum, and maximum rate values suggested. Estimated accrued costs shall be accompanied by an explanation of the methods and procedures used for cost projections. The analyses of estimated costs shall include, but need not be limited to:

(i) An explanation of the project of total volumes;

(ii) An explanation of the effect of the projected volume levels on estimated total costs;

(iii) The specification of the cost savings which will be realized from gains and improvements in total productivity, indicating such factors as operational and technological advances and innovations; and

(iv) The identification of abnormal costs which are expected to be incurred in the forecasted test period.

(3) Each cost presentation required by paragraphs (f) (1) and (2) of this section shall, subject to paragraph (a)(2) of this section:

(i) Show operating costs in sufficient detail as to the accounting and functional classifications and with such reasonable explanation so that the actual or estimated amount for each item of expense may be readily understood;

(ii) State and fully explain the amounts included for:

(A) Depreciation on capital facilities and equipment;

(B) Dept service;

(C) Contingencies; and

(D) Extraordinary or nonrecurring expenses;

(iii) Assign and distribute costs to each of the functions comprising the mail process. Such presentations shall include:

(A) an itemization of costs by the major accounts as reflected by the Service's books of accounts for all cost segments, such as postmasters, supervisors, etc.;

(B) An itemization of costs by functions such as collection, acceptance, general overheads, etc.;

(C) An assignment and distribution of the costs by account, exemplified in paragraph (f)(3)(iii)(A) of this section, together with related mail volumes, to the functions exemplified in paragraph (f)(3)(iii)(B) of this section;

(D) An assignment and distribution of the costs by account, together with related mail volumes, to such subfunctions within each category for which information is available or can be developed; and

(E) An explanation of the method by which the costs by accounts are assigned and distributed to functions.

(g) *Costs of prior fiscal years.* Subject to paragraph (a)(2) of this section, every formal request shall present the total actual accrued costs for each fiscal year since the last filing pursuant to this section. Such submission should be in a form as nearly consistent as possible with the filing under paragraph (f) of this section, together with explanations of any departures from such form and the effect of such departures.

(h) Separation, attribution, and assignment of certain costs. (1) Every formal request shall separate the Service's actual and estimated total costs, for the fiscal years specified in paragraph (f) of this section, as between postal services (including international mail) and nonpostal services. The presentation shall show the methodology for separating postal costs as between postal services and nonpostal services, and shall be in sufficient detail to allow a determination that no nonpostal costs have been assigned or allocated to postal services.

(2) Subject to paragraph (a)(2) of this section, the costs for postal services, as set forth by functions pursuant to paragraph (f) of this section, shall be separated as between:

(i) Those direct costs which can be attributed to each class of mail or type of mail service;

(ii) Those indirect costs which can be attributed to each class of mail or type of mail service;

(iii) Any other costs of the Service which can be reasonably assigned to each class of mail or type of mail service; and

(iv) Any costs which cannot be attributed or reasonably assigned.

(3) The methodology used to derive the costs requested in paragraphs (h)(2)(i) through (iv) of this section shall be set forth in detail.

(4) The attributable and other costs reasonably assignable as provided in paragraphs (h)(2) (i) through (iii) of this section shall separately be attributed to mail classes, subclasses, special services, and, to the extent practical, rate categories of mail service. The submission shall identify the methodology used to attribute or assign each type of such costs and, subject to paragraph (a)(2) of this section, shall also include an analysis of the effect on costs of:

(i) Volume;

(ii) Peaking patterns;

(iii) Priority of handling;

(iv) Mailer preparations;

(v) Quality of service;

(vi) The physical nature of the item mailed;

(vii) Expected gains in total productivity, indicating such factors as operational and technological advances and innovations; and

(viii) Any other factor affecting costs.

(5) The cost forecasting or "roll-forward" model shall be provided. It shall include the following items:

(i) For each cost segment component, a listing of all forecasting factors used in the cost level, mail volume, nonvolume workload, additional workday, productivity and other programs effects.

(ii) For each "ripple-affected"[1] cost segment component, a listing of those segments and components that determine its level of attribution or its distribution to mail class, subclass, rate category and service.

(iii) For each longer-run cost segment component:

(A) A listing of all factors used in determining its overall level of attribution, and

(B) A listing of the specific cost segment components used in determining its level of attribution, and its distribution to mail class, subclass, rate category and service.

(iv) Workpapers showing the application of the forecasting factors and procedures to each cost segment component for each time period used in the forecasting process. Such workpapers shall include the quantification, and distribution to mail class, subclass, rate category, and service, of each cost segment component, separating the short-run from the longer-run portions. Such workpapers shall conform to the requirements of paragraph (o) of this section. Compliance with the citation requirements of paragraph (o)(4) of the section shall be achieved by providing citations in "roll-forward" workpapers in the following cases:

(A) Workpapers showing the application of the forecasting factors and computational procedures (i.e., computer subroutines described in paragraph (h)(5)(iv)(B) of this section) to representative short run cost segment components and to representative longer run cost segment components for representative time periods used in the forecasting process.

(B) Workpapers showing the application of a computational procedure to a cost segment component, if the application of a forecasting factor or computational procedure to a particular cost segment component deviates from the application of that forecasting factor or computational procedure as presented in the workpapers required by paragraph (h)(5)(iv)(A) of this section.

(v) If the "roll-forward" model is submitted in the form of a computer generated model, it shall include:

(A) An annotated glossary of input data files, to include, for each time period

(*1*) The name of each input data file,

(*2*) A general description of each file in relation to the "roll-forward" process,

(*3*) The format for each kind of data record in the file,

(*4*) For each distinct format type used in the file, a brief description of each data item included in the format.

(B) A hard-copy description, in the form of a mathematical equation, of each subroutine in the program.

(C) A copy of the Base Year attributable cost matrix on a 5-inch floppy diskette in MS–DOS format.

(6) Attributable cost final adjustments by mail class, subclass, rate category and service, details of the development of those adjustments, and an explanation of each adjustment shall be provided.

(7) "Other services" adjustments by mail class, subclass, rate category and service, details of the development of those adjustments, and an explanation of each adjustment shall be provided.

(8) An overall summary cost table shall be provided. It shall show by mail class, subclass, rate category and service, short-run attributable costs, longer-run attributable costs, assignable costs by category, and all adjustments made to each of the foregoing.

(9) For each cost segment, base-year amounts for each included account and subaccount shall be provided.

(10) The minimum level of disaggregation required for presenting evidence on a cost segment or component is that employed by the Commission in its most recently completed section 3624 proceeding

[1] A cost component whose absolute value or level of attributability is determined in part or in whole by a change in another cost component or group of components is said to be a "ripple effect."

establishing a methodological precedent for that segment or component. This requirement shall not apply:

(i) To presentations that propose to define, attribute, assign, or distribute to mail classes segment or component costs by a method not employed or recommended by the Commission in such proceeding, and the Postal Service has demonstrated that the proposed methodological departure makes the level of disaggregation most recently employed or recommended by the Commission inappropriate;

(ii) Where the Postal Service has demonstrated that changes in mail operations make the level of disaggregation most recently employed or recommended by the Commission inappropriate.

(11) Any nonattributed or unassigned costs specified in paragraph (h)(2)(iv) of this section shall be clearly and separately identified. An explanation shall be furnished as to why such costs cannot be attributed or assigned. To the extent possible, the presentation shall identify all such costs which benefit more than one class of mail or type of service (but not all classes or types), together with the mail classes or types of services so benefited.

(12) The Service shall furnish the data relevant to its analysis of the effect on costs of the factors specified in paragraph (h)(4) (i) through (viii) of this section.

(i) *Criteria for rate schedule.* There shall be included in every formal request a statement of the criteria employed in constructing the proposed rate schedule. The submission shall include:

(1) The identification of the relationship between the revenues derived from the rates and fees for a particular class and subclass of mail or service and the costs attributed or assigned to that class and subclass or service;

(2) The identification of the procedures and methods used to apportion (to postal services) that part of the total revenue requirement, if any, which is in excess of costs attributed or assigned;

(3) Such other studies, information and data relevant to the criteria established by section 3622 of the Act with appropriate explanations as will assist the Commission in determining whether or not the proposed rates or fees are in accordance with such criteria.

(j) *Revenues and volumes.* (1) Subject to paragraph (a)(2) of this section, every formal request shall set forth the actual and estimated revenues of the Postal Service from the then effective postal rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraphs (f) and (g) of this section. With respect to categories for which band rates are suggested, pursuant to § 3001.121(d), the request shall also set forth a description of each change made within that band since the implementation of the then effective rates and fees and a statement of the rationale (including quantitative estimates of volume and revenue) underlying the Postal Service's decision to make the change.

(2) Subject to paragraph (a)(2) of this section, every formal request shall set forth the estimated revenues based on the suggested rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraph (f)(2) of this section, including, for all classes for which the Postal Service is suggesting band rates, pursuant to § 3001.121(d), estimates of revenues at the minimum and maximum suggested rate as well as the baseline rate value, together with a statement of the method used for estimating revenue at any rate value within the band.

(3) Subject to paragraph (a)(2) of this section, the actual and estimated revenues referred to in paragraphs (j) (1) and (2) of this section shall be shown in total and separately for each class and subclass of mail and postal service and for all other sources from which Postal Service collects revenues.

(4) Each revenue presentation required by paragraphs (j) (1), (2), and (3) of this section shall, subject to paragraph (a)(2) of this section, be supported by an identification of the methods and procedures employed.

(5) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request, for each class and subclass of mail and postal service, the following:

(i) An econometric demand study relating postal volumes to their economic and noneconomic determinants including postal rates, discounts and fees, personal income, business conditions, competitive and complementary postal services, competitive and complementary nonpostal activities, population, trend, seasonal patterns and other factors.

(ii) The actual or estimated volume of mail at the prefiled rates for each postal quarter beginning with the first quarter of the most recent complete fiscal year and ending one year beyond the last quarter of the future fiscal year.

(iii) The estimated volume of mail assuming the effectiveness of the suggested rates for each postal quarter beginning with the quarter in which the rates are assumed to become effective and ending one year beyond the last quarter of the future fiscal year.

(6) The estimated volumes and revenues referred to in paragraphs (j)(2), (j)(3), and (j)(5) of this section shall be derived from the econometric demand study referred to in paragraph (j)(5)(i) of this section. Any departure from the assumptions and specifications in the demand study made in estimating volumes of any class or subclass of mail shall be explained.

(i) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast volumes for each class and subclass of mail and postal service. Representative derivations may be summarized, except where their derivations of these forecasts from the econometric demand study shall be presented in detail for two major mail classes, showing each intermediate value or factor employed. For remaining classes and subclasses of mail, such derivations may be summarized, except where their derivations depart from the representative methods presented.

(ii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast changes in revenues for each class and subclass of mail and postal service resulting from changes in rates and fees.

(iii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a computer implementation of the methodology employed to forecast volumes and revenues for each class and subclass of mail and postal service.

(iv) The computer implementation described in paragraph (j)(6)(iii) of this section shall be able to compute forecasts of volumes and revenues compatible with those referred to in paragraphs (j)(2), (j)(3), and (j)(5) of this section for:

(A) Any set of rates and fees within a reasonable range of the prefiled and suggested rates,

(B) Any date of implementation within the range spanned by the assumed date and the start of the future fiscal year,

(C) Alternative forecasts of the economic determinants of postal volumes other than postal rates and fees, and

(D) Alternative values of any parameters with assigned values that are based upon unverifiable judgments.

(v) The computer implementation described in paragraph (j)(6)(iii) of this section shall comply with § 3001.31(k)(3).

(7) Subject to paragraph (a)(2) of this section, there shall be made available at

the offices of the Commission with every formal request, in a form that can be read directly by a standard digital computer, the following:

(i) All of the input files and programs needed to replicate the econometric demand study referred to in paragraph (j)(5)(i) of this section;

(ii) Any input files and programs employed to derive a price index for any class or subclass of mail or postal service from postal rates, discounts and fees;

(iii) Any input files and programs used to prepare data for use in the econometric demand study referred to in paragraph (j)(5)(i) of this section.

(k) *Financial statements and related information.* (1) Subject to paragraph (k)(3) of this section, every formal request shall include, for the two fiscal years immediately preceding the fiscal year in which the date of formal filing occurs, the Balance Sheet, the Statement of Income and Expense, basic statistical information and the Statement of Income and Expense by budget categories of the Postal Service. This information shall include data with respect to:

(i) Balance Sheet and a supporting schedule for each item appearing thereon;

(ii) Statement of Income and Expense and a supporting schedule for each item appearing thereon;

(iii) As appropriate, statistical data with respect to revenue, pieces (by physical attributes, showing separately amounts of mail identified as stamped, metered, and imprinted, or other), weight, distance, postal employees (number, total payroll, productivity, etc.), postal space, post offices (number, classes, etc.), and any other pertinent factors which have been utilized in the development of the suggested rate schedule;

(iv) Statement of Income and Expense by cost segment.

(2) A reconciliation of the budgetary information with actual accrued costs shall be provided for the most recent fiscal year.

(3) If the fiscal information for the immediately preceding fiscal year is not fully available on the date of filing, a preliminary or pro formal submittal shall be made and upon final completion an updated report shall be filed in substitution therefor.

(l) *Billing determinants.* (1) A statement, which can be in workpaper form, indicating for each class and subclass of mail and postal service the relevant billing determinants (e.g., the volume of mail related to each rate element in determining revenues) separately for the current rates and the proposed rates. Proposed changes in rate design and the related adjustments of billing determinants should be explained in detail.

(2) For third-class bulk mail, subject to paragraph (a)(2) of this section, every formal request shall set forth separately for regular and preferred, by presort level, the base year volume by ounce increment for each shape (letter-size, flat, irregular parcels, parcels).

(m) *Continuing appropriations.* A statement, which can be in workpaper form, presenting detailed calculations of continuing appropriations pursuant to 39 U.S.C. 2401(c) and any proposed adjustment to such reduced rates under 39 U.S.C. 3627 indicated by circumstances known at the time of the filing.

(n) *Performance goals.* (1) Every formal request shall identify any performance goals which have been established for the classes and subclasses of mail.

(2) Subject to paragraph (a)(2) of this section, the request shall identify the achieved levels of service for those classes and subclasses of mail and mail services for which performance goals have been set. This information may be provided by reference to published documents or otherwise.

(o) *Workpapers.* (1) Whenever the Service files a formal request it shall accompany the request with seven sets of workpapers, five for use by the Commission staff and two which shall be available for use by the public at the Commission's offices.

(2) Workpapers shall contain:

(i) Detailed information underlying the data and submissions for paragraphs (b) through (n) of this section in such fashion and content so as to permit independent analysis of each cost segment and an independent attribution or assignment of costs to classes and subclasses and the assignment of nonattributed or unassigned costs to classes and subclasses;

(ii) A description of the methods used in collecting, summarizing and expanding the data used in the various submissions;

(iii) summaries of sample data, allocation factors and other data used for the various submissions;

(iv) The expansion ratios used (where applicable); and

(V) The results of any special studies used to modify, expand, project, or audit routinely collected data.

(3) Workpapers shall be neat and legible and shall indicate how they relate to the data and submissions supplied in response to paragraphs (b) through (n) of this section.

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations themselves, or a crossreference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by anology.

(p) *Certification by officials; planning documents.* Every formal request shall include:

(1) One or more certifications stating that the cost statements and supporting data submitted as a part of the formal request, as well as the accompanying workpapers, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books; and

(2) Such officially adopted or approved documents describing the Postal Service's financial, operational, investment, and other relevant plans for the period covered by the request (or any part of such period), as will materially aid in the understanding of such plans, of the request, or of the relationship between the two.

(q) *Opinion of independent public accountant.* Every formal request shall include an opinion from an independent public accountant to the extent required by 39 U.S.C. 2008(e).

(r) *Special waiver provision for minor rate cases.* The Commission may, upon the filing of a proper motion by the Postal Service, together with a showing of good cause therefor, waive certain of the filing requirements of paragraphs (b) through (q) of this section if in the Commission's judgment it has been demonstrated that the proposed change in a rate or rates of postage and a fee or fees for postal service does not significantly change the then effective rates and fees or alter the cost-revenue relationships of the various classes and types of postal services.

(s) *Rejection of requests.* The Commission may reject any request under this subpart that patently fails to substantially comply with any requirements of this subpart.

**§ 3001.124a Contents of formal requests in midcycle rate cases.**

(a) *General requirements.* (1) Each formal request to which this section applies shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (m) of this section. If the required information is set forth in the Postal Service's prepared direct evidence, it shall be deemed to be part of the formal request without restatement.

(2) If any information required by paragraphs (b) through (m) of this section is not available and cannot be made available without undue burden, the request shall provide where reference is made to this paragraph, in lieu of such information, a statement of explanation as required by § 3001.124(a)(2).

(3) The provisions of paragraph (a)(2) of this section for the Postal Service to include in its formal request certain alternative information in lieu of that specified by paragraphs (b) through (m) of this section are not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of information at a time following receipt of the formal request.

(4) The Commission may request information in addition to that required by paragraphs (b) through (m) of this section.

(b) *Rates and standards information.* (1) Every formal request shall include schedules of the then-effective rate or rates of postage and fee or fees for all postal services, and, arranged in legislative format, schedules of the rate or rates of postage and fee or fees for all postal services proposed by the Postal Service, as they would appear in the Domestic Mail Classification Schedule. The schedules shall show the full rate and any proposed adjustment to rates under section 3627 of the Act indicated by circumstances known at the time of filing.

(2) The schedules required by paragraph (b)(1) of this section shall, for all classes and subclasses of mail and service, be in summary fashion and tariff-like form. (For example, there shall be a specification of those rules, regulations and practices which establish the conditions of mailability and the standards of service.) As part thereof, the schedules shall specifically be addressed to such functions as mail pick-up and delivery, processing and other similar functions.

(3) Subject to paragraph (a)(2) of this section, the schedules required by paragraph (b)(1) of this section shall be accompanied by an identification of all nonpostal services.

(c) *Total functionalized accrued costs.* (1) Subject to paragraph (a)(2) of this section, every formal request to which this section applies shall set forth the total actual accrued costs during the most recent complete fiscal year for which rates established by the preceding omnibus rate case were in effect. In the event final total actual accrued costs are not yet available for that fiscal year, a preliminary or pro forma statement of such actual accrued costs shall be furnished. Any preliminary statement shall use, as appropriate, quarterly or accounting period reports for the preceding fiscal year. A final complete statement shall be substituted for any preliminary statement when the former becomes available.

(2) Subject to paragraph (a)(2) of this section, every formal request shall also set forth:

(i) The estimated total accrued costs of the Postal Service for the fiscal year in which the filing is made and

(ii) The estimated total accrued costs of the Postal Service as specified in section 3621 of the Act which form the basis for proposed change in rates or fees.

Estimated accrued costs referred to in paragraph (c)(2)(ii) of this section shall be for the final 24 months of the planning cycle considered in the previous omnibus rate case. These two estimates of accrued costs shall be calculated on two bases: First, assuming the prefiling rates and fees and, second, assuming the suggested rates and fees. Estimated accrued costs shall be developed by the methods and procedures used by the Commission for cost projections in the preceding omnibus rate case. The analyses of estimated costs shall include, but need not be limited to:

(A) The projection of total volumes;

(B) The effect of the projected volume levels on estimated total costs;

(C) The specification of the cost savings which will be realized from gains and improvements in total productivity, indicating such factors as operational and technological advances and innovations; and

(D) The identification of abnormal costs which are expected to be incurred in the forecasted test period.

(3) Each cost presentation required by paragraphs (c)(1) and (2) of this section shall, subject to paragraph (a)(2) of this section:

(i) Show operating costs in sufficient detail as to the accounting and functional classifications and with such reasonable explanation so that the actual or estimated amount for each item of expense may be readily understood;

(ii) State and fully explain the amounts included for:

(A) Depreciation on capital facilities and equipment;

(B) Debt service;

(C) Contingencies; and

(D) Extraordinary or nonrecurring expenses;

(iii) Assign and distribute costs to each of the functions comprising the mail process. Such presentations shall include:

(A) An itemization of costs by the major accounts as reflected by the Service's books of accounts for all cost segments, such as postmasters, supervisors, etc.;

(B) An assignment and distribution of the costs by account, together with related mail volumes, to such subfunctions within each category for which information is available or can be developed; and

(d) *Costs of prior fiscal years.* Subject to paragraph (a)(2) of this section, every formal request shall present the total actual accrued costs for each fiscal year since the last filing pursuant to this section. Such submission should be in a form as nearly consistent as possible with the filing under paragraph (c) of this section, together with explanations of any departures from such form and the effect of such departures.

(e) *Separation, attribution, and assignment of certain costs.* (1) Every formal request shall separate the Service's actual and estimated total costs, for the fiscal years specified in paragraph (c) of this section, as between postal services (including international mail) and nonpostal services. The presentation shall show the methodology for separating postal costs as between postal services and nonpostal services, and shall be in sufficient detail to allow a determination that no nonpostal costs have been assigned or allocated to postal services.

(2) Subject to paragraph (a)(2) of this section, the costs for postal services, as set forth by functions pursuant to

paragraph (c) of this section, shall be separated in the manner used by the Commission in the preceding omnibus rate case as between:

(i) Those direct costs which can be attributed to each class of mail or type of mail service;

(ii) Those indirect costs which can be attributed to each class of mail or type of mail service;

(iii) Any other costs of the Service which can be reasonably assigned to each class of mail or type of mail service; and

(iv) Any costs which cannot be attributed or reasonably assigned.

(3) The attributable and other costs reasonably assignable as provided in paragraphs (e)(2) (i) through (iii) of this section shall separately be attributed to mail classes, subclasses, special services, and, to the extent practical, rate categories of mail service.

(4) The cost forecasting or "roll-forward" model shall be provided. It shall include workpapers as specified in § 3001.124(h)(5)(iv).

(5) Attributable cost final adjustments by mail class, subclass, rate category and service, details of the development of those adjustments, and an explanation of each adjustment shall be provided.

(6) "Other services" adjustments by mail class, subclass, rate category and service, details of the development of those adjustments, and an explanation of each adjustment shall be provided.

(7) An overall summary cost table shall be provided. It shall show by mail class, subclass, rate category and service, short-run attributable costs, longer-run attributable costs, assignable costs by category, and all adjustments made to each of the foregoing.

(8) For each cost segment, base-year amounts for each included account and subaccount shall be provided.

(f) *Criteria for rate schedule.* There shall be included in every formal request a statement of the criteria employed in constructing the proposed rate schedule. The submission shall include such other studies, information and data relevant to the criteria established by section 3622 of the Act with appropriate explanations as will assist the Commission in determining whether or not the proposed rates or fees are in accordance with such criteria.

(g) *Revenues and volumes.* (1) Subject to paragraph (a)(2) of this section, every formal request shall set forth the actual and estimated revenues and volumes of the Postal Service from the then effective postal rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraphs (c) and (d) of this section, and the estimated revenues and volumes based on the suggested rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraph (c)(2) of this section.

(2) Subject to paragraph (a)(2) of this section, the actual and estimated revenues and volumes referred to in paragraph (g)(1) of this section shall be shown in total and separately for each class and subclass of mail and postal service and for all other sources from which Postal Service collects revenues.

(3) Subject to paragraph (a)(2) of this section the actual and estimated revenues and volumes referred to in paragraphs (g)(1) and (2) of this section shall be prepared using the methods and procedures employed by the Commission in the previous omnibus rate case, although the most recent available actual and estimated input values should be utilized.

(4) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a computer implementation of the methodology employed to forecast volumes and revenues for each class and subclass of mail and postal service.

(i) This computer implementation shall be able to compute forecasts of volumes and revenues compatible with those referred to in paragraphs (g)(1), and (g)(2) of this section.

(ii) This computer implementation shall be able to compute the range and variety of forecasts of volumes and revenues specified in § 3001.24(j)(6)(iv).

(h) *Financial statements and related information.* (1) Every formal request made under this section shall include, for the two fiscal years immediately preceding the fiscal year in which the date of formal filing occurs, the Balance Sheet, the Statement of Income and Expense, basic statistical information and the Statement of Income and Expense by budget categories of the Postal Service, with supporting schedules. If the fiscal information for the immediately preceding fiscal year is not fully available on the date of filing, a preliminary or pro forma submittal shall be made and upon final completion an updated report shall be filed in substitution therefor.

(2) A reconciliation of actual results for the base year identified in § 3001.121(b)(3)(vi) with the project for that year relied on by the Commission in the preceding omnibus rate case.

(3) A comparison of expected costs, volumes, and revenues for the final 24 months of the planning cycle considered in the previous omnibus rate case, *see* § 3001.124a(c)(2)(ii) with the projections of costs and revenues for that period projected by the Postal Service in that case. This comparison should be accompanied by a discussion of the reasons for all significant variations between the previous and current projections.

(i) *Billing determinants.* (1) A statement, which can be in workpaper form, indicating for each class and subclass of mail and postal service the relevant billing determinants (e.g., the volume of mail related to each rate element in determining revenues) separately for the current rates and the proposed rates.

(2) For third-class bulk mail, subject to paragraph (a)(2) of this section, every formal request shall set forth separately for regular and preferred, by presort level, the base year volume by ounce increment for each shape (letter-size, flat, irregular parcels, parcels).

(j) *Expected appropriations.* A statement, which can be in workpaper form, presenting detailed calculations of expected appropriations pursuant to 39 U.S.C. 2401(c) and any proposed adjustment to reduced rates under 39 U.S.C. 3627 indicated by circumstances known at the time of the filing.

(k) *Workpapers.* Whenever the Service files a formal request it shall accompany the request with seven sets of workpapers, five for use by the Commission staff and two which shall be available for use by the public at the Commission's offices. Workpapers shall comply in form and content with the requirements of § 3001.124(o).

(l) *Certification by officials.* (1) Every formal request shall include one or more certifications stating that the cost statements and supporting data submitted as a part of the formal request, as well as the accompanying workpapers, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books.

(2) The certificates required by paragraph (l)(1) of this section shall be signed by one or more representatives of the Postal Service authorized to make such certification. The signature of the official signing the document constitutes a representation that the official has read the document and that, to the best of his/her knowledge, information and belief, every statement contained in the instrument is proper.

(m) *Opinion of independent public accountant.* Every formal request shall include an opinion from an independent public accountant to the extent required by 39 U.S.C. 2008(e).

(n) *Rejection of requests.* The Commission may reject any request

under this subpart that patently fails to substantially comply with any requirements of this subpart.

**§ 3001.124b Limited-scope rate cases.**

The Commission intends that limited-scope rate cases as defined in § 3001.121(c) be processed and decided with special attention to securing a high degree of expedition and to simplification of issues and avoidance of unnecessary controversy. Accordingly, upon filing of a proper motion by the Postal Service showing good cause therefor, the Commission will waive filing requirements of § 3001.54 (b) through (r) if it is satisfied that the proposed changes in a rate or rates of postage and a fee or fees for postal service falls within the policy of § 3001.121(c), and in particular does not significantly alter the cost-revenue relationships of the various classes and types of postal service as reflected in the decisions establishing the then-effective rates and fees.

**§ 3001.125 Service by the Postal Service.**

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission under this subpart, or, with respect to a midcycle rate case, in the circumstances described in § 3001.121(b)(2), the Postal Service shall serve copies of its formal request for a recommended decision and its prepared direct evidence upon such officer and the parties permitted to intervene as provided in § 3001.12. Such service shall also be made on persons who have been granted limited participation.

**§ 3001.126 Failure to comply.**

If the Postal Service fails to provide any information specified by this subpart, or otherwise required by the presiding officer or the Commission, the Commission, upon its own motion, or upon motion of any participant to the proceeding, may stay the proceeding until satisfactory compliance is achieved. The Commission will stay proceedings only if it finds that failure to supply adequate information interferes with the Commission's ability promptly to consider the request and to conduct its proceedings with expedition in accordance with the Act.

**§ 3001.127 [Reserved]**

**§ 3001.128 Designation of categories as competitive.**

(a) The provisions of this subpart which govern the use of band rates shall apply, in accordance with their terms and the evidence of record, only to categories of mail listed in this section as competitive. A category is deemed competitive if it:

(1) Is not subject to the Private Express Statutes as interpreted and administered by the Postal Service (39 U.S.C. 601–606; 18 U.S.C. 1693–1699; 39 CFR parts 310, 320); and

(2) Is subject to direct competition by enterprises not subject to regulation of rates, routes, or service, but providing substantially the same service as that offered by the Postal Service.

A competitive category may comprise all or less than all of a class of mail. The Commission will entertain appropriately supported requests for additions to or deletions from the list of competitive classes. The designation of a category as competitive permits but does not require the Postal Service to suggest rates in band form when it files a request under this subpart.

(b) The competitive categories are:

(1) Express Mail;

(2) Priority Mail over [TO BE DETERMINED] pounds; and

(3) Parcel post.

## Appendix A to Subpart I to Part 3001—Statement of General Policy Regarding Competitive Categories and Band Rates

Adoption of § 3001.121(d) reflects the Commission's intention that future rate proceedings will allow substitution of band rates for unitary rates in competitive service offerings identified in § 3001.128. Band rates imply a limited opportunity for selection of values within the band during the rate cycle without formal rate proceedings. This contrasts with unitary rates, which generally remain unchanged absent a new rate request. The band rate option offers the Service an opportunity to act more expeditiously to preserve the prescribed contribution of these services to net revenue than might be possible if it were required to prepare an entirely new rate request, filed under customary procedures, and more quickly than it has chosen to act under § 3001.57 et seq.

The Commission provides the following additional explanatory material for parties who will be participating in omnibus rate cases under the new rules and for others with an interest in postal ratemaking. The policy statement:

(i) Briefly reviews practical aspects of the procedure described in the rules,

(ii) Identifies the conceptual and statutory basis for the change; and

(iii) Explains why the Commission considers categories designated in § 3001.128 especially suitable for this treatment.

Practical aspects of band rate recommendations and administration. As the provisions of § 3001.121(d) indicate, the Commission's band rate model entails three main elements: a baseline rate, a minimum value (the floor) and a maximum value (the ceiling). The band rate subsumes all values within the upper and lower boundaries. The choice of the baseline rate for any eligible category need not be the midpoint of the maximum and minimum rate values, but is to reflect the Service's considered judgment on an appropriate rate (in the case of an initial rate filing or midcycle case) and the Commission's decision thereon (in its recommended decision). The Service's request and the Commission's recommended decision must address the band's compliance with applicable section 3622(b) of the Act rate criteria.

Assuming the Governors' acceptance of a Commission-recommended band rate in the ordinary course of an omnibus rate proceeding, the rule allows selection, prior to a midcycle case, of another rate value within the band without invoking section 3622 proceedings. Selection is subject to two constraints:

(i) The value selected must fall within the Commission's previously recommended minimum and maximum values and

(ii) The market circumstance(s) triggering the adjustment must be clearly identified in a written document filed with the Commission and published in the **Federal Register**.

As explained below, this adjustment occurs without the need for a new rate filing because the band rate operates as the legal equivalent of the unitary rate it replaces. Assuming that the minimum and maximum band values satisfy the relevant statutory criteria, any rate within the band has the legal status of "a previously recommended rate."

Conceptual and statutory basis for band rates. A review of cost, revenue and volume experience under the Postal Reorganization Act has led us to conclude that the standard approach to recommending rates has not served the statutory breakeven goal as well as might be hoped in the designated competitive service categories. For example, PRC Op. R87–1, paras. 5995–6010.

The reason the standard rate-setting approach for competitive offerings falls short of expectations appears to be that its inflexibility hinders timely Postal Service reaction to competitors' actions. For example, under the standard approach, a competitor can reduce the price of a comparable service offering immediately after new rates take effect. Absent preparation of a new filing, the Service clearly stands to lose volume in that category, along with the associated institutional cost contribution. Similarly, competitors' ability to raise rates quickly in response to sudden or unexpected marketwide cost increases might leave the Service with volume, but with a distorted cost/revenue relationship and impaired institutional cost contribution.

In light of the Commission's responsibilities under the Act, the financial consequences attendant to market realities present a live concern about the adequacy of our longstanding approach to § 3001.128 offerings, and not simply an abstract lesson on competitiveness. Accordingly, it strikes us that it would be more in line with the statutory breakeven mandate if the Commission's ratemaking procedures incorporated a mechanism that would minimize the potential for reduction in the institutional cost contribution expected to be generated by the designated competitive

categories over the rate cycle. This process is appropriate in the context of the four-year rate cycle when the Commission and the public will know that the level of rates for competitive service will always be revisited within two years, so that possibility for abuse is minimal.

We have considered whether we are under a statuatory obligation to continue the approach that has been the norm for all service offerings since reorganization, even though we find it unsatisfactory in important statute-linked respects for certain offerings, or whether the band rate concept is an acceptable legal alternative for these categories. Our conclusion, based on a review of the statute, is that the controlling provisions (in sections 3621, 3622, 3624, and 3625 of the Act) do not place us under a legal compulsion to do so. The pertinent references are to "rate or rates" of postage and the cornerstone of rate implementation is a previous Commission recommended decision. Thus, the main requirement is that any rate that is put into effect must have been previously recommended by the Commission. As the Commission intends that every value within the band will meet relevant statutory criteria, the band rate stands on the same legal footing as the standard unitary rate. Thus, it seems clear that subsequent adjustment is not a unilateral—and thus illegal [1]—action. It is an administrative action implementing a rate previously recommended by the Commission and thus fully based on the Commission's expert judgment.

Accordingly, we believe there is no statutory necessity that we adhere to the normal practice of unitary rate recommendations when, as here, the band rate alternative appears to offer a superior way of meeting the statutory breakeven mandate. We therefore believe we are justified in adopting it as a better way of discharging our responsibilities under the Act.

Types of services. Section 3001.128 identifies several eligible categories of competitive offerings and holds out the possibility for designation of additional categories. The limitation to competitive service offerings that are not subject to the Private Express Statutes is based on the premise that this provides the most clear evidence that the market circumstances that give rise to the most need for pricing flexibility—and are a condition precedent to band rate adjustment—are likely to exist. In addition, the Commission believes the pricing flexibility associated with band rates is especially well-suited to non-core, non-traditional postal services, whose contribution to net revenues (i.e., to covering institutional costs) should be encouraged.

Section 3001.128 provides for changes in the scope of its coverage on the basis of "appropriately supported requests for additions to or deletions from the list of competitive categories." Because these rules are intended to guide the preparation of requests to change § 3001.128, the Commission strongly prefers that these requests be submitted independent of rate or classification filings. While all such requests would have to be evaluated on their individual merits, it is likely that some issues would be common to most if not all of them. In addition, the Commission believes these generic issues would include (without limitation) product or service definition (and possible substitutes), data and information on competing firms and industry structure, and relevant pricing practices and trends.

Summary. The optional band rate procedure set out in § 3001.121(d) imposes important responsibilities on the Commission and the Postal Service, especially in establishing minimum band rate values, but it is not a depature from the legal requirements of the statute. Instead, it adapts longstanding practice to modern market realities, and thereby provides pricing flexibility that can minimize the possibility of a diminution in institutional cost contribution from these categories and any ensuing impairment of the financial breakeven goal.

Issued by the Commission on August 18, 1992.

**Cyril J. Pittack,**

*Acting Secretary.*

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[1] There is a broadly-based discussion of unilateral action (albeit in a different factual setting) in *United Parcel Service* v. *U.S. Postal Service*, 455 F. Supp. 857 (E.D. Pa. 1978), *affirmed*, 604 F.2d 1370 (3d Cir. 1979), *cert. denied*, 446 U.S. 957 (1980).

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Public Hearing on Proposed Endangered or Threatened Status for Five Florida Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rules; reopening of comment period and notice of public hearing.

**SUMMARY:** The Service gives notice that the comment period is reopened on three separate proposals to list five Florida plants as endangered or threatened pursuant to the Endangered Species Act of 1973 (Act), as amended. These proposals were published in the **Federal Register** on May 20, 1992 (57 FR 21369, 21377, and 21381). A public hearing will allow all interested parties to orally submit comments on these proposals.

**DATES:** The comment period on these proposals is reopened until September 28, 1992. The public hearing will be held from 4 p.m. to 6 p.m. on September 16, 1992, in Orlando, Florida.

**ADDRESSES:** Written comments and materials concerning the proposals should be sent directly to the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. The public hearing will be held at the auditorium, Florida Fruit and Vegetable Association, 4401 East Colonial Drive, Orlando, Florida.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Bentzien, Assistant Field Supervisor, at the above address (telephone: 904/232-2580, fax 904/232-2404).

**SUPPLEMENTARY INFORMATION:**

### Background

On May 20, 1992, the Service published three separate proposals (57 FR 21369, 21377, and 21381) to add five Florida plant species to the list of endangered and threatened plants. The plants proposed for listing as endangered species are: *Conradina glabra* (Apalachicola rosemary), of Liberty County; native to ravine edges, threatened by habitat modification due to forestry practices. *Conradina brevifolia* (short-leaved rosemary), of Highlands and Polk Counties; native to Florida scrub vegetation, threatened by habitat destruction for agricultural or residential purposes. *Conradina etonia* (Etonia rosemary), of Putnam County, native to Florida scrub vegetation, threatened by residential development. *Cucurbita okeechobeensis* senso strictu (Okeechobee gourd), native to the southern shore of Lake Okeechobee in Palm Beach County, is vulnerable to vegetation management measures and to the consequences of water level management. The one plant proposed for listing as a threatened species is *Pinguicula ionantha* (Godfrey's butterwort), native to bogs and flatwoods ponds in Bay, Franklin, Gulf, and Liberty counties, from roughly Panama City east to the southern part of Apalachicola National Forest. It is threatened by habitat degradation due to lack of prescribed fire and shading by planted pines.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On July 2, 1992, the Service received a request for a public hearing on the proposal to list Okeechobee gourd from Ms. Cindy L. Bartin, an attorney representing the

Florida Sugar Cane League. On July 6, 1992, the Service received a letter from Mr. Michael W. Mingea, Executive Director of the Florida Native Plant Society, requesting a public hearing.

Because the Native Plant Society's request covers plants from much of Florida (with the Okeechobee gourd the southernmost of the five species), the Service has arranged to conduct the public hearing in Orlando, Florida, at the Florida Fruit and Vegetable Association's auditorium at 4401 East Colonial Drive. Parking is available at the site, and the auditorium is clearly marked. The public hearing is scheduled for September 16, 1992, from 4 p.m. to 6 p.m. Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The comment period for this proposal closes on September 28, 1992. Written comments should be submitted to the Service office in the **ADDRESSES** section.

## Author

The primary author of this notice is David Martin, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216 (904/232-2580 or fax 904/232-2404).

**Authority:** The authority for this action is the Endangered Species Act (16 U.S.C. 1531-1544).

Dated: August 19, 1992.

**James W. Pulliam, Jr.,**

*Regional Director.*

[FR Doc. 92-20564 Filed 8-27-92; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register
Vol. 57, No. 168
Friday, August 28, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Judicial Review; Committee on Rulemaking; Public Meetings

This notice of committee meetings is given pursuant to the Federal Advisory Committee Act (Pub. L. 92–463). Attendance at each meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman, (202) 254–7020, at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: 202–254–7020.

**Committee on Judicial Review**

*Date:* Thursday, September 10, 1992.
*Time:* 2:30 p.m.
*Location:* Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037 (Library, 5th Floor).
*Agenda:* The committee will meet to discuss: (1) A study of the availability and scope of judicial review of prompt corrective action decisions by federal banking agencies under the Federal Deposit Insurance Corporation Improvement Act of 1991; and (2) past Conference recommendations that have originated in the Committee on Judicial Review.
*Contact:* Mary Candace Fowler, 202–254–7020.

**Committee on Rulemaking**

*Date:* Wednesday, September 9, 1992.
*Time:* 9 a.m.
*Location:* Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037 (Library, 5th Floor).
*Agenda:* The committee will meet to discuss a draft report by Professor Mashaw on the rulemaking process.
*Contact:* Kevin L. Jessar, (202) 254–7020.

Dated: August 26, 1992.

**Jeffrey S. Lubbers,**
*Research Director.*

[FR Doc. 92–20842 Filed 8–27–92; 8:45 am]

BILLING CODE 6110–01–M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### National Organic Standards Board Committees; Meeting

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), as amended, the Agricultural Marketing Service announces the forthcoming meetings of the National Standards Board (NOSB) Committees.

**DATES:** September 17–18, 1992.

**ADDRESSES:** The Crops Standards Committee and the National Material List Committee of the National Organic Standards Board will be meeting at the Red Lion Inn, 2001 Pointwest Way, Sacramento, CA on Thursday, September 17 and Friday, September 18, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harold S. Ricker, Staff Director, National Organic Standards Board, Room 4006—South Building P.O. Box 96456, Washington, DC 20090–6456. Telephone: (202) 720–2704.

**SUPPLEMENTARY INFORMATION:** Section 2119 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Fact Act), Public Law 101–624 (7 U.S.C. 6501 *et seq*), requires establishment of a National Organic Standards Board. The purpose of the Board is to assist in the development of standards for substances to be used in organic production and handling and to advise the Secretary on any other aspects of the implementation of title XXI of the Fact Act. The NOSB met for the first time in Washington, DC, in March and formed six committees to work on various aspects of the Program. The committees are: Crops Standards, Processing, Labeling and Packaging, Livestock Standards, Accreditation, National Materials List, and International Issues. The full Board will meet in plenary sessions and the six committees will meet in separate sessions.

The purpose of the Crops Standards Committee is to work on draft documents and position papers for presentation to the full Board at a future meeting and to receive input on crop standards issues from individuals and organizations in California. Issues to be discussed include: An organic farm plan, pesticide residue testing, spray drift policy, audit trail, and planting stock. The Crops Committee will meet on Thursday, September 17, from 1 p.m. to 5 p.m.

The National Materials List Committee is working to develop recommendations for the National List of approved and prohibited substances for organic production and processing and is seeking input on: materials needed for fruit and vegetable production, materials needed for livestock health and feeding, and materials needed in production and processing that may not be available in natural form. The Materials Committee will meet at the Red Lion Inn on Friday, September 18 from 8 a.m. to 5 p.m. Both committees also are interested in other concerns as they related to the organic program.

A final agenda will be available on August 28, 1992, which will include detailed agendas for each committee. Persons requesting copies should contact Mrs. Fox at the above address or phone number.

The meetings will be open to the public. Individuals and organizations wishing to provide written comments on these issues or to express public comment on any organic issues should forward the request to Harold S. Ricker at the above address or FAX to (202) 690–0338 by September 10, 1992, in order to be scheduled. The committees will schedule time for public input on Thursday, September 17, beginning at 8 a.m. and continuing until noon at the Red Lion Inn. Each individual or organization will be allocated 10 minutes for presenting orally the key issues of concern and should provide copies of written material elaborating on those issues for the Committees.

Dated: August 24, 1992.

**Daniel Haley,**

*Administrator.*

[FR Doc. 92-20663 Filed 8-27-92; 8:45 am]

BILLING CODE 3410-02-M

## Federal Grain Inspection Service

### Evaluation of Fumonisin (FUM) Test Kits

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Federal Grain Inspection Service (FGIS) is considering providing Fumonisin (FUM) testing in grains and commodities under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621, *et seq.*). FUM is a chemical substance resulting from the metabolic process of certain molds in grains. This notice announces that FGIS will be examining commercially available test kits for qualitatively determining the presence of FUM in grains and commodities under field conditions.

**DATES:** Comments must be submitted on or before September 28, 1992.

**ADDRESSES:** Comments must be submitted to Dr. Chuan Kao, Chemist, Quality Assurance and Research Division, USDA/FGIS Technical Center, 10383 N. Executive Hills Blvd., Kansas City, Missouri 64153.

**FOR FURTHER INFORMATION CONTACT:** Dr. Chuan Kao, address as above, telephone (816) 891-7150.

**SUPPLEMENTARY INFORMATION:** The objective of this study is to provide FGIS with information about and experience with commercially available test kits for the qualitative determination of Fumonisin in certain grains and commodities under field conditions. Grains and commodities to be considered are corn, corn gluten feed, corn meal, milled rice, sorghum, wheat, and products therefrom with primary emphasis on corn and wheat. The general requirements for a test kit to be acceptable for testing are:

(a) The time for completion, including extraction of a single test, shall not be more than 30 minutes, and

(b) The test shall not require the use of recognized or suspect human carcinogens.

Manufacturers are requested to notify FGIS of the commercial availability of test kits for Fumonisin and to provide information on the performance of these test kits.

**Authority:** 7 U.S.C. 1621, *et seq.*

**David R. Galliart,**

*Acting Administrator.*

[FR Doc. 92-20616 Filed 8-27-92; 8:45 am]

BILLING CODE 3410-EN-M

## Food and Nutrition Service

### Food Stamp Program, Recipient Claims Collection; Expansion of Test of Offsetting Federal Income Tax Refunds

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** General notice.

**SUMMARY:** The Department hereby gives notice that it intends to expand the test of the feasibility and effectiveness of offsetting Federal income tax refunds to collect claims against households for overissued food stamp benefits. The offsets are made from Federal income tax refunds payable to individuals liable for those claims. This notice identifies additional States where this procedure will be tested.

**EFFECTIVE DATE:** This notice will be effective September 14, 1992. Comments will be accepted until November 27, 1992. Implementation of the expansion of this test will begin September 14, 1992.

**ADDRESS:** Comments should be addressed to Joseph H. Pinto, Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, room 905, Alexandria, Virginia 22302. Comments can be reviewed at that address during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Pinto, Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, room 905, Alexandria, Virginia 22302, telephone (703) 305-2384.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12291 and Secretary's Memorandum 1512-1

This proposed action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The action will affect the economy by less than $100 million a year. The action will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the notice as "not major".

#### Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR 3015, subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

#### Executive Order 12778

This Notice has been reviewed under Executive Order 12778, Civil Justice Reform. This notice is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This notice is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this Notice or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities); (3) for program retailers and wholesalers—7 U.S.C. 2023 set out at 7 CFR 278.8.

#### Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this notice does not have a significant economic impact on a substantial number of small entities. This notice will affect the State and local agencies which administer the Food Stamp Program, and individuals who have received excess food stamp benefits.

#### Paperwork Reduction Act

This notice does not contain reporting or record keeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

**Background**

The Department published a General Notice on August 20, 1991 (56 FR 41325–31) which gave notice that it intended to test the offset of Federal income tax refunds as a means of collecting Food Stamp Program recipient claims for overissued benefits. That Notice described the test procedures, including notices to individuals, appeal rights and related requirements for State agencies. Readers are directed to that Notice for information about those matters.

In section (a) of the above referenced Notice, the Department advised that the initial test of the offset procedures would be conducted in the States of Alabama and California and might be expanded to other States and extended for subsequent years. The Notice also advised that if other test States were added, appropriate Notice would be published. Accordingly, the Department hereby gives notice that, subject to their meeting certain Internal Revenue Service (IRS), resource and technical requirements, it plans to add the following States to the test: Arkansas, Colorado, Kentucky, Louisiana, Maine, Oregon, and Tennessee. This expanded test will be conducted through calendar year 1993. In all other respects the test will continue to be conducted according to the terms contained in the August 20, 1991 General Notice, which by reference is incorporated here.

The Department also wants to clarify the scope of the offset procedure as described in the third paragraph of section (a) of the August 20, 1991 Notice. As explained below, tax offset may affect certain persons who now reside outside of the States participating in this test if such persons formerly resided in a participating State.

All claims which are subject to collection under this test were established by one of the nine participating States listed in this Notice. However, some members of the households liable for the claims may have moved out of State since these claims were established. Individuals liable for claims for overissued food stamp benefits remain liable for those debts even though they may have moved out of the State which established the claims. The IRS maintains a file of current addresses for taxpayers, and it is these addresses which the IRS provides State agencies and which State agencies must use to notify debtors of their intent to refer the claims to the IRS for offset. Addresses which the IRS provides to States participating in the test may locate individuals who are liable for claims and who are residing in States other than the nine listed in this notice. Accordingly, some individuals whose tax refunds are offset may not reside in one of the States participating in this test.

In section (a) of the prior Notice the Department indicated its intent to evaluate the feasibility and cost-effectiveness of collecting food stamp recipient claims from Federal income tax refunds. From the initial year's operation it is clear that: (1) This procedure may prove feasible for both State agencies and the Department; (2) the start up phase has involved relatively limited resources; and (3) thus far collections have significantly exceeded costs. The Department believes that a second test with additional States participating is necessary to determine if this procedure would be beneficial on a program wide basis. As indicated in the prior Notice, if this test proves successful, the Department intends to incorporate the offset procedures into Food Stamp Program regulations by proposing appropriate regulations in the near future.

The previous Notice provided a period for public comments, and the Department received six comments. Three comments came from State agencies, one from a municipality, one from a Member of Congress, and one from a National advocacy group. Of the six commenters, four supported the test; and of these four, three asked questions about operational matters. These operational matters involved such things as how collections would be reported on Form FNS–209, Status of Claims Against Households, and communications between the Food and Nutrition Service and State agencies about appeals. These matters are technical in nature and are being dealt with in operational guidelines and in training provided State agencies as they begin participating.

The other two comments addressed general Food Stamp Program recipient claims policies which were not modified by the August 20, 1991 Notice. Both expressed concern about referring for offset claims which are delinquent for several years. The provision in the Notice governing the age of claims meets IRS requirements and, the Department believes, is consistent with existing Food Stamp Program policy for collecting established claims. Both commenters also expressed concern that the procedures contained in the Notice did not provide adequate due process to debtors prior to offset. However, all claims to be collected by tax offset have first been established using existing Food Stamp Program procedures, including those relating to notice of the opportunity for a fair hearing on the claim. In addition, as reflected in the Notice, the IRS also requires that notice and an opportunity to appeal the offset be given the debtor prior to the actual offset. This procedure is in addition to those available to debtors when the claim is first established by the State agency.

The Department believes that the tax refund offset program described in the prior Notice is consistent with the requirements of the Food Stamp Act, current Program regulations on claims collection, and pertinent IRS regulations. For these reasons, the Department is not, at this time, modifying the policies or procedures set forth in the prior Notice.

As noted above, the Department plans to publish proposed rules for tax offset in the near future and will provide an additional opportunity for public comment on these policies and procedures at that time. Moreover, the Department is accepting public comment on this Notice for 90 days.

Dated: August 24, 1992.

**Phyllis R. Gault,**

*Acting Administrator.*

[FR Doc. 92–20682 Filed 8–27–92; 8:45 am]

BILLING CODE 3410-30-M

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## Forest Service

## Exemption

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of exemption from appeal, Duncan/Sunflower Timber Sale Environmental Impact Statement, Tahoe National Forest.

**SUMMARY:** The Forest Service is exempting from appeal the decision to sell dead and dying trees that are being killed by the combined effects of severe drought and bark beetles. The environmental analysis for this decision will be documented in the Duncan/Sunflower Timber Sale Environmental Impact Statement. The project objectives are to reduce the fire hazard, to recover the value of the timber, and to rehabilitate the affected area. This area is east of the small rural community of Foresthill, California.

These are higher than normal levels of tree mortality occurring on the Tahoe National Forest due to six years of below-normal precipitation. The greatest effect of the drought has been reduced vigor and weakening of the natural defense mechanisms of over-stocked, young sawtimber stands and older, mature trees, which predisposes them to bark beetle attack. White fir and red fir

makes up between 80 to 95 percent of the present timber stands and are experiencing the greatest mortality. This project area includes the true fir and mixed conifer forest types located between approximately 5,600 and 7,200 feet elevation. The rapid rate of deterioration of true fir requires that it be removed as soon as possible if the timber is to be used, its value recovered and the fire hazard reduced.

The Forest Supervisor determined through preliminary environmental analysis, including public scoping that there is good cause to expedite this project. Signs of mortality are visible on approximately 3,500 acres of the analysis area. The analysis is proposing one timber sale in 1992 using both tractor and helicopter harvest systems. The proposal to salvage in the project area is consistent with the direction provided in the Tahoe National Forest Land and Resources Management Plan, approved by the Regional Forester on June 14, 1990, which includes intensive management practices on commercial forest lands.

There will be no new road construction or reconstruction of existing roads.

Spotted owl surveys have been conducted using the current Regional owl-calling protocol in areas considered to be potential California spotted owl habitat. The salvage proposal does not include any harvest within Spotted Owl Habitat Areas.

Regional entomologists have visited the area and have stated that with the current drought conditions, the over-stocked stands and the numerous acres involved, there is no economical or practical means to control the insect damage. Although salvage harvesting will not control the mortality caused by insects, it would recover valuable timber that would otherwise deteriorate and create a severe fire hazard. The excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

It is important to remove the dead and dying timber before it deteriorates and causes a value loss. Through timber sales, fuels can be treated (or deposits collected to treat it) to a degree that could not be funded otherwise. It is important to harvest the dead and dying timber when there is the potential to get the highest return to the government and to collect Knutsen-Vandenburg (K–V) funds to restore forest values being affected by extensive tree mortality. The salvage sales will also stimulate the local rural economy that has been impacted by reduced timber harvests.

The Record of Decision is expected to be signed the latter part of August 1992. If the proposed salvage timber sale is delayed because of appeals (delays can go from 100 days up to six months with an additional 15–20 days for discretionary review by the Chief of the Forest Service), it is unlikely that the project could be implemented during the 1992 normal operating season and access would be difficult for a portion of the winter operating season. This would result in substantial monetary loss to the Government and reduced monies returned to the Counties. Any unnecessary delays of the proposed salvage sales could delay a portion of the harvesting until the 1993 logging season. Because of the small-sized timber involved and its deterioration rate, any unnecessary delays could cause the value of the timber to decrease.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision to harvest and restore lands affected by drought-induced timber mortality that will be documented in the Record of Decision for the Duncan/Sunflower Timber Sale Environmental Impact Statement on the Foresthill Ranger District, Tahoe National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, document public involvement, and address the issues raised by the public.

Revised 36 CFR 217 appeal regulations have been proposed. Project decisions made after revised regulations become effective would be subject to the revised regulations.

**EFFECTIVE DATE:** This decision will be effective August 28, 1992.

**FOR FURTHER INFORMATION CONTACT:** Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648; or to John H. Skinner, Forest Supervisor, Tahoe National Forest, PO Box 6003, Nevada City, CA 95959, (916) 265–4531.

**SUPPLEMENTARY INFORMATION:** Pursuant to 40 CFR 1501.7, scoping was conducted to determine the issues and concerns to be addressed in the Final Environmental Impact Statement and Record of Decision. Letters were mailed to various agencies, permittees, environmental organizations, timber industry, local private property owners, and other known interested parties. Notices were sent to the local newspapers discussing the project proposal. Copies of the public involvement letters and responses are on file at the Foresthill Ranger District Office. The project files and related maps also are available for public review at Foresthill Ranger District Office, 22830 Foresthill Road, Foresthill, CA 95631.

The proposal is not expected to adversely affect snag-dependent wildlife species. Sufficient numbers of hard snags of appropriate size for wildlife and protection of soft snags from potential damage during harvest activities will occur in compliance with management requirements. No Wild and Scenic Rivers or Wildernesses would be affected by salvage harvesting. Harvesting would occur in a former RARE II area; the area was released for multiple-use management in 1984 with the passage of the California Wilderness Act. Mitigation measures for streamside management zones, meadows, soil productivity, and fuels will follow the Forestwide Standards and Guidelines. Rehabilitation and restoration measures will be implemented for watershed protection, erosion prevention, and fuels reduction. Sensitive areas such as archaeological sites, California spotted owl nest sites, should they be found, or sensitive plant areas, should they be identified, will be avoided.

Dated: August 21, 1992.

**Dale N. Bosworth,**

*Reviewing Officer, Deputy Regional Forester.*

[FR Doc. 92–20681 Filed 8–27–92; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Export Administration Bureau

**[Docket Number 0120-01]**

### Iran Air, Mehrabad Airport Tehran, Iran, Respondent; Final Order

On July 22, 1992, Administrative Law Judge Hugh J. Dolan (ALJ) issued an Order (Recommended Order) in this proceeding. In accordance with section 13(c) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991)) (the Act),[1] and section 788.23 of the Export Administration Regulations (currently codified at 15 C.F.R. parts 769–799 (1991)) (the Regulations), the Recommended Order must be affirmed, modified, or vacated by the Acting Under Secretary for Export

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 F.R. 40373, October 2, 1990) invoked the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)) (IEEPA), continuing in effect the Export Administration Regulations and to the extent permitted by law, the provisions of the Act.

Administration (Under Secretary) within 30 days from her receipt of the Recommended Order.

**Statement of the Case**

On October 18, 1990, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), issued, and filed with the Office of the Administrative Law Judge, a one-count charging letter against Iran Air. The charging letter alleged that, on October 21, 1985, Iran Air caused U.S.-origin Fluke signal generators and frequency counters [2] to be reexported from the Federal Republic of Germany to Iran without obtaining from the Department the reexport authorization required by § 774.1 of the Regulations. The charging letter alleged that, in causing the unauthorized reexport of U.S.-origin equipment, Iran Air violated § 787.2 of the Regulations.[3]

Following its receipt of the charging letter, Iran Air conducted extensive discovery of the Department, several aspects of which led to disagreements between counsel for Iran Air and counsel for the Department, requiring the intervention of the Administrative Law Judge (ALJ).[4] When discovery and other preliminary matters were concluded, the ALJ set the matter for a hearing, as Iran Air had requested and to which it was entitled.

The hearing was held on May 8, 1991, in Washington, DC. After the hearing, the parties filed post-hearing briefs and replies. After considering the record, the ALJ issued his Recommended Order on October 31, 1991 (First Recommended Order). The ALJ made several findings of fact with which the Department agreed, but also found that the Department did not meet its burden of proof that Iran Air committed the violation alleged and therefore recommended dismissal of the charge against the company. In making that decision, the ALJ reached certain findings of fact and conclusions of law with which the Department took issue. In particular, the Department disagreed with the ALJ's conclusion that "knowledge" is an essential element of proof for the imposition of civil penalties in a case brought pursuant to § 787.2 of the Regulations.

The Department urged the Under Secretary to vacate much of the First Recommended Order, and to remand the matter to the ALJ for further proceedings. On November 26, 1991, I issued an Order that was, for the most part, consistent with the views of the Department. Among other things, I specifically ruled that "knowledge" is not a required element of proof in establishing a violation of § 787.2 of the Regulations. I remanded the matter to the ALJ, directing him to determine the charge against Iran Air "in a matter not inconsistent with" my determination concerning the "knowledge" issue.

Despite that explicit instruction, the ALJ, on June 15, 1992, issued a Decision and Order on Remand from the Order of the Acting Under Secretary for Export Administration (Recommended Order on Remand), wherein the ALF held again that "knowledge" is an element of proof for allegations of violations of § 787.2 of the Regulations.

In the ALJ's Recommended Order on Remand, the ALJ also commented on his authority and the authority of the Under Secretary to act in enforcement cases in light of the lapse of the Act. He opined that the use of an ALJ is no longer statutorily mandated and that, because IEEPA does not provide for or authorize review by an Under Secretary, the actions of a person purporting to act in that capacity "would appear to be" *ultra vires*.

In its Initial Submission Concerning Recommended Order on Remand, the Department objected to the ALJ's Recommended Order on Remand, and urged the Under Secretary to vacate the entire Recommended Order. By order of July 14, 1992, I vacated the entire Recommended Order on Remand, and remanded the case to the ALJ with explicit instructions to rule on whether the facts that have been established are sufficient to sustain the allegation of the charging letter, *i.e.*, that Iran Air violated § 787.2 of the Regulations, a strict liability provision.

In response, on July 22, 1992, the ALJ issued a cryptic, one-page Order, ruling that "the record is made. The case should promptly be the subject of final Agency action." The ALJ stated:

> [T]he statement of facts set forth at pp. 2–4 in the Decision and Order of October 31, 1991, with the other findings of record * * * and in footnote 15 of the Decision and Order After Remand, constitute a complete fulfillment of this adjudication officer's responsibilities. Further dialogue or consideration of the case would only serve to unnecessarily postpone the already excessive belaboring of the essentially legal, not the *factual dispositive issues which have been considered and decided* (emphasis added).

In view of the ALJ's most recent Order, this case has now reached an unsatisfactory procedural posture. Despite my *two* orders setting forth the law that the ALJ must apply in this case concerning the strict liability nature of the Regulations, and despite my instructions that the ALJ must apply that law to the facts as found by the ALJ,[5] and despite *three* recommended orders from the ALJ, the ALJ is apparently unwilling to state clearly and directly whether Iran Air violated the Regulations, as charged, as is required of him under section 788.16(b)(2) of the Regulations, which states:

> The [recommended] decision shall include recommended findings of fact, *conclusions of law, and findings as to whether there has been a violation of the Act*, the regulations or any order, license or other authorization issued under the Act (emphasis added).

Essentially, it appears that I have but two options. My first option is to remand, yet again, the case to the ALJ, with instructions. I find that this course of action would be futile. The ALJ has already stated that, in his view, he has completely fulfilled his "adjudication officer's responsibilities."

The other option is for me to review the entire record and to apply the law—as I have set it forth in this proceeding—to the ALJ's findings of fact, all of which have either been affirmed in my November 26, 1991 Order or stood uncontested by Iran Air.

I choose the latter option. Indeed, the ALJ himself has urged that "the case should promptly be the subject of final agency action." It is true that, in *Dart* v. *United States*, 848 F.2d 217 (D.C. Cir. 1988), the Court of Appeals for the District of Columbia Circuit held that, pursuant to section 13(c)(1) of the Act, the Under Secretary may only "affirm, modify or vacate" the recommended orders of the ALJ.[6] And, in this case, the recommended order of the ALJ that is before me for review is incomplete.

Even so, in view of all of the above, I find that the second option is the only reasonable alternative. In his most recent order, the ALJ has specifically referred to the findings of fact he made in the October 31, 1991 Recommended Order at pp. 2–4, and has therefore

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[2] During the course of discovery, the Department decided not to pursue the claim concerning the frequency counters.

[3] At the time the alleged violation occurred, the Regulations appeared in part 300 of title 15 of the Code of Federal Regulations.

[4] The ALJ made findings that the Department failed to comply with certain discovery orders. I have carefully reviewed the entire record of the proceedings. I find, as I have previously found, that there is simply no evidence in the record that the Department failed to comply with discovery orders. To the extent that the ALJ made findings to the contrary, they were, in my Orders of November 26, 1991 and July 14, 1992, and hereby are, expressly vacated.

[5] It should be emphasized that my instructions to the ALJ on remand left him unfettered to determine the ultimate question of whether or not the alleged violation occurred.

[6] This statutory provision is reflected in § 788.23(c) of the Regulations. 15 CFR 788.23(c).

effectively incorporated them into his July 22, 1992 Order. I choose to accept the findings of fact that the ALJ made based on the evidence of record and apply the law as set forth by me to those facts. Thus, I will not "vacate" the Recommended Order; however, I will "modify" the Recommended Order in regards to the sanctions. Although perhaps not the ideal solution, case law suggests that this approach is justifiable:

> [A]lthough the Administrative Procedure Act requires an agency to include in its decision a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented," * * * we are not disposed to overturn a sound decision if the agency's path, although not ideally clear, may reasonably be discerned.

*Benmar Transport & Leasing Corp.* v. *Interstate Commerce Commission*, 623 F.2d 740, 746 (2d Cir. 1980).[7]

This being said, and turning to the merits of the case, the charging letter alleged that Iran Air caused U.S.-origin Fluke signal generators to be reexported from the Federal Republic of Germany to Iran without the reexport authorization required, in violation of § 787.2 of the Regulations. Following a full hearing on the merits and the taking of the parties' evidence, in the Decision and Order of October 31, 1991, at pp. 2–4, the ALJ made these findings:

1. Iran Air is an international air carrier with its principal place of business in Tehran, Iran.
2. Iran Air placed a purchase order with Fluke (Germany) for signal generators. The purchase order contained the language "Please ship to Iran Air Frankfurt Airport for reforwarding to Tehran, Iran."
3. Fluke (Germany) acknowledged receipt of the order and set forth final terms of price and delivery.
4. Iran Air accepted the counteroffer of Fluke (Germany) by telex dated September 12, 1985.
5. Fluke (Germany), however, did not have the requested signal generators in stock and therefore requested the items from Fluke (Holland).
6. Because Fluke (Holland) also did not have the requested items, it transmitted the order to John Fluke Mfg. Co. in Everett, Washington, U.S.A. (Fluke USA).
7. To fill the order, Fluke USA sent three signal generators to Fluke (Holland), which then sold and shipped them to Fluke (Germany).
8. The invoices from Fluke USA to Fluke (Holland) and from Fluke (Holland) to Fluke (Germany) each contained destination control statements that read as follows: "These commodities were licensed for ultimate destination Fed. Rep. Germany. Diversion contrary to United States law is prohibited."
9. On October 17, 1985, Fluke (Germany) delivered the signal generators to Iran Air.
10. The invoice from Fluke (Germany) to Iran Air did not contain the destination control statement that diversion contrary to U.S. law was prohibited.
11. Shortly thereafter, Iran Air shipped the items from Germany to Tehran, Iran.
12. Iran Air acknowledged the receipt of the signal generators in Iran.
13. At the time the signal generators were shipped by Iran Air from Germany to Iran they were classified under Commodity Control Classification Number (ECCN) 1531A for national security reasons.
14. No reexport authorization was granted for this shipment from Germany to Iran.

While the ALJ made the foregoing findings of fact,[8] he is apparently unwilling to clearly and directly apply the law as given by the Under Secretary to the facts that he has found, and has not made the statement that, "I find the violation alleged in the charging letter has been proven." Nevertheless, the numerous findings of fact that the ALJ actually did make based upon the evidence of record, the law given by me on the issue of the strict liability nature of the Regulations, and the ALJ's own statements that "the record is made" and that the "case should promptly be the subject of final Agency action," point to a simple conclusion: the ALJ has found that Iran Air caused an unauthorized reexport of U.S.-origin Fluke signal generators from West Germany to Iran, in violation of § 787.2 of the Regulations, as alleged in the charging letter. I affirm this conclusion.

Section 787.2 of the Regulations provides: "No person may cause * * * the doing of any act prohibited, or the omission of any act required by the Export Administration Act, or any regulation, order or license issued under the Act." I have already expressly ruled that "knowledge" is not an element of a violation under § 787.2. Therefore, the Department was not required to allege or prove that Iran Air had any particular knowledge of the Regulations, that Iran Air had any particular knowledge of the ECCN status of Fluke model 6060A signal generators, or that Iran Air had "knowing" intent to violate the Regulations, in order to sustain the allegations of the charging letter. Thus, the only consideration is whether, based upon the facts of record, Iran Air caused the unlawful reexport, as the Department alleged.

"Cause" is not specifically defined in the Act or the Regulations, but is a word of very broad import and its meaning is generally known. In the absence of a regulatory definition, general rules of construction instruct the tribunal to apply the plain, common, or ordinary definition. See 73 Am. Jur. 2d, *Statutes*, section 206 (1974). The word "cause" in its simplest sense means "to bring about." *United States* v. *Kenofskey*, 243 U.S. 440 (1917).

I find that the facts established inescapably lead to the conclusion that Iran Air did cause an unauthorized reexport: Iran Air's Head Supply Office in Tehran originated the purchase order for the Fluke signal generators, calling for them to be shipped to Iran, thereby setting in motion the entire chain of events that brought about the unauthorized reexport, and Iran Air carried the signal generators on an Iran Air aircraft from Germany to Iran. All of this took place without the U.S. reexport authorization that was required, but that had not been obtained by, or on behalf of, Iran Air.

The reference in the ALJ's most recent order to footnote 15 of his Recommended Order on Remand lends further support to this conclusion. In that earlier order, although the ALJ was not willing to reach the conclusion of law urged by the Department—that Iran Air violated § 787.2 of the Regulations—he did state that, "under the Agency's theory" of the case, "Respondent would have warranted no more than a warning * * *." In effect—given the legal standard that I have articulated to the ALJ—the ALJ stated that the case

[7] "[T]he requirement of factual findings is met if the written decision of the hearing panel or the record of the hearing sets out clearly the grounds for its action so that appellate bodies and reviewing courts are able to ascertain whether the decision is arbitrary, capricious or not supported by the reasonable, substantial and probative evidence on the record considered as a whole." *Farrett* v. *Matthews*, 474 F. Supp. 594, 599 (N.D. Ala. 1979). See also, *Gilbertville Trucking Company* v. *United States*, 196 F. Supp. 351 (D. Mass. 1961), *aff'd* 371 U.S. 115 (1962).

[8] The ALJ found that Iran Air shipped the signal generators from Germany to Iran. However, he did not specify the date of that shipment. I find that the shipment occurred on October 21, 1985, as evidenced by Iran Air air waybill —096–8222–5813, referencing Iran Air's purchase order —81591. (Gov. Ex. 10.) This finding establishes that the commencement of this proceeding, initiated by the October 18, 1990 charging letter, was timely, *i.e.*, within the five-year statute of limitations that applies to the enforcement of the Act and Regulations.

Although the ALJ found that "no reexport authorization was granted for this shipment from Germany to Iran," the ALJ did not expressly find that reexport authorization was required, in October 1985, to reexport Fluke signal generators, model 6060A, to Iran. In a certified licensing determination made a part of the record (Gov. Ex. 1), William L. Clements, Director of the Office of Technology and Policy Analysis, stated that Fluke signal generators, model 6060A, were classified as ECCN 1531A and "required a validated license for export or reexport authorization to Iran in October 1985." This was the only fact specifically contested by Iran Air before me. The other facts found by the ALJ were not contested by Iran Air, and I find each of them to have been established.

should be disposed of with a warning letter.

I agree with the ALJ's implicit acceptance of the "Agency's theory." However, I disagree with his statement that the case deserves no more than a warning, and I modify it as hereinafter set forth.

**Discussion**

Because several pivotal issues were raised during the course of this proceeding, I am setting forth for the public record key holdings that I made during the course of this proceeding.[9]

*1. "Knowledge" is not an essential element of proof for the imposition of civil penalties pursuant to § 787.2 of the Regulations.*

The Department argued, prior to the first remand in this case, that the plain language of § 2410 describes three different types of export violation; the first two ("knowing" and "willful") have state of mind requirements, while the third ("civil") has no state of mind requirement. This view, the Department argued, is the only view which is consistent with all of the following: the plain language of § 2410; the Department's 1981 regulatory amendments, wherein "knowledge" was eliminated as an element in § 787.2 cases; and the Department's practice in charging violations pursuant to § 787.2. I expressly agreed with this view in my first remand order, and I expressly reaffirmed it in my second remand order. In support thereof, I have made the following points.

First, the plain language of the Act is directly contrary to the position taken by the ALJ. Section 11 of the Act establishes the various penalties that apply to violations of the Act. Section 11(a) of the Act provides:

> Except as provided in subsection (b) of this section, whoever *knowingly* violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both (emphasis added).

Section 11(b)(1) provides, in pertinent part:

> Whoever *willfully* violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with *knowledge* that the exports involved will be used for the benefit of or that the destination or intended destination of the goods or technology involved is any controlled country or any country to which exports are controlled for foreign policy purposes—
>
> (A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and
>
> (B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both (emphasis added).

Section 11(c)(1) (entitled "Civil Penalties; Administrative Sanctions") provides, in pertinent part:

> The Secretary of Commerce * * * may impose a civil penalty not to exceed $10,000 for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each violation involving national security controls imposed under section 5 of this Act * * * may not exceed $100,000.

Section 11 demonstrates congressional intent to provide for an array of penalties against persons who have violated the Act.[10] Anyone who "knowingly violates" the Act is subject to one criminal fine; anyone who "willfully violates," with "knowledge" of certain uses and destinations, is subject to another, more severe, criminal fine; and administrative sanctions are applicable to anyone who violates the Act or the Regulations. Significantly, Congress did not include any *scienter* requirement in order for the Secretary to impose an administrative sanction. Despite the unambiguous language of the Act, however, the ALJ interpreted the "knowingly violates" language in section 11(a) as also applying to the civil penalty provisions of section 11(c). In part, the ALJ's confusion may result from the fact that Congress has provided for separate criminal penalties under the Act. There simply is no basis for concluding that section 11(a) or section 11(b) establishes a knowledge requirement for the imposition of administrative sanctions pursuant to section 11(c)(1) of the Act.

Second, the ALJ's reliance on *Spawr Optical Research, Inc.* v. *Baldrige*, 649 F. Supp. 1366 (D.D.C. 1986), was misplaced. Simply put, *Spawr* did not turn on the question of the proof necessary to establish an administrative violation. Rather, *Spawr* dealt with how and whether a prior *criminal* conviction that necessarily encompassed an element of "knowledge" could be used against a respondent in a subsequent administrative proceeding by way of collateral estoppel.

Third, section 11(b)(5) of the Act (50 U.S.C.A. app. 2410(b)(5)) provides: "Nothing in this subsection [Section 2410(b)] or subsection (a) [Section 2410(a)] shall limit the power of the Secretary to define by regulations violations under this Act." Thus, it is within the Secretary's express statutory authority, notwithstanding the knowing or willfulness elements contained in section 11(a) and 11(b)(1) of the Act, to define, by regulation, what activities constitute administrative violations of the Act. The Secretary has carried out this responsibility in part 787 of the Regulations.

Before 1981, § 387.2 of the Regulations (the predecessor section to § 787.2)[11] contained a "knowing" element. See, 15 CFR 387.2 (1980). In 1980, however, the word "knowingly" was deleted from § 387.2 of the Regulations when then-part 387 of the Regulations was amended. 45 FR 84021 (1980).

The deletion of the word "knowingly" from section 387.2 of the Regulations in 1980 was not an inadvertent mistake. This is demonstrated by the fact that, at the same time, the Department also deleted any knowledge requirement from then-section 387.6 of the Regulations (compare 15 CFR 387.6 (1980) with 15 CFR § 387.6 (1981)) and then-section 387.10 of the Regulations (compare 15 CFR 387.10 (1980) with 15 CFR 387.12 (1981)).[12]

The clear intent and effect of these several amendments to then-part 387 (now part 787) of the Regulations was to delete any requirement that "knowledge" be proven as an element of the offense, thereby making now—§§ 787.2, 787.6 and 787.12 of the Regulations strict liability offenses in administrative proceedings conducted before an ALJ. As is made clear in section 11(b)(5) of the Act, it was well within the Secretary's prerogatives to do so.

Fourth, this result is consistent with the long-standing judicial acknowledgement that even criminal acts can be prosecuted without a "knowledge" element. At common law, the concept of "crime" embraced an element of an evil-meaning intent, known as *mens rea*. In more recent times, a completely different category of crimes has arisen under modern

[9] While other decisions were made in this case, they generally involve the admissibility of certain evidence or the exclusion of certain testimony. Because these decisions do not have general applicability, they are not repeated in my final order.

[10] It is not at all unusual for Congress to provide for both criminal and administrative penalties in the same statute. See, *e.g.*, International Emergency Economic Powers Act, 50 U.S.C.A. 1705 (a) and (b).

[11] In 1988, the Regulations were renumbered from parts 368–399 to parts 768–799 of title 15 of the Code of Federal Regulations.

[12] Section 387.10 was renumbered section 387.12 by the 1980 amendments to part 387. See, 45 FR 84021 (1980).

statutes. *Morissette* v. *United States*, 342 U.S. 246 (1952). These are crimes that include no mental element, such as knowledge or intent, but consist only of forbidden acts or omissions.

Finally, § 787.2 of the Regulations, on its face and as applied, does not require that the Department allege or prove that Iran Air had any particular knowledge of the Regulations, that Iran Air had any particular knowledge of the ECCN status of the Fluke model 6060A signal generators, or that Iran Air had intent to violate the Regulations, in order to sustain the allegations of the charging letter. The Department has long maintained that, with the 1980 amendments to the referenced sections, the violations defined in those sections are strict liability offenses. The record of administrative proceedings initiated by the Department since the 1980 amendments clearly establishes that, contrary to the assertions of the ALJ, the Iran Air case is only one of many cases where the Department has chosen to charge a respondent administratively for a violation under section 787.2 of the Regulations and has not alleged that the action was taken with knowledge.

For example, in *In the Matter of Herman Kluever*, 56 FR 14916 (April 12, 1991), the Department charged an administrative violation of § 787.2 of the Regulations, and did not allege or prove "knowledge." In fact, the Department's practice has been to charge violations on a strict liability basis, except in those instances in which the Department is also alleging that the respondent had the requisite knowledge to sustain a separate administrative charge under § 787.4(a) of the Regulations.[13]

It is entirely consistent with the provisions of the Act for the Secretary to provide, by regulation, for strict liability offenses. It is not inconsistent with this authority for the Department, in appropriate cases, to charge that a particular violative act was also taken with "knowledge," thereby subjecting the offender to a charge of violating section 787.4(a) of the Regulations, in addition to any other charge. Accordingly, the Act does not require proof of knowledge in order to impose civil sanctions and the Regulations properly establish certain strict liability offenses in administrative proceedings heard by the ALJ.

*2. The ALJ correctly determined that the statute of limitations does not bar this proceeding.*

The ALJ held that the statute of limitations did not bar this proceeding concerning the Fluke signal generators. The ALJ ruled on this issue in response to arguments by Iran Air that the October 18, 1990 charging letter was not served on Iran Air until October 24, 1990.

The charging letter alleged:

> On October 21, 1985, Iran Air caused U.S.-origin Fluke signal generators and frequency counters to be reexported from the Federal Republic of Germany to Iran without obtaining from the Department the reexport authorization required by § 774.1 of the Regulations. In causing the doing of an act prohibited by the Regulations, Iran Air violated § 787.2 of the Regulations with respect to this shipment.

As a general matter, the Department applies the five-year statute of limitations contained in 28 U.S.C. § 2462 to enforcement of the Act and Regulations. The charging letter alleged that, on October 21, 1985, Iran Air caused U.S.-origin Fluke signal generators to be reexported from the Federal Republic of Germany to Iran without obtaining from the Department the reexport authorization required. The statute of limitations would bar this proceeding if it were brought after October 21, 1990. However, the Department commenced this proceeding by filing a charging letter with the ALJ on October 18, 1990, within the five-year period.

Iran Air argued that this action was not timely commenced by "service" on Iran Air because Iran Air was not "served" until October 24, 1990. Iran Air's position is erroneous because this administrative action is not deemed commenced at the time of "service." Rather, section 788.4(a) of the Regulations provides that "The Office of Export Enforcement * * * may begin administrative proceedings under this part by issuing a charging letter in the name of the Department * * *." This rule is analogous to Rule 3 of the Federal Rules of Civil Procedure, which states: "A civil action is commenced by filing a complaint with the court."

Filing a complaint in federal district court tolls the statute of limitations where the action is to enforce a federally-created right, even though process is not effected until after expiration of the statutory period. *West* v. *Conrail*, 481 U.S. 35 (1987). *See generally*, Moore's Federal Practice, Vol. 2, § 3.09[2], Matthew Bender (1991).

Accordingly, Iran Air's defense that this proceeding was brought too late is erroneous insofar as the Fluke signal generators are concerned, because the Department both issued, and filed with the ALJ, the charging letter making that allegation on October 18, 1990. The Department conceded that the statute of limitations was a defense to the charged violation as to the frequency counters which, it appears, were flown to Iran by Iran Air on or about February 7, 1985, more than five years before the commencement of this proceeding. I affirm the ALJ's finding that this proceeding was timely brought insofar as the Fluke signal generators are concerned, and that this proceeding is not barred by the statute of limitations.

*3. The ALJ correctly concluded that this proceeding is not contrary to the Algiers Accords.*

Iran Air maintained that the imposition and enforcement of export controls upon Iran Air by the United States, such as the one at issue in this case, is contrary to the United States's declared international obligations to Iran under the General Principles of the Algiers Declaration. The ALJ concluded that the Algiers Accords do not preclude the United States Government's right to bring an action against those who allegedly violate the Act; I affirm the ALJ's conclusion.

*4. Effect of the lapse of the Export Administration Act.*

The ALJ's Recommended Order on Remand comments on his authority and the authority of the Under Secretary to act in enforcement cases in light of the lapse of the Act. He opines that the use of an ALJ is no longer statutorily mandated and that, because IEEPA does not provide for or authorize review by an Under Secretary, the actions of a person purporting to act in that capacity "would appear to be" *ultra vires*.

On May 15, 1992, the General Counsel of the Department of Commerce responded to the ALJ's inquiries concerning both the ALJ's and the Under Secretary's authority to act in enforcement proceedings in light of the lapse of the Act on September 30, 1990. The General Counsel affirmed the authority of both the ALJ and the Under Secretary to act in cases arising under the Act and Regulations despite the lapse of the Act. I concur with the General Counsel's opinion. Accordingly, all references in this proceeding made by the ALJ which purport to question either the ALJ's or the Under Secretary's authority to act during the lapse of the Act, or the legitimacy of proceedings brought or pending under Part 788 of the

[13] Section 787.4(a) of the Regulations specifically requires "knowledge" to establish a violation of the section. There have been a number of proceedings in which the Department alleged that a respondent committed a particular violation and that the violation was committed with knowledge or reason to know that a violation had occurred, was about to occur, or was intended to occur in connection with the transaction. In such instances, the Department charges that the respondent violated two separate regulatory provisions, *e.g.*, that a violation of both § 787.2 and § 787.4(a) occurred in the same transaction.

Regulations, are hereby expressly vacated.

**Sanctions**

Having found that Iran Air committed the violation alleged, I cannot accept the ALJ's recommended sanction of a "warning" and so modify it as described below.

The Department has consistently sought the imposition of significant sanctions against Iran Air for its violation of the Regulations. Specifically, the Department has continued to urge that Iran Air be assessed a civil penalty of $100,000 for the violation of national security controls that it committed, the maximum civil penalty available under § 788.3(a)(4) of the Regulations. In addition, the Department recommends that all of Iran Air's export privileges be denied for a period of 24 months, with 21 months suspended. I agree with the Department's recommendation.

Moreover, the Department recommends that, to assure full and timely payment of the civil penalty, which is to be due within 30 days after the entry of this Order, the suspension of 21 months of the denial period be expressly made contingent upon Iran Air's timely payment of the full civil penalty imposed. Thus, if Iran Air should fail or refuse to pay, in a timely manner, the full amount of the civil penalty imposed against it, the suspended portion of the denial period would be reinstated.[14] I agree with this recommendation, as well.

In view of the foregoing,

*Therefore, it is ordered*:

1. A civil penalty in the amount of $100,000 is assessed against Iran Air, to be paid in full within 30 days from the date of entry of this Order. Payment shall be made to the Department in the manner specified in the attached instructions.

2. All outstanding individual validated licenses in which Iran Air appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Iran Air's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

3. Iran Air, with its main office located at Mehrabad Airport, Tehran, Iran, and all its successors, assigns, officers, partners, representatives, agents and employees, for a period of 24 months from the date of entry of this Order, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

4. As authorized by § 788.3(b) and 788.16(c) of the Regulations, the denial period herein provided for against Iran Air shall be suspended for a period of 21 months beginning three months from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Iran Air has committed no violation of the Act or any regulation, order or license issued under the Act. The suspension of this 21-month portion of the denial period is contingent upon Iran Air's timely payment to the Department of the full amount of the civil penalty, as provided for herein. If Iran Air fails or refuses to pay the civil penalty imposed against it, the suspended portion of the denial period will be reinstated.

5. After notice and opportunity for comment, any person, firm, corporation, or business organization related to Iran Air by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

6. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

7. Pursuant to § 788.20(c)(1) of the Regulations, the charging letter, Iran Air's answer, and this final Order disposing of the case shall be made available to the public. A copy of this Order shall be served upon Iran Air and published in the **Federal Register**.

The Recommended Order of the ALJ dated July 22, 1992, is modified as set forth in this Final Order. This constitutes the final agency action in this matter.

Dated: August 21, 1992.

**James M. LeMunyon,**

*Acting Under Secretary for Export Administration.*

**In the Matter of Iran Air, Respondent; Order**

[Docket Nos. 0120–01]

The statement of facts set forth at pp. 2–4 in the Decision and Order of October 31, 1991, with the other findings of record and the alternative dispositions set forth therein and in footnote 15 of the Decision and Order After Remand, constitute a complete fulfillment of this adjudication officer's responsibilities. Further dialogue or consideration of the case would only serve to unnecessarily postpone the already excessive belaboring of the essentially legal, not the factual dispositive issues which have been considered and decided.

Dilatory action, resulting in multi-year delays, such as is involved *In the Matter of Town & Country Plastics*, Docket No. AB–1–89, which has been awaiting Secretarial action since September 21, 1990, should not be repeated here. The Secretarial citation to, and reliance

[14] Iran Air is an Iranian entity. The Department's ability to collect a civil penalty against Iran Air is questionable. Therefore, conditioning the continuation of Iran Air's U.S. export privileges on the complete and timely payment of any civil penalty is appropriate.

upon, provisions of the expired Export Administration Act is incomprehensible. (See Recommended Decision, Docket Numbers OEE-1-92 and OEE-2-92 of this date.) The record is made. The case should promptly be the subject of final Agency action.

Dated: July 22, 1992.

**Hugh J. Dolan,**

*Administrative Law Judge.*

[FR Doc. 92-20534 Filed 8-27-92; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

**[Project I.D. No. 06-10-93001-01]**

### Business Development Center Applications: Oklahoma City MBDC

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $165,000 in Federal funds. An audit fee of $4,125 has been added to the Federal amount. The total funding breakdown is as follows: $169,125 Federal and $29,846 non-Federal for a total of $198,971. The period of performance will be from January 1, 1993 to December 31, 1993. The MBDC will operate in the Oklahoma City, Oklahoma geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget period. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance, with OMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD-511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

**CLOSING DATE:** The closing date for applications is September 30, 1992. Applications must be postmarked on or before September 30, 1992.

**Note:** Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75227.

**FOR APPLICATION KIT OR OTHER INFORMATION CONTACT:** Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara, (214) 767-8001.

Requests for application kit must be in writing.

A pre-bid conference will be held on September 14, 1992 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: August 21, 1992.

**Melda Cabrera,**

*Regional Director, Dallas Regional Office.*

[FR Doc. 92-20802 Filed 8-27-92; 8:45 am]

BILLING CODE 3510-21-M

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## National Institute of Standards and Technology

**[Docket No. 920534-2134]**

**RIN 0693-AA73**

## Approval of Federal Information Processing Standards Publication 173, Spatial Data Transfer Standard (SDTS)

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS publication 173, Spatial Data Transfer Standard.

**SUMMARY:** On April 11, 1991, notice was published in the **Federal Register** (56 FR 14686) that a Federal Information Processing Standard for SDTS was being proposed for Federal use.

NIST reviewed written comments submitted by interested parties and other available material. On the basis of this review, NIST recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

**EFFECTIVE DATE:** This standard is effective February 15, 1993. The transition period begins on the effective date and continues for twelve (12) months thereafter. Use of FIPS SDTS is mandatory for Federal agencies one year from the effective date.

**ADDRESSES:** Interested parties may purchase copies of this standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Henry Tom, (301) 975-3271, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: August 24, 1992.

**John W. Lyons,**

*Director.*

Federal Information Processing Standards Publication 173

(Date)

Announcing the Standard for Spatial Data Transfer Standard (SDTS)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. Name of Standard. Spatial Data Transfer Standard (SDTS) (FIPS PUB 173).

2. Category of Standard. Software Standard, Information Interchange.

3. Explanation. This standard provides specifications for the organization and structure of digital spatial data transfer, definition of spatial features and attributes, and data transfer encoding. The purpose of the standard is to promote and facilitate the transfer of digital spatial data between dissimilar computer systems.

Work on a national spatial data transfer standard was initiated by the National Committee for Digital Cartographic Data Standards, American Congress on Surveying and Mapping in 1982 to develop a comprehensive set of data exchange standards for the profession. In 1985, the Standards Working Group of the Federal Interagency Coordinating Committee on Digital Cartography also began work on spatial data exchange standards. During 1987, the results of these parallel efforts were merged by the Digital Cartographic Data Standards Task Force into the proposed Digital Cartographic Data Standard, published as a special issue of The American Cartographer in January 1988. Subsequent testing, modification, and refining of the specifications were done by the Spatial Data Transfer Standard Technical Review Board. These efforts have resulted in this Federal Information Processing Standard (FIPS) for Spatial Data Transfer Standard (SDTS).

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Interior, United States Geological Survey (USGS), National Mapping Division.

Questions concerning this standard are to be addressed to the Maintenance Agency: SDTS Program, National Mapping Division, United States Geological Survey (USGS), 510 National Center, Reston, VA 22092. National Mapping Division, USGS maintains a FIPS Spatial Features Register for part 2 of SDTS. Users of this standard who need to be notified of changes that occur prior to the next publication of the standard must complete the Change Request Form provided in this publication and send it to: Standards Processing Coordinator (ADP), Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. The NIST will issue Change Notices on an as-needed basis.

6. Related documents. A list of references is contained in section 1.3 and annex F of part 1 of the specifications.

7. Objectives. The objectives of the SDTS are to:

—Provide a common mechanism for transferring digital spatial information between dissimilar computer systems, while preserving information meaning, and minimizing the need for information external to this standard;

—Provide, for the purpose of transfer, a set of clearly specified spatial objects and relationships to represent real world spatial entities, and to specify the ancillary information necessary to accomplish the transfer;

—Provide a transfer model that will facilitate the conversion of user-defined to standardized set of objects, relationships, and information.

8. Applicability.

a. This standard is for use in the acquisition and development of government applications and programs involving the transfer of digital spatial data between dissimilar computer systems.

b. The use of the FIPS SDTS applies when the transfer of digital spatial data occurs or is likely to occur within and/or outside of the Federal government.

c. The use of the FIPS SDTS does not apply to the transfer of digital geocoded data files which are not intended to represent spatial entities as digital geographic or cartographic features.

d. FIPS SDTS is not intended to facilitate product distribution of spatial data in a form designed for direct access by application software specific to a particular data structure, class of computer platform, or distribution media.

e. Nonstandard features should be used only when the needed operation or function cannot be reasonably implemented with standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the interchange of digital spatial data and future conversions more difficult and costly.

9. Specifications. The FIPS SDTS, in three parts, provides specifications for the organization and structure of digital spatial data transfer, definition of spatial features and attributes, and data transfer encoding. All three parts are required for Federal Government implementations of this standard.

FIPS SDTS implementations not requiring full functionality are designated as application profiles. Application profiles, requiring all three parts of the FIPS SDTS, are limited subsets designed for use with a specific type of data and/or application.

The SDTS Profile for Geographic Topological Vector Data, is currently under development by the Standards Working Group, Federal Geographic Data Committee (FGDC), formerly the Federal Interagency Coordinating Committee on Digital Cartography (FICCDC).

Specifications of this FIPS have the following characteristics:

a. Ability to transfer vector, raster, grid and attribute data and other ancillary information;

b. Common set of terminology and definitions for spatial features;

c. Internal description of the data types, formats, and data structures such that the information items can be readily identified and processed in the recipient system; and

d. Media independence and extendibility to encompass new spatial information as needed.

10. Implementation. The implementation of this standard involves three areas of consideration: Acquisition of FIPS SDTS implementations, validation, and interpretations of the standard.

10.1 Acquisition of FIPS SDTS implementations. This publication is effective February 15, 1993. Federal applications, requiring the transfer of digital spatial data, are encouraged to start using FIPS SDTS.

A transition period provides time for industry to produce implementations conforming to the standard. The transition period begins on the effective date and continues for twelve (12) months thereafter. Use of FIPS SDTS is mandatory for Federal agencies one year from the effective date.

10.2 Validation. Conformance to FIPS SDTS is applicable whether implementations are developed internally, acquired as part of an automated data processing (ADP) procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

Conformance criteria, based on application profiles, will be used for validating the conformance of FIPS SDTS implementations. Validations of implementations for conformance to FIPS SDTS, conformance criteria, policy, and procedures are under the authority of the FIPS program.

10.3 Interpretation of FIPS SDTS. Resolution of questions regarding this standard will be provided by NIST. Questions concerning the content and specifications should be addressed to: Director, Computer Systems Laboratory, ATTN: FIPS SDTS Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–2490.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings. Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

12. Where to obtain copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the United States Geological Survey (USGS).) When ordering, refer to Federal Information Processing Standards Publication 173 (FIPSPUB173), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 92– 20737 Filed 8–27–92; 8:45 am]
BILLING CODE 3510-CN-M

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## National Oceanic and Atmospheric Administration

## Western Pacific Regional Fishery Management Council; Hearing

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of public hearing and request for comments.

**SUMMARY:** The Western Pacific Regional Fishery Management Council will convene a public hearing on Tuesday, September 1, 1992, to discuss the management of bottomfish in the Northwestern Hawaiian Islands. The hearing agenda includes limiting entry into the Mau Zone; transferability of

Federal bottomfish permits; reducing effort or size of the harvest, and other business.

**DATES:** The public hearings are scheduled to begin at 6:30 p.m., local time, on September 1, 1992, and September 3, 1992.

**ADDRESSES:** The hearings will be held on September 1, 1992, at Paki Hale, 3840 Paki Avenue, Honolulu, Hawaii 96815, and on September 3, 1992, at Kalaheo Neighborhood Center, 4480 Papalina Street, Kalaheo, Hawaii 96741. Send written comments to Western Pacific Fishery Management Council, 1164 Bishop Street #1405, Honolulu, HI 96813.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop Street #1405, Honolulu, HI 96813, Telephone (808) 523–1368, Fax (808) 526–0824.

Dated: August 24, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92–20650 Filed 8–27–92; 8:45 am]

BILLING CODE 3510–22–M

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## National Telecommunications and Information Administration

## Comprehensive Study of the Use of Competitive Bidding as a Means of Assigning Spectrum in the United States

**AGENCY:** National Telecommunications and Information Administration ("NTIA"), Commerce.

**ACTION:** Notice, request for funding.

**SUMMARY:** In a recent major report on spectrum management policy, NTIA recommended that the Federal Communications Commission (FCC) employ "competitive bidding" to assign electromagnetic spectrum licenses to private sector users.[1] The intellectual underpinnings of this recommendation were provided by the 1991 Nobel Prize Winner in Economics, Ronald Coase, over three decades ago.[2] The power of Coase's analysis has been appreciated by many in the communications field and by other Federal agencies as well, most notably the Federal Trade Commission (FTC)[3] and the Department of Justice.[4]

Because of this research and the shortcomings of current FCC assignment methods, Congress has recently considered various legislative proposals that would permit the FCC to assign spectrum licenses through "competitive bidding."[5] As the term implies, under competitive bidding, prospective spectrum users would submit bids to the Government in exchange for a set of rights that identify the terms and conditions for use of such spectrum. The competitive bidding process would assign and establish the price for the spectrum license based upon the submitted bids.

Despite the frequent use of competitive bidding in other instances where the U.S. Government distributes natural resources (*e.g.*, sales of mineral and timber rights on Federal lands, oil leases on the continental shelf), its use as a means of assigning spectrum has sparked considerable debate. Such debate stems, in large measure, from a lack of detailed research on the merits of different types of competitive bidding, as well as the absence of a detailed competitive bidding proposal. In an effort to clarify these issues, NTIA is proposing to conduct a detailed research project on competitive bidding mechanisms. The objectives of this study are: (a) To analyze the merits of different forms of competitive bidding; and (b) to identify in implementation-specific terms the "best" competitive bidding mechanism for assigning spectrum licenses for the United States. The project team will be comprised of investigators from the California Institute of Technology (CALTECH), FTC, NTIA, University of Amsterdam, and the University of Arizona.

By this notice, NTIA is soliciting funds no later than Friday, October 9, 1992 to help defray the cost of this project. Subject to Department of Commerce regulations, NTIA will accept all contributions up to the maximum amount of $25,000. Although the set of sponsoring entities will be duly recognized in the final report, editorial and analytic control will remain with NTIA and CALTECH.

On or about October 30, 1992, NTIA will publish a "post-deadline notice" in the **Federal Register** that will announce the set of firms and other entities that are sponsoring the project. NTIA intends to issue a report, in conjunction with its collaborators, within a year following receipt of funding. The scope of the report, described below, will depend upon the extent of private funding.

**DATES:** Contributions should be received no later than Friday, October 9, 1992.

**ADDRESSES:** Checks should be made out to the Department of Commerce/NTIA and should be sent to Ms. Gay Shrum, Budget Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., room 4890, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mark M. Bykowsky, NTIA, Office of Policy Analysis and Development, room 4725, 202–377–1880.

**Authority:** 15 U.S.C. 1525; Exec. Order No. 12046, § 2–409, *reprinted in* 47 U.S.C. 305.

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### I. Introduction

1. The FCC is charged with the responsibility of managing private sector use of the electromagnetic spectrum. To this end, the FCC determines *how* a particular frequency shall be used, and also decides, through a "lottery," "comparative hearing," or on a first-come first-served basis, who may use the frequencies allocated. These two functions, commonly referred to as "allocation" and "assignment," respectively, have been subject to criticism over the years. Critics of current spectrum management procedures have recently focused their attention on reforming the assignment process. According to them, the non-market-based mechanisms used in this process are too costly to the government and prospective licensees, as well as unfair to taxpayers since the revenues not collected must be replaced with tax revenue.

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[1] National Telecommunications and Information Administration, U.S. Dep't of Commerce, NTIA Special Pub. No. 91–23, U.S. Spectrum Management Policy: Agenda for the Future 115 (Feb. 1991) [hereinafter Spectrum Report].

[2] Coase, The Federal Communications Commission, 2 J.L. & Econ. 1 (Oct. 1959).

[3] Comments of the Staff of the Bureau of Economics of the Federal Trade Commission, Amendment of the Commission's Rules With Regard to the Establishment and Regulation of New Digital Audio Radio Services, Gen. Docket No. 90–357 (filed Jan. 25, 1991).

[4] Comments of the United States Department of Justice Antitrust Division, Comprehensive Policy Review of Use and Management of the Radio Frequency Spectrum, NTIA Notice of Inquiry and Request for Comments, 54 FR 50694 (filed Feb. 23, 1990).

[5] See H.R. 1407, 102d Cong., 1st Sess. (1991); Congressional Budget Office, Auctioning Radio Spectrum, 102d Cong., 2d Sess. (1992).

2. Economists have been particularly critical of current spectrum assignment mechanisms. In their view, because lotteries and comparative hearings distribute spectrum at a price below its true market value, current assignment mechanisms encourage users to acquire incremental quantities of spectrum whose worth to them is less than their incremental cost to society.[6] These incremental costs represent the telecommunications or broadcast services that are sacrificed because spectrum is being employed for other uses. Prices that are below such incremental costs will not guide the nation's scarce resources to those uses that would maximize the economic welfare of producers and consumers.

3. In addition, current assignment mechanisms induce applicants to spend considerable resources (*e.g.*, fee for legal consultants) in applying for or, if they fail to win the lottery, acquiring a spectrum license in the open market. These resource expenditures, to some extent, represent a loss to society.[7] Finally, because lotteries attract a large number of applicants, it takes considerable time to assign spectrum via a lottery, thereby delaying the benefits consumers obtain from spectrum-using services. Comparative hearings traditionally have caused even greater delays than lotteries in providing consumers these services.

4. In part because of these and other criticisms, Congress has begun to consider legislation that would, among other things, permit the FCC to assign spectrum through a "competitive bidding mechanism," (*i.e.*, a market mechanism with an explicit set of rules for determining resource apportionment and price based upon bids from market participants).[8]

5. Although concerns have been expressed about the use of competitive bidding in spectrum licensing,[9] competitive bidding appears to be superior to current assignment mechanisms in promoting the public and private gains associated with spectrum use. For instance, by forcing providers of spectrum-based services to pay a fee equal to the opportunity costs these providers impose upon society for using the spectrum, competitive bidding will promote the efficient use of society's resources and overall economic welfare. In addition, competitive bidding will likely reduce considerably the FCC's administrative cost of assigning spectrum and the resources firms use up in private pursuit of a valuable license.

## II. Background on Auctions

6. Economists classify auctions according to the different rules that govern the asset's exchange. These rules are important because they can affect bidding incentives and, therefore, the terms and the efficiency of an exchange. The two most general classification categories are continuous or "oral" auctions and static or "sealed-bid" auctions.[10] A continuous auction is one in which the bidder may alter its bid in response to the bids of others, or the failure of a bid to be accepted. The term "continuous" is used to convey the fact that the auction process continuously makes available bid information so as to allow bidders to either update or place an initial bid. A static auction is one in which the bidder submits one bid to a center that processes all bids according to publicized rules, and announces summary information describing the outcome.

7. A large number of auctions fall within each of these two categories. For instance, the two principal continuous auctions are the oral ascending-bid auction ("English" auction) and the oral descending-bid auctions ("Dutch" auction).[11] In the English auction, a prospective buyer begins by announcing a bid. Bidders successively raise the standing bid until no more bids are elicited. The item is then awarded to the highest bidder at the price bid. In the Dutch auction, the seller begins by asking a price judged to be well in excess of what the highest bidder is willing to pay, and lowers the price until the first buyer accepts. The item is then awarded to that buyer at the price accepted.

8. Similarly, the two primary static auctions are the first price sealed-bid auction and the second price sealed-bid (or "Vickrey") auction.[12] In a first price sealed-bid auction, the government would collect sealed bids, arrange them in descending order and award the asset to the highest bidder at a price equal to its bid. In a second price sealed-bid mechanism, the government would follow the same procedures, but would award the asset to the highest bidder at a price equal to the second highest bid.

9. The four primary auction forms can be altered to generate numerous different auction forms. The auction specialist's ability to develop such forms has been enhanced by the computational power provided by computers.[13] One auction form made possible by computers, and which could be suitable for use in assigning spectrum, is the "combinatorial" auction. This is an auction that allows bidders to submit bids for one or more combinations of non-identical items. A combinatorial auction may be useful in assigning spectrum because the value that a bidder places on one spectrum license may depend on what other licenses it has also won. For instance, a bidder that wishes to create a cellular telephone network that encompasses two adjoining urban areas may place a relatively moderate value on each separate license, but may place a high value on the combination.

10. Identifying the most appropriate method for assigning spectrum is a complicated matter. While economic theory permits a ranking of auctions under simplified conditions, the superiority of any one auction form becomes less clear under conditions that are likely to exist in an FCC spectrum assignment process. For instance, differences among bidders may cause

[6] Incentives to "overconsume" spectrum exist when the price of spectrum is too low. Impediments to the free exchange of spectrum may cause such a price by preventing existing spectrum users from transferring spectrum to higher value users. For instance, the FCC's cellular renewal "anti-trafficking" rules are likely to have such an effect. See Considerations Involving Transfer of Assignment Applications (to be codified at 47 CFR 22.40 (b)(2)); Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, CC Docket No. 90-358, 7 FCC Rcd 719, 725, 729-30 (1992).

[7] See E. Kwerel & A. Felker, Office of Plans and Policy, Federal Communications Commission, Working Paper No. 16, Using Auctions to Select FCC Licenses 13-14 (1985).

[8] See S. 2217, H.R. 4150, 102d Cong., 2d Sess. (1992). In the present context, the phrase "competitive bidding" can be used interchangeably with the term "auction."

[9] For example, opponents have expressed concern that a competitive bidding mechanism could: discriminate against firms with limited financial resources; allow firms to "warehouse" spectrum in an effort to enhance the financial value of their other spectrum holdings; and allow financially powerful firms to obtain excessive market power by obtaining spectrum rights for competing services. See Spectrum Report, *supra* note 1, at 102-114 for a discussion of these and related issues.

[10] See Vernon Smith, Auctions, in The New Palgrave: A Dictionary of Economic Theory and Doctrine 138 (J. Eatwell, M. Milgate, P. Newman eds., 1987) (hereinafter Smith).

[11] *Id.* at 139.

[12] *Id.* at 138-39.

[13] The Federal Reserve System is currently developing a computer-based system that will enable it to sell government securities using an oral, iterative, ascending-bid auction. See U.S. Dept. of the Treasury, U.S. Securities and Exchange Commission, and Board of Governors of the Federal Reserve System, Joint Report on the Government Securities Market B-43 (Jan. 1992).

them to have different valuations for spectrum.[14] If these valuations are unknown to the respective bidders, theory suggests that both a second price sealed-bid and an English auction always assign the resource to the proper bidder, but the first price sealed-bid auction may not.

11. Therefore, while existing theoretical work sheds some light on which auction is the best under certain conditions, it does not clearly identify the "best" mechanism under conditions that could exist in an actual spectrum auction. Furthermore, some of the predictions of auction theory are not supported by empirical evidence.[15] Because of this, the study proposes to use, in addition to competitive bidding theory, "experimental methods" to analyze the performance of the various assignment mechanisms.

### III. Criteria for Evaluating Assignment Mechanisms

12. The objective of the proposed research is to provide an assessment of the relative merits of different competitive bidding mechanisms for assigning spectrum licenses and to identify, in implementation-specific terms, the most "appropriate" mechanism. The first step in achieving this objective is to establish the criteria by which the alternative mechanisms will be compared.

13. This research will employ a criterion that emphasizes the efficiency characteristics of alternative competitive bidding mechanisms. These mechanisms will be ranked according to their ability to promote economic efficiency (both distributional and allocative).[16] The use of economic efficiency as the basis for ranking alternative assignment mechanisms can be justified on many grounds. An economically efficient competitive bidding mechanism assigns spectrum to the entity with the highest valuation for spectrum, given the current use restrictions imposed by the FCC. This ensures that spectrum is being used in its most highly valued use, given existing use restrictions.

14. Likewise, substantial benefits are derived from selecting an assignment mechanism that promotes "allocative efficiency." Allocative efficiency is promoted when the price a user pays for spectrum reflects the opportunity cost society incurs in having spectrum used in that manner as opposed to its next best use, given existing use restrictions. Assigning spectrum to users at prices that are below society's opportunity cost of spectrum will induce firms to obtain incremental quantities of spectrum that are worth less to them than their incremental cost to society. This results in an economic loss to society in exactly the same way as would withdrawing millions of dollars from peoples' incomes.

15. Although the ability to generate revenue is one method of ranking alternative assignment mechanisms, it may not maximize the total welfare gain (*i.e.*, the sum of the consumer surplus and Treasury Department's receipts) associated with the assignment. Moreover, competitive bidding mechanisms that maximize expected receipts are not employed even by auction specialists (*e.g.*, auction houses). This is because of the complexity of designing such competitive bidding mechanisms and the simplicity and robustness (*i.e.*, ability to work well in a variety of bidding environments) of the common auction forms.

### IV. Research Issues

16. To some degree, the problem of identifying the best competitive bidding mechanism is due to the nature of the resource itself. The physical properties of spectrum allow it to be assigned in varying units (*i.e.*, hertz) and permit the same frequency to be used in different geographic areas. These characteristics raise the issues of the appropriate geographic scope of a license, as well as the "right" amount of spectrum to be assigned to each licensee. With respect to the former, the geographic scope of a spectrum license can range from one that is national to one that is local in scope. Theory suggests that the geographic scope of license may affect the performance characteristics of any assignment mechanism. In addition, it can be shown that society incurs a welfare loss by offering either too little or too much spectrum, per license, for assignment.

17. The research will examine various forms of competitive bidding, using the criteria discussed above. It will also examine the most common criticisms of competitive bidding. For instance, it will analyze the soundness of the argument that an auction would unfairly discriminate against firms with limited financial resources. It will also study the degree to which bidders have the incentive to "warehouse" spectrum to increase the value of their remaining spectrum holdings. Research will also investigate whether competitive bidding is ill-suited to deal with the public service aspects of spectrum use. Moreover, the study will examine how changes in the duration of the assigned terms and conditions affect the performance of the various assignment mechanisms.

18. The study will examine the potential for "illicit" profits in competitive bidding as a result of strategic behavior on the part of bidders. In particular, it will analyze the possibility that bidders may conspire to lower the cost of acquiring a license by agreeing not to freely compete for the license. The study will also examine the possibility that individual bidders may acquire spectrum for the purpose of obtaining excessive market power in the provision of a specific spectrum-based service.

### V. Methodology

19. Because the research project involves the analysis of market mechanisms that do not already exist and for which theoretical work provides insufficient guidance, we propose to evaluate the different mechanisms via a "laboratory" approach. Thus, the project team will create experimental markets using computerized trading, volunteer subjects, and cash incentives to parallel the markets being studied. Under this approach, human subjects will be paid according to how successful they are in achieving their economic goals under the market and other rules specified by the "experiment." [17] By changing the rules, researchers can effectively examine a wide variety of assignment mechanisms.

20. This laboratory approach has a number of advantages over a non-laboratory approach. Identifying the "best" competitive bidding mechanism involves identifying the separate influences of numerous factors that determine a mechanism's ability to promote economic efficiency. This process can only be performed under the carefully controlled conditions found in a laboratory. Moreover, these carefully controlled conditions allow one to investigate whether the results are replicable and, therefore, reliable.

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[14] Bidders may also be uncertain as to the value of a spectrum license, due to, for instance, uncertainty surrounding the extent of interference, or the commercial viability of a new spectrum-based service.

[15] See, *e.g.*, Smith *supra* note 10, at 141.

[16] In this context, the term "allocative" refers to the distribution of resources among industries. This distribution is optimal (*i.e.*, yields the most satisfaction compared to all available resource distributions) when product prices are equal to marginal cost. It should not be confused with the administrative process of "allocating" spectrum.

[17] A monetary reward is a necessary component of any laboratory experiment involving market behavior. See, *e.g.*, V. Smith, Microeconomic Systems as an Experimental Science, 72 Am. Econ. Rev. 923 (1982).

21. Experiments will examine the performance characteristics of the current assignment mechanisms—lotteries and comparative hearings. In this analysis, the winner of a simulated comparative hearing or lottery will be permitted to exchange its spectrum license for payment made by an FCC-approved buyer. This analysis will serve as a benchmark by which to compare the performance characteristics of the various competitive bidding mechanisms.

22. Subsequent experiments will identify the performance characteristics of the various competitive bidding mechanisms, given specific assumptions regarding the expected attributes of bidders (*e.g.*, uncertainty regarding spectrum value, recognizably different bidders). Given these attributes, experiments will analyze the entire array of research issues listed previously. For instance, experiments will be conducted to analyze the effect of changing the geographic scope of the spectrum license. Experiments will also analyze the effect of unequal financial power (*i.e.*, "deep pockets") on the ability of the competitive bidding mechanism to satisfy the adopted criteria.

**VI. Finished Product**

23. The study team will complete a written report that includes: (1) A justification for the adopted performance criteria; (2) a discussion of the applicability of "experimental methods;" (3) a discussion of the experimental design; (4) an analysis of the results of the experiments; (5) a detailed description of the recommended assignment mechanism.

**Gregory F. Chapados,**

*Assistant Secretary of Commerce for Communications and Information and Director of NTIA.*

[FR Doc. 92-20738 Filed 8-27-92; 8:45 am]

BILLING CODE 3510-60-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List Proposed Additions

**AGENCY:** Committee for Purchase From the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 28, 1992.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O' Day Act (41 U.S.C. 46-48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and services to the Procurement List:

*Commodity*

Cap, Knit
8405-01-006-1074
Nonprofit Agency: Seneca County Chapter, NYSARC, Waterloo, New York

*Services*

Administrative Services
Automated Dispatch System
Hill Air Force Base, Utah
Nonprofit Agency: Pioneer Adult Rehabilitation Center, Clearfield, Utah
Janitorial/Custodial, Emanual Celler Federal Building, 225 Cadman Plaza, Brooklyn, New York
Nonprofit Agency: Federation of the Handicapped, New York, New York
Janitorial/Custodial, Federal Building #111, JFK International Airport, Jamaica, New York
Nonprofit Agency: Federation of the Handicapped, New York, New York
Janitorial/Grounds Maintenance for the following locations in Calexico, California:
Truck Inspection Building, 1 East First Street
U.S. Border Inspection Station Building, 200 First Street
Shop Building, 1 East First Street
U.S. Border Patrol Station, 8th and Andrade Street
Commercial Hazmat Office, 1 East First Street
Commercial Operations Office, 1 East First Street
Nonprofit Agency: Association for Retarded Citizens of Imperial Valley, El Centro, California.

**E.R. Alley, Jr.,**

*Deputy Executive Director.*

[FR Doc. 92-20739 Filed 8-27-92; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List; Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to procurement list.

**SUMMARY:** This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** September 28, 1992.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On June 12, 26, July 6 and 10, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 25023, 28658, 29712 and 30727) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities or services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities or services.

3. The action will result in authorizing small entities to furnish the commodities or services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities or services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

*Commodities*

Brake Pad Assembly
2530–01–255–4215
Parts Kit, Automatic Transmission Filter
2940–01–121–6350
Air Freshener Deodorant, General Purpose
6840–00–721–6055
Dustpan, Short Handle
7290–00–616–0109

*Services*

Commissary Shelf Stocking & Custodial, Naval Construction Battalion Center, Gulfport, Mississippi
Commissary Shelf Stocking, Custodial & Warehousing, Beale Air Force Base, California
Convert IRS Documents to Braille (Excluding VersaBraille), Internal Revenue Service, Washington, DC (20% of the Government's Requirement)
Janitorial/Custodial, Federal Building and U.S. Courthouse, 701 C Street, Anchorage, Alaska
Janitorial/Custodial, Naval Air Station Commissary, Cecil Field, Florida
Janitorial/Custodial, Portsmouth Naval Shipyard, Buildings 153 & 170, Kittery, Maine
Switchboard Operation, Patrick Air Force Base, Florida.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

**E.R. Alley, Jr.,**
*Deputy Executive Director.*

[FR Doc. 92–20740 Filed 8–27–92; 8:45 am]
BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Special Operations Policy Advisory Group, Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on Tuesday, September 15, 1992, at the United States Special Operations Command, MacDill Air Force Base, FL, to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations and Low-Intensity Conflict Forces.

In accordance with section 10(d) of Public Law 92–463, the "Federal Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: August 24, 1992.

**L.M. Bynum,**
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–20656 Filed 8–27–92; 8:45 am]
BILLING CODE 3810-01-M

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

**[Recommendation 92-5]**

### Discipline of Operation in a Changing Defense Nuclear Facilities Complex

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Notice; recommendation.

**SUMMARY:** The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning the Discipline of Operation in a Changing Defense Nuclear Facilities Complex. The Board requests public comments on this recommendation.

**DATES:** Comments, data, views, or arguments concerning this recommendation are due on or before September 28, 1992.

**ADDRESSES:** Send comments, data, views or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: August 24, 1992.

**John T. Conway,**
*Chairman.*

**Discipline of Operation in a Changing Defense Nuclear Facilities Complex**

**[Recommendation 92-5]**

Dated: August 17, 1992.

The changes in defense-related plans in the Department of Energy are beginning to have a profound effect on the activities directed to systematic upgrading of the conduct of operations at defense nuclear facilities, plans that have often been discussed between the Board and its staff, on the one hand, and members of your staff on the other.

The Rocky Flats Plant presents an excellent example of the major changes being made by DOE while reconfiguring the nuclear weapons complex. It had been planned that as the Rocky Flats Plant moved toward resumption of production of plutonium components of nuclear weapons, a succession of facilities would be readied for renewed operation, beginning with Building 559 (the analytical chemistry laboratory), and followed by Building 707 and then others. This process was to include systematic upgrading of the quality of operations in each case, including Operational Readiness Reviews by the contractor and by DOE to verify that the desired improvements had been accomplished by line management. Resumption of operations is now proceeding in Building 559, in accordance with this process and following the path proposed in your Implementation Plan for the Board's Recommendations 90–4 and 91–4.

You have announced, however, that in light of international developments, plutonium production operations will not be resumed at the Rocky Flats Plant, and future activities there will be confined to cleanup and decontamination of the site, decommissioning of some facilities and parts of others, and placing of some facilities and parts of others in a state of readiness for resumption of operations in the future in the event such a step should be needed. Thus for most facilities at Rocky Flats there is now a major change from the mission and activities previously planned and for which the Board's Recommendations and your implementation plans specific to the Rocky Flats Plant were to be applied, for those recommendations were predicated upon resumption of plutonium production.

At a number of other defense nuclear facilities, similar changes are taking effect. Many facilities are now scheduled for

cleanout, shutdown, and decommissioning. Some are to be devoted to aspects of cleanup and decommissioning of sites and of facilities located within sites. Some are slated to be placed in a standby mode, available for restart at a later date if needed. Some are to be continued in operation either in reduction of the stockpile of nuclear weapons or in the maintenance of a reduced stockpile an improvement of its safety.

Some of these facilities have been inactive for long periods of time. Some are to become involved in operations that differ from past usage. Experience shows that when operations are resumed at a facility that has been idle for an extended period, or a facility is operated in a new mode, there is in an above-average possibility of mistakes, equipment failures, and violations of safety requirements, that could cause accidents. We believe that special attention is needed at such times. The appropriate measures to be followed depend on specific features of the facility, the nature of the planned campaign of use, and the long-term plan for the facility. For example, one needs to know if further campaigns are likely, of the same or different kinds; if the facility is to be decommissioned after the planned use; or if it is to be placed in a standby mode.

The Board has found, through experience at the Savannah River Sites and the Rocky Flats Plant and other defense nuclear facilities, that an extended period of time has been required at major facilities to develop an acceptable style and level of conduct of operations. Accomplishing the cultural changes you have required and meeting safety standards comparable to those required of the civilian nuclear industry remains an ongoing challenge. Major improvements have been necessary including development of configuration control, revised and acceptable safety analysis, revised Limiting Conditions of Operation derivative from the safety analysis, operating procedures consistent with the configuration and the safety analysis, and training and qualification of operators for the new mode of operation. Continued improvement has been sought by the Board.

The Board has been informed that DOE does not intend to devote equivalent time and resources to improving the quality of operation at a facility being restarted only for a short campaign or intended for use only in a short campaign in a different mode, but would on a cost-benefit basis use a graded approach, always being sure, however, to take whatever compensatory and other measures are needed to ensure the acceptable level of safety.

The definition and exposition of a graded approach as it is meant to be used in ordering the conduct of operations have not been provided. In discharging its responsibilities in the context of the new defense-related plans of the Department of Energy, the Board intends to carefully review future operations at defense nuclear facilities on a case-by-case basis, starting in each instance from the best information as to the intended future use of the facility. Any proposals to use special measures or controls to compensate for deviations from those ordinarily used to achieve high quality conduct of operations will be closely scrutinized.

Therefore, it is requested that as you decide the future status of individual defense nuclear facilities you inform the Board, designating which ones are to continue in operation and their mission, which are to be shut down for decommissioning within a short time period, which are to be used for an extended time period and then shut down for decommissioning, and which are to be moved to a standby mode (along with the schedule for this).

Regardless of the category, the Board believes that operation and maintenance of defense nuclear facilities in all modes should be in accordance with the Nuclear Safety Policy statement that you issued on September 9, 1991 as SEN-35-91, and the safety goals stated therein.

The Board also believes that, to the extent practicable, facilities that are to be shut down and decommissioned should be cleaned up, and hazards from radiological exposures sufficiently reduced that access can be made freely without need for precautions against radioactivity, and facilities meant for standby status should be placed in such a condition that sudden need to reactivate them would not subject a new operating group to unacceptable radiation hazards.

In furtherance of this view it is recommended that:

1. For defense nuclear facilities scheduled for long term continued programmatic defense operations,[1] or for other long term uses such as in cleanup of radioactive contamination or in storage of nuclear waste or other nuclear material from programmatic defense operations, the Department of Energy should institute a style and level of conduct of operations comparable to that toward which DOE has been working at Building 559 at the Rocky Flats Plant and the K-Reactor at the Savannah River Site, and which is at least comparable to that required for commercial nuclear facilities, addressing at a minimum the areas referred to above in connection with style of conduct of operations.

2. Where a facility, after a long period of idleness for whatever reason, is being readied for new use or reuse, special care should be taken to ensure that the line organization, both DOE and contractor, has the technical and managerial capability needed to carry out its responsibilities. Appropriate and effective Operational Readiness Reviews should be conducted by the contractor and by DOE before restart of the facility, to establish confidence that line management has provided satisfaction of safety requirements. Where national security requirements lead to urgent need to restart such facilities before necessary upgrades can be fully completed, compensatory measures should be instituted and their adequacy in ensuring the desired level of safety should be confirmed through appropriate independent review.

3. For facilities designated for the various other future modes of use (such as standby), DOE should undertake to develop specific criteria and requirements that ensure meeting the safety goals enunciated in your Nuclear Policy Statement (SEN-35-91). Accomplishment of these criteria and requirements by line management should be confirmed by appropriate independent review.

John T. Conway,

*Chairman.*

[1] This term is meant to encompass research, development, and production for defense purposes, and operations related to testing, assembly, disassembly, and storage of nuclear weapons and nuclear weapons components.

**Appendix—Transmittal Letter to the Secretary of Energy**

**Defense Nuclear Facilities Safety Board**

August 17, 1992.

The Honorable James D. Watkins,
*Secretary of Energy, Washington, DC 20585.*

Dear Mr. Secretary: On August 17, 1992, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 92-5 which is enclosed for your consideration. Recommendation 92-5 deals with Discipline of Operation in a Changing Defense Nuclear Facilities Complex.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161-68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,

*Chairman.*

[FR Doc. 92-20590 Filed 8-27-92; 8:45 am]

BILLING CODE 6820-KD-M

## DEPARTMENT OF ENERGY

### Office of the Deputy Secretary

### U.S. Alternative Fuels Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* United States Alternative Fuels Council.

*Date and Time:* Wednesday, September 9, 1992, 9 a.m.-5 p.m.

*Location:* National Renewable Energy Laboratory, Golden, Colorado, Building 17.

*Contact:* Mark Bower, Office of Energy Demand Policy, U.S. Department of Energy, Mail Stop EP-50, Washington, DC 20585, Phone: (202) 586-3891.

*Purpose of the Council:* To provide advice to the Interagency Committee on Alternative Motor Fuels to help:

1. ". . . coordinate Federal agency efforts to develop and implement a national alternative motor fuels policy."
2. ". . . ensure the development of a long-term plan for the commercialization of alcohols, natural gas, and other potential alternative motor fuels."
3. ". . . ensure communication among representatives of all Federal agencies that are involved in alternative motor fuels projects or that have an interest in such projects."
4. ". . . provide for the exchange of information among persons working with, or interested in working with, the commercialization of alternative motor fuels."

*Agenda:* To be published later.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Council either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairpersons of the Council are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, room 1E190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on August 25, 1992.

**Howard H. Raiken,**

*Advisory Committee Management Officer.*

[FR Doc. 92-20864 Filed 8-26-92; 11:31 am]

BILLING CODE 6450-01-M

## Office of Fossil Energy

**[FE Docket No. 92-62-NG]**

## SDS Petroleum Products, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting SDS Petroleum Products, Inc. a blanket authorization to export up to 98.5 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 24, 1992

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92-20735 Filed 8-27-92; 8:45 am]

BILLING CODE 6450-01-M

## Office of Conservation and Renewable Energy

**[Case No. F-051]**

## Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Armstrong Air Conditioning, Inc.

**AGENCY:** Office of Conservation and Renewable Energy, Department of Energy.

**ACTION:** Decision and order.

**SUMMARY:** Notice is given of the Decision and Order (Case No. F-051) granting a Waiver to Armstrong Air Conditioning, Inc. (Armstrong) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Armstrong its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GHC series of gas furnaces.

**FOR FURTHER INFORMATION CONTACT:**

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127,

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestral Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Armstrong has been granted a Waiver for its GHC series of gas furnace, permitting the company to use an alternative test method in determining AFUE.

Issued in Washington, DC, August 21, 1992.

**J. Michael Davis,**

*Assistant Secretary Conservation and Renewable Energy.*

### Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is

sooner, and may be extended for an additional 180 days, if necessary.

Armstrong filed a "Petition for Waiver," dated March 20, 1992, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on June 22, 1992, Armstrong's petition and solicited comments, data and information respecting the petition. 57 FR 27765. Armstrong also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on June 16, 1992. 57 FR 27765, June 22, 1992.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." Doe consulted with The Federal Trade Commission (FTC) concerning the Armstrong Petition. The FTC did not have any objections to the issuance of the waiver to Armstrong.

**Assertions and Determinations**

Armstrong's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Armstrong requests the allowance to test using a 30-second blower time delay when testing its GHC series of gas furnaces. Armstrong states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 0.6 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Armstrong indicates that it is unable to take advantage of any of these exceptions for its GHC series of gas furnaces.

Since the blower controls incorporated on the Armstrong furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Armstrong GHC series of gas furnaces. Accordingly, with regard to testing the GHC series of gas furnaces, today's Decision and Order exempts Armstrong from the existing provisions regarding blower controls and allows testing with the 30-second delay.

*It is, therefore, ordered that:*

(1) The "Petition for Waiver" filed by Armstrong Air Conditioning, Inc. (Case No. F-051) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR part 430, subpart B, Armstrong Air Conditioning, Inc. shall be permitted to test its GHC series of gas furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103-82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Armstrong Air Conditioning, Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GHC series of gas furnaces manufactured by Armstrong Air Conditioning, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective August 21, 1992, this Waiver supersedes the Interim Waiver granted Armstrong Air Conditioning, Inc. on June 16, 1992. 57 FR 27765, June 22, 1992 (Case No. F-051).

Issued In Washington, DC, August 21, 1992.

**J. Michael Davis,**

*Assistant Secretary, Conservation and Renewable Energy.*

[FR Doc. 92-20625 Filed 8-27-92; 8:45 am]

BILLING CODE 6450-01-M

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[Case No. F-047 ]

## Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Clare Brothers

**AGENCY:** Office of Conservation and Renewable Energy, Department of Energy.

**ACTION:** Decision and order.

**SUMMARY:** Notice is given of the Decision and Order (Case No. F-047) granting a Waiver to Clare Brothers (Clare) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Clare its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces.

**FOR FURTHER INFORMATION CONTACT:**

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127,

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9507.

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Clare has been granted a Waiver for its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, August 21, 1992.

**J. Michael Davis,**

*Assistant Secretary, Conservation and Renewable Energy.*

## Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Clare filed a "Petition for Waiver," dated January 30, 1992, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on June 3, 1992, Clare's petition and solicited comments, data and information respecting the petition. 57 FR 23396. Clare also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on May 20, 1992. 57 FR 23396, June 3, 1992.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with the Federal Trade Commission (FTC) concerning the Clare Petition. The FTC did not have any objections to the issuance of the waiver to Clare.

## Assertions and Determinations

Clare's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Clare requests the allowance to test using a 60-second blower time delay when testing its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces. Clare states that since the 60-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency the petition should be granted.

Under specific circumstances, the DOE test procedure contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Clare indicates that it is unable to take advantage of any of these exceptions for its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces.

Since the blower controls incorporated on the Clare furnaces are designed to impose a 60-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 60-second blower time delay when testing the Clare MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces.

Accordingly, with regard to testing the MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces, today's Decision and Order exempts Clare from the existing provisions regarding blower controls and allows testing with the 60-second delay.

*It is, therefore, ordered that:*

(1) The "Petition for Waiver" filed by Clare Brothers (Case No. F–047) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Clare Brothers shall be permitted to test its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, The Clare Brothers shall comply in all respects

with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces manufactured by Clare Brothers.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective August 21, 1992, this Waiver supersedes the Interim Waiver granted the Clare Brothers on May 20, 1992. 57 FR 23396, June 3, 1992 (Case No. F-047).

Issued In Washington, DC, August 21, 1992.

**J. Michael Davis,**

*Assistant Secretary, Conservation and Renewable Energy.*

[FR Doc. 92-20624 Filed 8-27-92; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Docket No. RS92-4-000]**

## Colorado Interstate Gas Co.; Conference

August 24, 1992.

Take notice that on September 1, 1992, beginning at 9 a.m., a conference will be convened in the above-captioned restructuring docket. The conference will be held at the Grand Hotel, located at 2350 M Street, NW., Washington, DC.

The purpose of the conference is to address with the Staff of the Federal Energy Regulatory Commission and the intervenors in this proceeding the summary of Colorado Interstate Gas Company's (CIG) Order No. 636 restructuring proposal provided to all parties on July 7, 1992, together with any changes in that proposal that CIG may submit before September 1, 1992 or at the time of the conference.

All parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons may call James A. Pederson at (202) 208-2158 or Edith A. Gilmore at (202) 208-1093.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-20706 Filed 8-27-92; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP92-1-000]**

## Northern Natural Gas Co.; Informal Settlement Conference

August 24, 1992.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 10 a.m. on September 2, 1992, at the offices of the Federal Energy Regulatory Commission, in the Commission Meeting Room, 825 North Capitol Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket. The conference will continue through Friday, September 4, 1992, if necessary.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Michael D. Cotleur, at (202) 208-1076 or John J. Keating, at (202) 208-0762.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-20705 Filed 8-27-92; 8:45 am]

BILLING CODE 6717-01-M

## Office of Hearings and Appeals

## Cases Filed; Week of July 24 Through July 31, 1992

During the Week of July 24 through July 31, 1992, the appeals and applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20583.

Dated: August 21, 1992.

**Thomas O. Mann,**

*Acting Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 24 through July 31, 1992]

| Date | Name and Location of Applicant | Case No. | Type of submission |
|---|---|---|---|
| July 28, 1992 | Albuquerque Journal, Albuquerque, NM | LFA-0228 | Appeal of an information request denial. *If granted:* The June 19, 1992 Freedom of Information Request Denial issued by the Office of the Inspector General would be rescinded, and the Albuquerque Journal would receive access to DOE information. |
| Do | Energy Research Foundation, Columbia, SC | LFA-0227 | Appeal of an informational request denial. *If granted:* The June 23, 1992 Freedom of Information Request Denial issued by the Savannah River Operations Office would be rescinded, and the Energy Research Foundation would receive access to copies of records relating to Mr. Barr's alleged occupational exposure to radiation while employed at the DOE Savannah River Plant. |
| July 29, 1992 | Gulf/Nicklon's Gulf, Woodbridge, VA | RR300-193 | Request for modification/rescission in the Gulf refund proceeding. *If granted:* The July 1, 1992 letter (Case No. RF300-14795) to Nicklon's Gulf dismissing the firm's Application for Refund in the Gulf refund proceeding would be reconsidered. |

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of July 24 through July 31, 1992]

| Date | Name and Location of Applicant | Case No. | Type of submission |
|---|---|---|---|
| July 30, 1992 | ARCO/USA Petroleum Corporation, Washington, DC. | RR304-44<br>RR304-45<br>RR304-46 | Request for modification/rescission in the ARCO refund proceeding. *If granted:* The July 7, 1992 Decision & Order (Case Nos. RF304-9236, RF304-9237, and RF304-9238) issued to USA Petroleum Corp. regarding the firm's Application for Refund submitted in the ARCO refund proceeding would be reconsidered. |

Refund Applications Received

| Date received | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| 7/24/92 thru 7/31/92. | Crude Oil Applications Received. | RF272-93779 thru RF272-93792. |
| 7/24/92 thru 7/31/92. | Texaco Refund Applications Received. | RF321-18986 thru RF321-19057. |
| 7/24/92 thru 7/31/92. | Gulf Oil Refund Applications Received. | RF300-20397 thru RF300-20422. |
| 7/24/92 thru 7/31/92. | Apex/Clark Refund Applications Received. | RF342-267 thru RF342-291. |
| 7/24/92 thru 7/31/92. | Citronelle/ Refiners Applications Received. | RF345-13 thru RF345-25. |
| 7/27/92 | United Medical Laboratories. | RF304-13233. |
| 7/27/92 | Derefandra, Inc. | RF304-13234. |
| 7/27/92 | John T. Lease Relaters. | RF304-13235. |
| 7/28/92 | Budget Car Wash | RF304-13236. |
| 7/28/92 | Fred's Service Center. | RF304-13237. |
| 7/28/92 | Foothill Car Wash | RF304-13238. |
| 7/28/92 | Chao's Arco | RF304-13239. |
| 7/28/92 | Carnival Cruise Lines, Inc. | RF307-10215. |
| 7/28/92 | Gainesville Regional Utilities. | RF307-10216. |
| 7/28/92 | Midlothian Butane Gas Co., Inc. | RF340-174. |
| 7/31/92 | Transamerica Natural Gas Corp. | RF339-13. |

[FR Doc. 92-20736 Filed 8-27-92; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4200-4]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before September 28, 1992.

For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

**SUPPLEMENTARY INFORMATION:**

### Office of Research and Development

*Title:* Quality Control Sample Request Form (EPA No. 941.04; OMB No. 2080-0016).

*Abstract:* This ICR is for an extension of an existing information collection in support of the Agency's Quality Assurance (QA) and Quality Control (QC) program. The Clean Water Act at 40 CFR part 136, and the Safe Drinking Water Act at 40 CFR part 141 and 142 requires the establishment of QA/QC procedures for sample analysis. Included in these procedures, described in the Manual for Certification of Laboratories Analyzing Public Drinking Water Supplies, is the use of standardized samples to periodically perform QA/QC checks. The information collected from this ICR will be used by the EPA to process requests for QA sample support from laboratories participating in the EPA's QA/QC program.

Laboratories completing this form are requested to provide EPA with: (1) Identification information (name, address, telephone number), (2) date of request, and (3) type of sample requested (consisting of a check-list of all available microbiological/biological samples). There are no recordkeeping requirements for the respondent.

*Burden Statement:* Public reporting burden for laboratories subject to this collection of information is estimated to average less than 0.2 hours per response including time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the collection of information.

*Respondents:* State, local, and private laboratories participating in the EPA QA program.

*Estimated Number of Respondents:* 1000.

*Estimated Number of Responses per Respondent:* 4.

*Estimated Total Annual Burden on Respondents:* 700 hours.

*Frequency of Collection:* On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street SW., Washington, DC 20460,

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: August 21, 1992.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 92-20725 Filed 8-27-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4199-8]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 10, 1992 through August 14, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

### Draft EISs

*ERP No. D-AFS-L65170-WA Rating EC2,* Grouse Meadows Timber Sale and Road Construction, Implementation,

Wenatchee National Forest, Naches Ranger District, Yakima County, WA.

Summary: EPA had environmental concerns based on the potential for adverse air quality effects to class I airsheds, removal of habitat of a Federally listed threatened species (Northern Spotted Owl), and the potential for adverse effects to water quality and fish habitat. Additional information is requested to: clarify whether state water quality standards will be violated; describe project monitoring; describe the effectiveness of mitigation measures; clarify the future access and maintenance of new roads; and describe and fully evaluate cumulative effects.

*ERP No. D-AFS-L65172-WA Rating EC2,* County Timber Sale and Road Construction, Implementation, South Fork and Middle Fork, Little Naches River, Wenatchee National Forest, Naches Ranger District, Yakima and Kittitas Counties, WA.

Summary: EPA had environmental concerns based on the potential for adverse air quality effects to class I airsheds, removal of habitat of a Federally listed threatened species (Northern Spotted Owl), and the potential for adverse effects to water quality and fish habitat. Additional information is requested to: clarify whether state water quality standards will be violated; describe project monitoring; describe the effectiveness of mitigation measures; clarify the future access and maintenance of new roads; and describe and fully evaluate cumulative effects.

*ERP No. D-AFS-L67030-WA Rating EC2,* Kettle River Key Open-Pit Gold Mining Expansion Project, Construction and Operation, Plan of Operation Approval and NPDES Permit, Colville National Forest, Republic Ranger District, Ferry County, WA.

Summary: EPA had environmental concerns based on the potential for adverse air quality effects associated with the use of the proposed diesel generators. Additional information is requested to clarify what material will be used for haul road construction, describe how stormwater runoff will be segregated from waste rock pile runoff, describe contingency plans if acid drainage is detected, explain the basis for the groundwater flow patterns, describe if the sedimentation ponds can be used for water quality treatment, and clarify the nature of cumulative impacts.

*ERP No. D-COE-E36171-NC Rating EC2,* Great Coharie Creek Flood Damage Reduction Plan, Implementation, Sampson County, NC.

Summary: EPA raised concerns regarding the impacts of this project on the aquatic resource, the specifics of certain elements of the proposed mitigation, and the possibility of induced flooding resulting from the ring levee around the Clinton Wastewater Treatment Plant. These issues will require additional clarification/explanation in the final document.

*ERP No. D-FHW-E40743-NC Rating EC2,* US 29A/70A (High Point Road) from US 311 Bypass to the Greensboro Western Urban Loop near Hill Top Road, Improvement, Funding and Section 404 Permit, Guilford, Randolph and Davidson Counties, NC.

Summary: EPA expressed concerns that the project will degrade wetland and upland habitats and cause noise problems for residents along the highway. Additional information on habitat quality, air modeling and wetland mitigation was required.

*ERP No. D-FHW-J40125-MT Rating LO,* Shiloh Road Interchange Project, Construction, I-90 in the vicinity of the existing Shiloh Road Overpass (I-90 milepost 443) and Improvements to the South Frontage Road, Funding and Section 404 Permit, between the Cities of Laurel and Billing, Yellowstone County, MT.

Summary: EPA had no objection to the preferred alternative. ERP No. DS-BLM-L65158-OR Rating LO, Lower Deschutes Wild and Scenic River Management Plan, Implementation, Addresses Alternatives for Access to Public Lands Upstream from the Deschutes Club Locked Gate, Wasco County, OR.

Summary: EPA had no objections to the preferred alternative in the supplemental draft EIS.

**Final EISs**

*ERP No. F-AFS-L65163-ID,* Far East Salvage Project, Rehabilitation and Recovery of Insect Damaged Timber Resource Management Plan, Implementation, Upper South Fork Payette River, Boise National Forest, Lowman Ranger District, Boise County, ID.

Summary: EPA had environmental concerns with the proposed action since the final EIS was unresponsive to the concerns EPA raised on the draft EIS. These concerns focused primarily on water and air quality issues.

*ERP No. F-COE-E32074-KY,* Lower Cumberland and Tennessee Rivers Navigation Improvements, Kentucky Lock Addition, Implementation, Nashville District, Marshall and Livingston Counties, KY.

Summary: EPA determined that significant issues raised on the draft document have been satisfactorily resolved. Unavoidable wetland losses resulting from construction of the Kentucky Lock have been greatly minimized. Mitigation will be accomplished by planting appropriate wetland species and monitoring to determine success.

*ERP No. F-COE-E36167-FL,* Everglades National Park Modified Water Deliveries, Implementation, Central and Southern Florida Project, Dade County, FL.

Summary: EPA acknowledged the difficulties of achieving an ideal operational strategy for modifying the water deliveries into the Everglades National Park. The Corps' structural plan coupled with the eventual implementation of the Modified Rain-Driven Operational strategy appeared to be the best overall approach.

*ERP No. F-FHW-L40174-OR,* Sunnyside Road/I-205 Interchange Expansion and Sunnybrook Road Extension, Sunnybrook Road to 108th Avenue or Valley View Terrace, Funding and COE Section 404 Permit, Clackamas County, OR.

Summary: EPA had no objections to the proposed action as described in the final EIS as long as the issue of stormwater treatment is clarified in the ROD.

*ERP No. F-NOA-E90013-SC,* North Inlet/Winyah Bay National Estuarine Research Reserve Management Plan, Site Designation and Funding, Georgetown County, SC.

Summary: EPA recommended a stronger public outreach program, using workshops and brochures, to describe the North-Inlet Winyah Bay National Estuarine Research Reserve activities. Environmental and Public health risks of dioxin need to be identified.

*ERP No. F-VAD-C99008-NY,* Albany New York Area National Cemetery Development, Construction and Operation, Site Selection, Town of Florida, Montgomery County, Town of Saratoga or Town of Waterford, Saratoga County, NY.

Summary: EPA had no objections to the implementation of the project.

Dated: August 25, 1992.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 92-20733 Filed 8-27-92; 8:45 am]

BILLING CODE 6560-50-M

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[ER-FRL-4199-7]

## Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Availability of Environmental Impact Statements Filed August 17, 1992 Through August 21, 1992 Pursuant to 40 CFR 1506.9.

*EIS No. 920336,* Final EIS, AFS, CA, Lassen National Forest, Land and Resource Management Plan, Implementation, Several Counties, CA, Due: September 28, 1992, Contact: Leonard Atencio (916) 257–2151.

*EIS No. 920337,* Final EIS, AFS, MT, Halfmoon Timber Harvest Sale, Road Construction and Reconstruction, Implementation, Flathead National Forest, Hungry Horse Ranger District, Flathead County, MT, Due: September 28, 1992, Contact: Ed Lieser (406) 387–5243.

*EIS No. 920338,* Final EIS, AFS, MT, Smeads-Rice Timber Sale, Implementation, Kootenai National Forest, Cabinet Ranger District, Sanders County, MT, Due: September 28, 1992, Contact: Dave Wischer (406) 827–3533.

*EIS No. 920339,* Draft EIS, COE, CA, Bel Marin Key Unit 5 (BMK5), Residential Community Construction and Development, Master Plan and Rezoning Application Approvals and Permits, Novato Creek, Marin County, CA, Due: October 13, 1992, Contact: Susan Ryan (415) 744–3322.

*EIS No. 920340,* Draft EIS, BLM, OR, Coos Bay District Resource Management Plan, Implementation, Coos Bay District, Coos, Curry and Douglas Counties, OR, Due: December 21, 1992, Contact: Melvin Chase (503) 756–0100.

*EIS No. 920341,* Draft EIS, BLM, OR, Medford District Resource Management Plan, Implementation, Medford District, Douglas, Jackson, Coos and Curry, OR, Due: December 21, 1992, Contact: David Jones (503) 770–2200.

*EIS No. 920342,* Final Supplement, USA, AZ, Fort Huachuca Base Realignment, Implementation, Cochise County, AZ Due: September 28, 1992, Contact: Alex Watt (213) 894–5088.

*EIS No. 920343,* Draft EIS, BLM, OR, Roseburg District Resource Management Plan, Implementation, Roseburg District, Coast Range, Benton, Curry, Douglas, Jackson, Josephine and Linn Counties, OR, Due: December 21, 1992, Contact: James Moorhouse (503) 672–4491.

*EIS No. 920344,* Draft EIS, FAA, CA, Lindbergh Field Facilities Improvements, San Diego International Airport, Plan Approval, San Diego County, CA, Due: October 13, 1992, Contact: Bill Johnstone (310) 297–1621.

*EIS No. 920345,* Final EIS, FHW, AL, Corridor X Construction, U.S. 78 Eight Miles West of Jasper near the Walker/Jefferson County Line, Funding, U.S. Coast Guard Permit and COE Section 404 Permit, Walker County, AL, Due: September 28, 1992, Contact: Joe D. Wilkerson (205) 832–7370.

*EIS No. 920346,* Final EIS, UAF, MO, Whiteman Air Force Base (AFB) Minuteman II of the 351st Missile Wing Deactivation, Implementation, Johnson County, MO, Due: September 28, 1992, Contact: Douglas Hulings (804) 764–3056.

*EIS No. 920347,* Draft EIS, AFS, CO, Grand Mesa, Uncompahagre and Gunison National Forests Land and Resource Management Plan Amendment, Availability of Lands for Oil and Gas Leasing, Garfield, Deta, Gunnison, Mesa, Montrose, Ouray and San Miguel Counties, CO, Due: October 13, 1992, Contact: Robert Storch (303) 874–7691.

*EIS No. 920348,* Draft EIS, BLM, OR, Eugene District Resource Management Plan, Implementation, Lane, Linn, Douglas and Benton Counties, OR, Due: December 21, 1992, Contact: Ronald Kaufman (503) 683–6600.

*EIS No. 920349,* Final EIS, AFS, WA, Grouse Meadows Timber Sale and Road Construction, Implementation, Wenatchee National Forest, Naches Ranger District, Yakima County, WA, Due: September 29, 1992, Contact: Don Rotell (509) 653–2205.

*EIS No. 920350,* Draft Supplement, COE, MS, Upper Steele Bayou Flood Control Plan, Proposed Changes to the Unconstructed Portion of the Project, Boliver, Washington and Greenville Counties, MS, Due: October 13, 1992, Contact: Steve Reed (601) 631–5439.

*EIS No. 920351,* Draft EIS, BLM, OR, Salem District Resource Management Plan, Implementation, Several Counties, OR, Due: December 21, 1992, Contact: Bob Saunders (503) 375–5646.

**Amended Notices**

*EIS No. 920219,* Draft EIS, BLM, ID, Southwest Intertie Project, Construction and Operation, 500kV Transmission Line from the existing Midpoint substation near Shoshone, ID to a new substation site in the Dry Lake Valley of Las Vegas, NV area to a point near Delta, UT, Funding, Section 10 and 404 Permits and Permits Approval, Several Counties, NV, ID, UT, Due: September 18, 1992, Contact: Karl Simonson (208) 678–5514. Published FR—06–19–92—Due Date Correction

*EIS No. 920255,* Draft EIS, SFW, OR, South Tongue Point Land Exchange and Marine Industrial Park Development Project, Control and Management, Land Acquisition and Possible COE Section 10 and 404 Permits, Lewis and Clark National Wildlife Refuge, Clatsop County, OR, Due: September 1, 1992, Contact: Ben Harrison (503) 231–2231. Published FR 07–02–92—Due Date Correction

*EIS No. 920265,* Draft EIS, FAA, CA, Burbank-Glendale-Pasadena Airport Land Acquisition and Replacement Terminal Project, Improvement, Construction and Operation, Approval and Funding, Airport Layout Plan, Cities of Burbank, Glendale and Pasadena, Los Angeles County, CA, Due: October 10, 1992, Contact: William Johnstone (310) 297–1621. Published FR—07–10–92—Review period extended.

Dated: August 25, 1992.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 92–20734 Filed 8–27–92; 8:45 am]

BILLING CODE 6560–50–M

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[FRL–4200–6]

## Clean Air Act Advisory Committee; Open Meeting

**SUMMARY:** On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR 46993). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990.

**OPEN MEETING DATE:** Notice is hereby given that the Clean Air Act Advisory Committee will hold an open meeting on September 23, 1992 from 8:30 a.m. to 2:30 p.m., at the J.W. Marriott Hotel, 1313 Pennsylvania Avenue N.W., Washington, DC. Seating will be available on a first come, first served basis.

The meeting will discuss a number of current topics and issues related to the implementation of the Clean Air Act. These include: a discussion of a pollution prevention study of a refinery in Yorktown, Virginia; a discussion of developing effective air quality communication strategies at the state and local level, and a report and discussion of follow-up actions being developed as a result of the United Nations Conference on the Environment that was recently held in Rio de Janeiro. In addition, a report on the status of

EPA's Clean Air Act Regulatory development and other implementation efforts will be presented.

**INSPECTION OF COMMITTEE DOCUMENTS:** Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket No. A-90-39 in room 1500 of EPA Headquarters 401 M Street, SW., Washington DC. Hours of inspections are 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m. Monday through Friday.

**FOR FURTHER INFORMATION:** Concerning this meeting of the CAAAC please contact Mr. Paul Rasmussen, Office of Air and Radiation, US EPA (202) 260-7430, FAX (202) 260-8509, or by mail at US EPA, Office of Program Management Operations (ANR-443), Office of Air and Radiation, Washington, DC 20460.

Dated: August 24, 1992.

**Thomas Kiernan,**

*Acting Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 92-20728 Filed 8-27-92; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-4200-1]

## Workshop on Developmental Neurotoxic Effects and PCBs

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a workshop sponsored by the U.S. Environmental Protection Agency's (EPA) Risk Assessment Forum to develop expert scientific consensus on risk assessment issues, principles, and research recommendations regarding neurotoxic effects associated with prenatal and perinatal exposure to polychlorinated biphenyls (PCBs).

**DATES:** The workshop will begin on Monday, September 14, 1992, at 9 a.m. and end on Tuesday, September 15 at 3 p.m. Members of the public may attend as observers.

**ADDRESSES:** The meeting will be held in Research Triangle Park, North Carolina.

Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, call Eastern Research Group at (617) 674-7273 or call Kate Schalk, Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, Massachusetts, 02173, telephone (617) 674-7324 by Friday, September 4, 1992. Space is limited.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Clare Stine, U.S. Environmental Protection Agency, (RD-672), 401 M Street SW., Washington, DC, 20460, telephone (202) 260-6743.

**SUPPLEMENTARY INFORMATION:** Recent studies in rodents and monkeys have demonstrated that prenatal and perinatal PCB exposure results in neurotoxicity in the offspring. Related effects have been reported in human studies. For example, human poisonings have led to developmental delays and impairment in neurobehavioral indices in offspring of exposed women. Also, relatively low levels of exposures to PCBs in cohorts in Michigan and North Carolina have suggested neurobehavioral deficits in infants and young children.

Experts on PCB toxicity and mechanisms of action, epidemiology, neurotoxicology, and analytical methods for measuring PCBs in human samples will participate in the workshop. Information from the workshop will contribute to Risk Assessment Forum recommendations on the use of information on the developmental neurotoxic effects of PCBs for risk assessment purposes, and on related recommendations regarding new information and research needs.

Dated: August 24, 1992.

**Peter W. Preuss,**

*Acting Assistant Administrator for Research and Development.*

[FR Doc. 92-20727 Filed 8-27-92; 8:45 am]

BILLING CODE 6560-50-M

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[OPP-68013C; FRL-4161-7]

## Final Notice for Applications for Federal Dinoseb Disposal Assistance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of the closure of the Dinoseb Disposal Program.

**SUMMARY:** This notice announces the end of the Dinoseb Disposal Program. Those individuals still holding dinoseb product have until December 31, 1992, to complete shipment of their product to Chemical Waste Management, Inc. in Millington, Tennessee. After that date, anyone still holding dinoseb will not be able to participate in the EPA program and will need to arrange disposal of their stocks privately.

**DATES:** December 31, 1992, is the last day that EPA will accept approved shipments of dinoseb for disposal at Chemical Waste Management, Inc.

**FOR FURTHER INFORMATION CONTACT:** By mail: Donald E. Eckerman, Chief, Disposal and Analysis Section (H7506C), Office of Pesticide Programs, Environmental Protection Agency, EPA, 401 M St., SW., Washington, DC 20460, Telephone: (703-305-5062).

**SUPPLEMENTARY INFORMATION:**

### I. Background

The registrations of all dinoseb pesticides were suspended in October 1986 and finally canceled in 1988. Based on information about the adverse human health and environmental risks posed by dinoseb-containing pesticide products, on October 7, 1986, the Administrator issued an Emergency Suspension Order for all registrations of pesticides containing the active ingredient dinoseb. The order immediately prohibited all further sale, distribution, and use of dinoseb products. Notice of this action was published in the **Federal Register** of October 14, 1986 (51 FR 36634). All registrations of dinoseb were finally canceled on September 25, 1988.

Dinoseb was an extensively used pesticide during the time it was registered. Dinoseb was used primarily as a herbicide on such crops as cotton, caneberries, lentils, orchard crops, peanuts, peas, potatoes, snap beans, and soybeans. It was also used as a pre-harvest desiccant, insecticide, and fungicide. Common trade names include: Ancrack, Dinitro, Dyanap, Dynamite, General Weed Killer, Hel-Fire, and Premerge.

Section 19 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), prior to the 1988 amendments, required EPA to accept for disposal any pesticide product that was suspended and subsequently canceled upon request of the owner. Since beginning the acceptance of dinoseb products in 1989, EPA has accepted over 2.5 million gallons of dinoseb product for disposal at Chemical Waste Management, Inc. and is 99 percent complete with the disposal of the known stocks of dinoseb.

### II. Dinoseb Disposal Program End

Those individuals still holding dinoseb product have until December 31, 1992, to complete shipment of their product to Chemical Waste Management, Inc. in Millington, Tennessee. After that date, anyone still holding dinoseb will not be able to participate in the EPA program and will need to arrange disposal of their stocks privately.

Holders who have previously applied for disposal assistance and have not completed delivery to Chemical Waste Management, Inc. or holders who have

not previously applied for disposal assistance are encouraged to immediately contact EPA at the address referenced under FOR FURTHER INFORMATION CONTACT. After EPA confirms eligibility, holders will need to make arrangements for shipment. This process will take some time, as holders will need to complete the necessary paperwork, including a manifest and waste profile sheet, and to prepare their containers for shipment. For these reasons, holders should not delay applying for disposal assistance.

After EPA completes disposal of any remaining dinoseb stocks received between now and December 31, 1992, EPA's contract with Chemical Waste Management, Inc. will end, and EPA will have fulfilled its obligation under FIFRA section 19 to safely dispose of suspended and canceled dinoseb pesticides.

Dated: August 25, 1992.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 92-20899 Filed 8-27-92; 8:45 am]

BILLING CODE 6560-50-F

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[FRL-4200-2]

## Sole Source Aquifer Determination for the Ramapo Aquifer Systems, NJ and NY

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In response to a petition from the Township of Mahwah and the Passaic River Coalition in New Jersey, notice is hereby given that the Region II Regional Administrator of the U.S. Environmental Protection Agency has determined that the Ramapo River Basin Aquifer Systems within the Ramapo River Basin satisfy all determination criteria as a Sole Source Aquifer pursuant to section 1424(e) of the Safe Drinking Water Act. Satisfying the designation criteria resulted in the following findings: The Ramapo River Basin Aquifer Systems are the sole source of drinking water for the Aquifer Service Area; there are no viable alternative drinking water sources of sufficient supply; and if contamination were to occur, it would pose a significant hazard to the public health. As a result of this action, all Federal financially assisted projects for the area will be subject to EPA review to ensure that these projects are designed and constructed such that they do not bring about, or in any way contribute to, conditions creating a significant hazard to public health.

**DATES:** This determination shall be promulgated for purposes of judicial review at 1 p.m. Eastern time on September 14, 1992.

**ADDRESSES:** The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region II, Ground Water Management Protection Section, Drinking/Ground Water Protection Branch, room 842, 26 Federal Plaza, New York, New York 10278.

**FOR FURTHER INFORMATION CONTACT:** Walter Andrews, Chief, Drinking/Ground Water Protection Branch, Region II, 26 Federal Plaza, room 845, New York, NY 10278, (212) 264-1800.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h-3(e), Pub. L. 93-523 of December 16, 1974) states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish a notice of the determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On September 8, 1990, EPA received a petition from the Township of Mahwah and the Passaic River Coalition in New Jersey requesting the designation of the Ramapo River Basin as a Sole Source Aquifer. EPA determined that the petition, after receipt and review of additional information requested on November 26, 1990 and on September 9, 1991 was complete. A public hearing was held on March 10, 1992 at the Council Chambers of the Municipal Offices in Mahwah in Mahwah, New Jersey, in accordance with all applicable notification and procedural requirements. All comments received at the hearings, and the majority of the written comments received during the comment period were in favor of the designation.

### II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the technical review process for designating an area under Section 1424(e) were: (1) That the aquifer is the sole or principal source (more than 50%) of drinking water for the defined Aquifer Service Area, and that the volume of water available from all alternative sources is insufficient to replace the petitioned aquifer; and (2) that contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to EPA at this time, the Regional Administrator has made the following findings in favor of designating the Ramapo River Basin Aquifer Systems as a Sole Source Aquifer:

1. The Ramapo River Basin Aquifer Systems are the sole source of drinking water to approximately 180,000 residents of the Aquifer Service Area.

2. There are no reasonable alternative sources capable of supplying a sufficient quantity of drinking water to the population served by the petitioned Ramapo River Basin Aquifer Systems.

3. Although all public water supply wells meet or exceed the appropriate Federal and State drinking water standards, there have been several documented incidents of ground water contamination within the Ramapo River Basin.

### III. Description of the Ramapo River Basin Aquifer Systems, Sole Source Aquifer Designated Area, Aquifer Service Area, and Project Review Area

The Ramapo River Basin is an area of 161 square miles within the Passaic River drainage system. Thirty percent of the Basin is in New Jersey and includes parts of Passaic and Bergen Counties. Seventy percent of the Basin is in New York and includes parts of Orange and Rockland Counties.

The Ramapo River Basin Aquifer Systems within the Ramapo River Basin include the highly productive valley-fill aquifer in the Ramapo and Mahwah River valleys and the Newark Group bedrock aquifer. The Newark Group underlies the eastern portion of Ramapo River Basin, east of the Ramapo River Basin Great Border Fault. The trend of the Great Border Fault follows Ramapo River valley in New Jersey and the Mahwah River valley in New York.

The U.S. Environmental Protection Agency designated Sole Source Aquifer includes the Ramapo River Basin Aquifer Systems. In New York, the Sole Source Aquifer includes the New York Department of Conservation designated Ramapo—Mahwah Primary Aquifer as illustrated in the U.S. Geological Survey Water Resources Investigations Report 87-4274 Potential Yields in

Unconsolidated Aquifers in Upstate New York—Lower Hudson Sheet, Scale 1:250,000. The aquifer is delineated in detail on the U.S. Geological Survey Open File Report 82-114, Geohydorlogy of the Valley-Fill Aquifer in the Ramapo and Mahwah Rivers Area, Rockland County, New York, Scale 1:24,000. In New Jersey the designated Sole Source Aquifer includes the valley-fill aquifer in the Mahwah and Ramapo River valleys. The Ramapo River valley-fill aquifer is described and profiled in the New Jersey Geological Survey Map Series 88-6, Bedrock Topography and Profiles of Valley-Fill Deposits in the Ramapo River Valley, New Jersey, Scale 1:24,000. The designated Sole Source Aquifer area extends from the Great Border Fault, east to the Ramapo River Basin boundary to encompass the Newark Group bedrock aquifer.

The Aquifer Service Area includes the Townships of Mahwah and Wayne and the Boroughs of Ramsey, Oakland, Franklin Lakes, Allendale and Pomptom Lakes in New Jersey. In New York, the Aquifer Service Area includes the Towns of Ramapo, Haverstraw, Orangetown and Clarkstown and the Villages of Hillburn, Suffern and Spring Valley and the Township of Stony Point.

Because the U.S. Environmental Protection Agency determined that contaminants introduced in any of these areas have the potential to adversely affect the Ramapo River Basin Aquifer Systems, the designated Sole Source Aquifer includes the aquifer recharge areas and streamflow source areas encompassed by the Ramapo River Basin boundaries. The Project Review Area is defined as coincident with the boundaries of the Ramapo River Basin.

A map delineating the designated areas is available and may be obtained by contacting the person listed previously.

### IV. Information Utilized in Determination

The information utilized in this determination included the petition submitted by the Township of Mahwah and the Passaic River Coalition, various U.S. Geological Survey and New Jersey Geological Survey reports, information contained in the U.S. Environmental Protection Agency files, and written and verbal comments from the public. In addition, consultation was held with other U.S. Environmental Protection Agency Branches to achieve a regional consensus on the decision. These materials are available to the public and may be inspected during normal business hours at the address listed previously.

### V. Project Review

As per this determination the U.S. Environmental Protection Agency will review proposed projects with Federal financial assistance in order to ensure that such projects do not have the potential to contaminate the Ramapo River Basin Aquifer Systems through its recharge zone and streamflow source areas as to create a significant hazard to public health. In many cases, those projects may also be analyzed in an Environmental Impact Statement under the National Environmental Policy Act (NEPA), 42 U.S.C. section 4332(2)(c). All Environmental Impact Statements, as well as any other proposed Federal actions affecting the U.S. Environmental Protection Agency program, are required by Federal law (under the "NEPA/309" process) to be reviewed and commented upon by the U.S. Environmental Protection Agency Administrator.

In order to streamline the U.S. Environmental Protection Agency review of the possible environmental impacts on designated Sole Source Aquifers, when an action is to be analyzed in an Environmental Impact Statement, the two reviews will be consolidated and both authorities cited. The U.S. Environmental Protection Agency review under section 1424(e) will be therefore included in the U.S. Environmental Protection Agency review of the Environmental Impact Statement under NEPA.

### VI. Summary and Discussion of Public Comment

The public comments received expressed strong support for the designation of the Ramapo River Aquifer Basin as a Sole Source Aquifer. Seventeen persons, representing local governments, environmental and civic organizations, and purveyors presented statements of support at the public hearings. Fifteen written statements in favor of designation were received representing local governments, congress and the New Jersey Department of Environmental Protection and Energy.

The New York Department of Environmental Conservation and the Villages of Hillburn and Harriman in New York only supported the designation of the existing NYSDEC designated Ramapo—Mahwah Primary Aquifer and did not support the inclusion of aquifer recharge areas and streamflow source areas in New York.

The U.S. Environmental Protection Agency's response to the above concern is that, wherever possible, the boundaries of Sole Source Aquifers are based on hydrogeologic criteria. The designated Sole Source Aquifer includes the highly productive valley-fill aquifer in the Ramapo and Mahwah River valleys. It has been documented that the Ramapo River is a major source of recharge for the valley-fill aquifer. Hence any incident of surface water contamination may potentially impact wells tapping the aquifer. On that basis, the Ramapo River Basin, which encompasses the recharge areas and streamflow source areas for the Ramapo River Basin Aquifer Systems is designated as a Sole Source Aquifer.

### VII. Summary

Today's action affects the Ramapo River Basin located in Passaic and Bergen Counties in New Jersey and Orange and Rockland Counties in New York. Projects with Federal financial assistance proposed for portions of Passaic, Bergen, Orange and Rockland Counties within the Ramapo River Basin will be reviewed to ensure that their activities will not endanger public health through contamination of the aquifer.

Dated: August 11, 1992.

**Constantine Sidamon-Eristoff,**

*Regional Administrator, Environmental Protection Agency Region II.*

[FR Doc. 92-20729 Filed 8-27-92; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL RESERVE SYSTEM

### Citizens Holding Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 21, 1992.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

*1. Citizens Holding Corporation*, Clearwater, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Ctiizens Bank of Clearwater, Clearwater, Florida.

*2.. Georgia Bank Financial Corporation*, Augusta, Georgia; to merge with FCS Financial Corporation, Martinez, Georgia, and thereby indirectly acquire First Columbia Bank, Martinez, Georgia.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Fairmount Banking Company*, Fairmount, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Fairmount State Bank, Fairmount, Indiana.

*2. First Midwest Corporation of Delaware*, Elmwood Park, Illinois; to acquire 100 percent of the voting shares of West Central Illinois Bancorp, Inc., Monmouth, Illinois, and thereby indirectly acquire National Bank of Monmouth, Monmouth, Illinois.

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. First Interstate BancSystem of Montana, Inc.*, Billings, Montana; to acquire 100 percent of the voting shares of First Interstate Bank of South Missoula, N.A., Missoula, Montana, a *de novo* bank.

*2. St. Stephen BanGroup, Inc.*, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of St. Stephen Bancorporation, Inc., St. Stephen, Minnesota, and thereby indirectly acquire St. Stephen State Bank, St. Stephen, Minnesota.

**D. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Resource One*, Ulysses, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Grant County State Bank, Ulysses, Kansas.

**E. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. American Capital Corporation*, Katy, Texas; to acquire 72.03 percent of the voting shares of Crosby Bancshares, Inc., Crosby, Texas, and thereby indirectly acquire Crosby State Bank, Crosby, Texas.

*2. First Fabens Bancorporation, Inc.*, Fabens, Texas; to merge with Bancshares of Ysleta, Inc., El Paso, Texas, and thereby indirectly acquire Bank of Ysleta, El Paso, Texas.

*3. Olney Bancorp of Delaware, Inc.*, Wilmington, Delaware; to acquire 99.96 percent of the voting shares of First Coleman National Bank of Coleman, Coleman, Texas.

*2. Olney Bancshares, Inc.*, Olney, Texas; to acquire 99.96 percent of the voting shares of First Coleman National Bank of Coleman, Coleman, Texas.

Board of Governors of the Federal Reserve System, August 24, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-20675 Filed 8-27-92; 8:45 am]

BILLING CODE 6210-01-F

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## GNB Bancorporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 21, 1992.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. GNB Bancorporation*, Grundy Center, Iowa; to merge with Ackley Bancorporation, Ackley, Iowa, and thereby indirectly acquire Ackley State Bank, Ackley, Iowa.

In connection with this application, Applicant also proposes to acquire Ackley Insurance Agency, Ackley, Iowa, and thereby engage in general insurance activities in Ackley, Iowa, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. First Bank System, Inc.*, Minneapolis, Minnesota; to merge with Bank Shares, Inc., Minneapolis, Minnesota, and thereby indirectly acquire Marquette Bank Minneapolis, N.A., Minneapolis, Minnesota, and Marquette Bank Rochester, Rochester, Minnesota. In the alternative, First Bank System also proposes to acquire 24.9 percent of the voting shares of Bank Shares, Inc., Minneapolis, Minnesota, and thereby indirectly acquire Marquette Bank Minneapolis, N.A., Minneapolis, Minnesota; Marquette Bank Rochester, Rochester, Minnesota; Marquette Bank Lakeville, Lakeville, Minnesota; and Marquette Bank Brookdale, Brooklyn Center, Minnesota.

In connection with this application, Applicant also proposes to acquire Marquette Information Services, Minneapolis, Minnesota, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y; and Marquette Insurance

Services, Minneapolis, Minnesota, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y.

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Liberty Bancorp, Inc.*, Oklahoma City, Oklahoma; to acquire 6.03 percent of the voting shares of F & M Bancorporation, Tulsa, Oklahoma, and thereby indirectly acquire The F & M Bank and Trust Company, Tulsa, Oklahoma.

In connection with this application, Applicant also proposes to acquire 5.85 percent of the voting shares of American Trustcorp, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Trust Company of Oklahoma of Tulsa, and thereby engage in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 24, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-20674 Filed 8-27-92; 8:45 am]

BILLING CODE 6210-01-F

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## Mid Am, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 21, 1992.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Mid Am, Inc.*, Bowling Green, Ohio; to acquire Apollo Savings and Loan Company, Cincinnati, Ohio, and thereby engage in permissible savings and loan activities pursuant to § 225.25(b)(9) of the Board's Regulation Y.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. CNB Bancshares, Inc.*, Evansville, Indiana; to acquire First Federal Savings Bank of Kentucky, Madisonville, Kentucky ("First Federal"), and thereby engage in operating a savings association pursuant to § 225.25(b)(9). Applicant also seeks approval for the acquired First Federal's subsidiary, First Home Services Corporation, Madisonville, Kentucky, to continue to engage in underwriting, selling and issuing credit life insurance and credit accident and health insurance in connection with loans and extensions of credit by Thrift pursuant to § 225.25(b)(8); and performing appraisals of real and personal property which will secure loans mae by Thrift, pursuant to § 225.25(b)(13) of the Board's Regulation Y.

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. BOK Financial Corporation*, Tulsa, Oklahoma; to acquire Southwest Trustcorp, Oklahoma City, Oklahoma, and thereby indirectly acquire Trust Company of Oklahoma, Oklahoma City, Oklahoma, and thereby engage in trust company activities pursuant to § 225.25(b)(2) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 24, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-20673 Filed 8-27-92; 8:45 am]

BILLING CODE 6210-01-F

## Marguerite Sevde, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 16, 1992.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Marguerite Sevde*, to acquire an additional 7.08 percent of the voting shares of Elcho Bancorporation, Inc., Venice, Florida, for a total of 30.89 percent and thereby indirectly acquire State Bank of Elcho, Elcho, Wisconsin.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Gladden A. Redding Revocable Trust*, Windom, Minnesota; to acquire an additional 2.34 percent of the voting shares of Windom State Investment Company, Windom, Minnesota, for a total of 25.27 percent, and thereby indirectly acquire Southwest State Bank, Windom, Minnesota.

*2. Mary Jane Redding Revocable Trust*, Windom, Minnesota; to acquire an additional 2.34 percent of the voting shares of Windom State Investment Company, Windom, Minnesota, for a total of 25.27 percent, and thereby indirectly acquire Southwest State Bank, Windom, Minnesota.

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Gary Dickinson*, Chillicothe, Missouri; to acquire an additional 11.45 percent of the voting shares of CNB Financial Corporation, Kansas City, Kansas, for a total of 21.44 percent, and thereby indirectly acquire Commercial National Bank of Kansas City, Kansas City, Kansas; and City National Bank,

Atchison, Kansas; and United Kansas Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire First Bank and Trust, Concordia, Kansas. **Comments on this application must be received by September 10, 1992.**

**D. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. Philip J. Rocco*, Santa Ana, California; to acquire an additional 26.23 percent of the voting shares of Orange Bancorp, Fountain Valley, California, for a total of 49 percent, and thereby indirectly acquire The Bank of Orange County, Fountain Valley, California.

Board of Governors of the Federal Reserve System, August 24, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-20672 Filed 8-27-92; 8:45 am]

BILLING CODE 6210-01-F

## Signet Banking Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 21, 1992.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. Signet Banking Corporation*, Richmond, Virginia; to engage *de novo* through its subsidiary, Signet Strategic Capital Corporation, Richmond, Virginia, in providing investment advice as a commodity trading advisor for institutional and other financially sophisticated customers with respect to the purchase and sale of futures and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit, and other money market instruments that a bank may buy or sell in the cash market for its own account, and providing foreign exchange and transactional services pursuant to §§ 225.25(b)(17) and (b)(19) of the Board's Regulation Y.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Midstate Financial Corp.*, Brownsburg, Indiana; to engage *de novo*, through its subsidiary, Freedom Mortgage Company, Brownsburg, Indiana, in the making, acquiring, and servicing of loans or otehr extensions of credit as a mortgage company, which will make both residential and commercial mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Indiana.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Arvest Bank Group, Inc.*, Bentonville, Arkansas; to engage *de novo* through its subsidiary, Arvest Bank Group, Inc., Bentonville, Arkansas, in making, acquiring, and servicing loans or other extensions of credit, including acquiring participations in loans originated by others, for the account of the notificant or for the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 24, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-20671 Filed 8-27-92; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL TRADE COMMISSION

[Dkt. C-3390]

## Debes Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, six Rockford, Illinois-area nursing homes and two corporations that own and operate nursing homes from entering into agreements to boycott temporary nurses registries or to fix, stabilize, or otherwise interfere or tamper with the prices charged by such registries. In addition, the order prohibits, for ten years, any agreement with any other respondent to purchase or use the services of any particular temporary nurses registry, and for five years prohibits each respondent from communicating to any other respondent any information concerning the use of temporary nurses registry services for any Rockford-area nursing home.

**DATES:** Complaint and Order issued August 4, 1992.[1]

**FOR FURTHER INFORMATION CONTACT:** C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, suite 1437, Chicago, IL 60603, (312) 353-8156.

**SUPPLEMENTARY INFORMATION:** On Wednesday, January 15, 1992, there was published in the **Federal Register**, 57 FR 1736, a proposed consent agreement with analysis In the Matter of Debes Corporation, et al., for the purpose of soliciting public comment. Interested parties are given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 35 Stat. 719, as amended; 15 U.S.C. 45)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 92-20730 Filed 8-27-92; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 92N-0338]**

### Drug Export; Amplicor™ HIV PCR Test

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Roche Molecular Systems, Inc., has filed an application requesting approval for the export of the biological product Amplicor™ HIV PCR Test to Belgium, Denmark, Federal Republic of Germany, Ireland, Japan, The Netherlands, Norway, Spain, Sweden and Switzerland.

**ADDRESSES:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Roche Molecular Systems Inc., 1080 U.S. Hgwy. 202, Branchburg, NJ 08876, has filed an application requesting approval for the export of the biological product Amplicor™ HIV PCR Test to Belgium, Denmark, Federal Republic of Germany, Ireland, Japan, The Netherlands, Norway, Spain, Sweden and Switzerland. The Roche Amplicor™ HIV PCR Test is a DNA Probe diagnostic test kit that utilizes the Polymerase Chain Reaction technique for the detection of HIV infection. The application was received and filed in the Center for Biologics Evaluation and Research on July 30, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 8, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: August 19, 1992.

**Michael P. Dubinsky,**

*Deputy Director, Office of Compliance, Center for Biologics Evaluation and Research.*

[FR Doc. 92-20653 Filed 8-27-92; 8:45 am]

BILLING CODE 4160-01-F

### Advisory Committee Meetings; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of August 19, 1992 (57 FR 37548), announcing upcoming advisory committee meetings. The deadline for persons interested in making a formal presentation before the Veterinary Medicine Advisory Committee was inadvertently stated as August 7, 1992. It should have stated September 7, 1992.

**FOR FURTHER INFORMATION CONTACT:** Alicia Abbott, Office of Policy (HF-26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

In FR Doc. 92-19801, appearing on page 37548 in the **Federal Register** of Wednesday, August 19, 1992, the following correction is made: on page 37549 in the 2d column, in the 4th paragraph, under the heading "*Agenda—Open public hearing.*", in the 6th line, "August 7, 1992," is corrected to read "September 7, 1992,".

Dated: August 21, 1992.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 92-20652 Filed 8-27-92; 8:45 am]

BILLING CODE 4160-01-F

### Health Resources and Services Administration

### Program Announcement and Proposed Funding Priorities and Special Consideration for Grants for Predoctoral Training in Family Medicine

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1993 for Grants for Predoctoral Training in Family Medicine are being accepted under the authority of section 786(a), title VII, of the Public Health Service Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100-607. Comments are invited on the proposed funding priorities and special consideration stated below.

This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

#### Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions

regarding submission of an application for this program. FY 1992 grant cycle data are not yet available.

In FY 1991, HRSA reviewed 48 applications for Grants for Predoctoral Training in Family Medicine. Of those applications, 69 percent were approved and 31 percent were not recommended for further consideration. Thirty-three projects, or 69 percent of the applications, were funded.

In FY 1990, HRSA reviewed 53 applications. Of those applications, 68 percent were approved and 32 percent were not recommended for further consideration. Thirty-six projects, or 68 percent of the applications, were funded.

**Purpose**

Section 786(a) of the Public Health Service Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support for both the program and the trainees.

Eligible applicants are accredited public or nonprofit private schools of medicine or osteopathic medicine.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart Q. The period of Federal support will not exceed 5 years.

**National Health Objectives for the Year 2000**

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Grants for Predoctoral Training in Family Medicine Program is related to the priority area of Educational and Community-Based Programs.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9325 (Telephone (202) 783-3238).

**Education and Service Linkage**

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

**Review Criteria**

The review of applications will take into consideration the following criteria:

1. The potential effectiveness of the proposed project in carrying out the training purposes of section 786(a) of the Act;
2. The degree to which the proposed project adequately provides for the project requirements;
3. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and
4. The potential of the project to continue on a self-sustaining basis after the period of grant support.

**Other Considerations**

In addition, the following funding factors may be applied in determining the funding of approved applications:

1. Funding Preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuation project ahead of new projects.
2. Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.
3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for a funding factor will be reviewed and given full consideration for funding.

**Established Funding Preference**

The following funding preference was established in FY 1992 after public comment (56 FR 55504) dated October 28, 1991 and is continued in FY 1993.

A funding preference will be given to applicants that have an established, required third year family medicine clerkship or preceptorship (at least 4 weeks in duration); or provide credible evidence that such a clerkship or preceptorship will be initiated no later than academic year 1994-95.

**Proposed Funding Priorities and Special Consideration for FY 1993**

It is proposed to give a funding priority to:

1. Applicants that provide substantial training experience in:

(1) Inpatient or outpatient health care facilities located in a Health Professional Shortage Area (HPSA), PHS Act, section 332 or in a Medically Underserved Area (MUA) designated under provisions of PHS Act, section 330(b)(3);

(2) Health care facilities that have a substantial portion of their patient visits/hospital admissions that are uncompensated or are compensated under the State Medicaid program and/or other State and local health services assistance programs; or

(3) Community Health Centers currently supported under PHS Act, section 330, Migrant Health Centers currently supported under PHS Act, section 329, Homeless Health Centers supported under PHS Act, section 340, facilities that have formal arrangements to provide primary health services to public housing communities, facilities operated by state or local health departments, and/or hospitals and other health care facilities of the Indian Health Service.

This priority is designed to continue HRSA's strategy to enhance primary medical care training in the above areas and to provide training experiences to underserved populations.

2. Applicants that have a required primary care preceptorship with community-based physicians (family physicians, general internists, or general pediatricians) in ambulatory care settings which (a) occurs in the 1st or 2nd year and is at least 4 weeks duration or (b) is a longitudinal experience of at least 5 days per semester in both the 1st and 2nd years, AND have an active family medicine student interest group with active support from the predoctoral coordinator.

This priority supports the concept that medical students who are exposed early to primary care preceptorships are more likely to choose careers in family medicine.

3. Applicants that document that 20 percent or more of the previous medical school graduating class or of the combined last three graduating classes entered accredited family medicine residency training programs or internship training programs in osteopathic medicine which emphasize family medicine and are approved by the American Osteopathic Association.

This priority will reward those schools with proven track records and encourage others to improve their percentages.

4. Applications that can demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in influencing graduates from those minority or low-income populations identified as at risk of poor

health outcomes to enter family medicine residency training.

This priority is consistent with a HRSA strategy to increase the number of health professionals from minority and other at risk populations, to assure equal access to health professions education for all population groups, and ultimately, to provide a greater volume of health care in underserved areas.

**Special Consideration**

Special consideration will be given to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

**Proposed Special Consideration**

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

This special consideration is intended to recognize programs that enroll and graduate trainees from underserved areas because health professionals who come from underserved areas are more likely to return there upon completion of training to provide needed health services.

**Additional Information**

Interested persons are invited to comment on the proposed funding priorities and special consideration. All comments received on or before September 28, 1992 will be considered before the final funding priorities and special consideration are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priorities and special consideration will be applied.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professionals, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 4C-25, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professionals, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

**Application Requests**

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Mrs. Donna Nash, Grants Management Specialist (D-15), Residency and Advanced Grants Section, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 8C-26, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Completed applications should be returned to the Grants Management Office at the above address.

If additional programmatic information is needed, please contact: Mrs. Betty Ball, Resources Development Section, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C-04, Parklawn Building, Rockville, Maryland 20857, Telephone: (301) 443-3614.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Public Law 100-607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for fiscal year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately 6 months from the first deadline.

The deadline date for receipt of applications is October 6, 1992. Applications shall be considered as meeting the deadline date if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.896 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: July 16, 1992.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 92-20707 Filed 8-27-92; 8:45 am]

BILLING CODE 4160-15-M

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## Program Announcement and Proposed Funding Priorities and Special Consideration for Special Project Grants to Schools of Public Health for Fiscal Year 1993

The Health Resources and Services Administration (HRSA) announces acceptance of applications for fiscal year (FY) 1993 Special Project Grants to Schools of Public Health. This grant program is authorized under section 790A, Title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, Title VI of Public Law 100-607. Comments are invited on the proposed funding priorities and special consideration. This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds.

The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding application does not reflect any change in this policy.

**Previous Funding Experience**

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1992 there was no competitive grant cycle. In FY 1991, HRSA reviewed 32 applications for this grant program. Of those applications, 53 percent were approved and 47 percent were not recommended for further consideration. Seventeen grant projects, or 100 percent of the approved grant applications, were funded.

Section 790A of the Public Health Service Act (the Act), as amended, authorizes the Secretary to award grants to schools of public health for the costs of planning, developing, demonstrating, operating, and evaluating projects: (1) for preventive medicine; (2) for health promotion and disease prevention; (3) for increasing the enrollment in such

schools of public health of individuals from disadvantaged backgrounds; and (4) to improve access and quality in health care.

The period of initial Federal support should not exceed 3 years. Grants will be awarded on a competitive basis.

**Eligibility**

Eligible applicants for this program are schools of public health. "A school of public health" means a school as defined in section 701(4) of the PHS Act which has been accredited by the Council on Education for Public Health pursuant to section 701(5) of the Act and which is located in a State as defined in section 701(11) of the Act.

**National Health Objectives for the Year 2000**

The Public Health Service urges applicants to submit proposals that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

**Education and Service Linkage**

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

**Review Criteria**

The following review criteria were established in FY 1990 after public comment and the Administration is again extending these criteria in FY 1993.

The review of applications will consider:

- The degree to which the proposed project adequately meets legislative intent;
- The background and rationale for the proposed project;
- Whether the project contains clearly stated realistic and achievable national or regional objectives which are described in: The Institute of Medicine study titled The Future of Public Health; Healthy People 2000: National Health Promotion and Disease Prevention Objectives; the Seventh Report to the President and Congress on the Status of Health Professions in the United States; and the recommendations and action steps in the Public Health Faculty/Agency Forum Final Report.
- The extent to which the project contains a methodology which is integrated and compatible with project objectives, including collaborative arrangements and feasible workplans;
- Evaluation plans and procedures for program and trainees, if applicable;
- The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources;
- The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when applicable; and
- Whether there is an institutional plan and commitment for self-sufficiency when Federal support ends.

**Other Considerations**

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

Special consideration is defined as the enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

**Proposed Funding Priorities**

It is proposed that a funding priority will be given to projects that provide for linkages between schools of public health and State/local official public health departments in the following areas: (1) Implementation of the Public Health Faculty/Agency Forum Final Report recommendations and action steps, (2) technical assistance, (3) shared teaching responsibilities by agency staff and schools of public health faculty, (4) provision of public health students to perform practicums (internships), (5) continuing professional development, and (6) education and training efforts in direct support of public health services. This funding priority is responsive to the Institute of Medicine Report, The Future of Public Health, the Seventh Report to the President and Congress on the Status of Health Personnel, Healthy People 2000, and the Public Health Faculty/Agency Forum Final Report.

It is also proposed that a funding priority will be given to programs which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or lower-income populations identified as at risk of poor health outcomes. This priority is consistent with a HRSA strategy to increase the number of minority health professionals, to assure equal access to health professions education for all population groups, and ultimately, to provide a greater volume of health care in underserved areas.

It is also proposed that a funding priority will be given to grantees offering substantial training experiences in underserved areas. This priority is consistent with HRSA's long-range plan to strengthen linkage between Public Health Service supported education programs and programs which provide comprehensive primary care services to the underserved.

**Proposed Special Consideration**

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

This special consideration is intended to recognize programs that enroll and graduate trainees from underserved areas because health professionals who come from underserved areas are more likely to return there upon completion of training to provide needed health services.

**Additional Information**

Interested persons are invited to comment on the proposed funding priorities and special consideration. The comment period is 30 days. All comments received on or before September 28, 1992 will be considered before the final funding priorities and special consideration are established. No funds will be allocated or final selections made until a final notice is published stating when the final funding priorities and special consideration will be applied. Written comments should be addressed to: Neil Sampson, M.P.H., Director, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration Parklawn Building, room 8-101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

**Application Requests**

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Application materials and questions regarding business management issues and grants policy should be directed to: Ms. Sandra Bryant (D38), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6915.

Questions concerning the programmatic aspects of Special Project Grants to Schools of Public Health should be directed to: Ms. Elizabeth Coleman-Santucci, Public Health Branch, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C-09, Rockville, Maryland 20857, Telephone: (301) 443-6896.

The application deadline date is October 26, 1992. Completed applications should be returned to the Grants Management Officer at the above address.

Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to an independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

The *Catalog of Federal Domestic Assistance* number for Special Project Grants to Schools of Public Health is 93.188. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: July 6, 1992.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 92-20708 Filed 8-27-92; 8:45 am]

BILLING CODE 4160-15-M

**Public Health Service**

**Agency Forms Submitted to the Office of Management and Budget for Clearance**

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, August 7, 1992. (Call PHS Reports Clearance Officer on 202-690-7100 for copies of package.)

1. Regulation—42 CFR 83.3-1: Contents of a Request for Health Hazard Evaluation—0920-0102—This data collection is an application for Health Hazard Evaluation as described in 42 CFR 85.3-1. Employers or authorized representatives of employers in general industry or mining may request an evaluation to determine whether any substances normally found in the place of employment has potentially toxic effect. Respondents: Individuals or households; Businesses or other for-profit; Non-profit institutions, Small businesses organizations; Number of Respondents: 500; Number of Responses per Respondent: 1; Average Burden per Response: .20 hours; Estimated Annual Burden: 100 hours.

2. Tuberculosis Statistics and Program Evaluation—0920-0026—Data are submitted to the Centers for Disease Control from tuberculosis programs using the forms contained in this information collection. This is a request to revise one of the forms to collect surveillance data on additional items such as HIV status, drug susceptibility results, occupation, drug use, initial drug therapy and type of health care provider. These new data will enable us to study and devise control programs for target populations. Respondents: Individuals or households; Number of Respondents: 117; Number of Responses per Respondent: 224; Average Burden per Response: .117 hours; Estimated Annual Burden: 4,641 hours.

3. 1990 Fluoridation Census and Annual Updates—0920-0195—A detailed, published census of fluoridated community and school water systems, followed by annual summary update will be conducted. The data will provide current information on status of fluoridation; location and status of water systems and places that use optimally adjusted or naturally occurring fluoridated water; and population served. Respondents: State or local governments; Number of Respondents: 59; Number of Responses Per Respondent: 1; Average Burden per Response: 8 hours; Estimated Annual Burden: 472 hours.

4. Medicated Feed Application—0920-0011—This form provides the Agency with the information required to aid in the assurance that medicated feeds will be manufactured in accordance with the FD&C Act and regulations concerning proper manufacture of new animal drug containing products. The applications are used to determine whether the feeds manufactured are safe and effective for labeled claims. Respondents: Farms; Businesses or other for-profit; Small businesses or organizations; Number of Respondents: 6,000; Number of Responses per Respondent: 1; Average Burden per Response: 2 hours; Estimated Annual Burden: 12,000 hours.

5. Loan Repayment Program for Service on Faculties of Certain Health Professions Schools-Application—0915-0150—Health professionals applying to the Loan Repayment program for Service on Faculties of Certain Health Professions Schools provide information needed to determine eligibility. Applicants provide information that identifies that they are a disadvantaged health professions graduate, have a contract to serve as full-time faculty, and have creditable loans. Respondents: Individual or households; Businesses or other for-profit; small businesses or organizations.

| Title | No. of respondents | No. of responses for respondent | Average burden per response |
|---|---|---|---|
| FLRP application. | 100 | 1 | 1 hr. |
| Lender's confirmation of loan. | 180 | 1 | .5 hrs. |

Estimated Total Annual Burden..... 190 hours.

6. Regulations Under The Federal Import Milk Act—0910-0212—The Import Milk Act prohibits the exportation of milk and cream to this country unless the shipper of such products holds a valid import permit from FDA. The Act requires documentation that all cows are healthy, dairy farms/plants are in good sanitary condition. Respondents: State or local governments; Farms; Businesses or other for-profit.

| Title | No. of respondents | No. of responses per respondent | Average burden per response |
|---|---|---|---|
| Application for permit to ship/transport milk/cream, form FDA 1993. | 1 | 1 | .5 hrs. |
| Certification/transmittal for an application, form FDA 1815 [1]. | 1 | 2 | .25 hrs. |
| Sanitary inspection of dairy farms, form FDA 1996. | 1 | 200 | 1.5 hrs. |
| Sanitary inspection of milk plants, form FDA 1997. | 1 | 2 | 2 hrs. |
| Time and temperature recordings, recordkeeping. | 1 | 200 | .05 hrs. |

[1] Submitted in lieu of Forms FDA 1994 and 1995, Report of Tuberculin Test of Cattle and Physical Examination of Cows.

Estimated Total Annual Burden..... 315 hours.

Desk Officer: Shannah Koss.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: August 18, 1992.

**Phyllis M. Zucker,**

*Acting Director, Office of Health Planning and Evaluation.*

[FR Doc. 92-20091 Filed 8-27-92; 8:45 am]

BILLING CODE 4160-17—M

## Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notice with comment period.

**SUMMARY:** The Clinical Laboratory Improvement Amendments of 1988, Public Law 100-578, requires that the Secretary provide for the categorization of specific laboratory test systems, assays and examinations by level of complexity. 42 CFR 493.17, published in the **Federal Register** on February 28, 1992 established criteria for such categorization.

It is the Department's intention to complete the categorization of all currently available clinical laboratory test systems, assays and examinations prior to the effective date of 42 CFR 493 (September 1, 1992). This notice announces the third of a series of lists containing specific clinical laboratory test systems, assays and examinations, categorized by complexity. Additional lists of test systems, assays and examinations by complexity will be published periodically. A complete list of all laboratory test systems, assays and examinations, categorized by complexity, will be published in the form of a compilation of these Notices. Any clinical laboratory test system, assay or examination that is not on the compilation list will be considered high complexity, until categorized otherwise as provided under 42 CFR 493.17. After publication of the compilation list, categorization or recategorization of laboratory test systems, assays and examinations will follow the procedures delineated in 42 CFR 493.17(c). After the effective date of 42 CFR 493, notices will be published periodically in the **Federal Register** to announce any additional test system, assay or examination that has been categorized (or re-categorized) during the preceding interval.

This notice also contains a list of waived procedures. 42 CFR 493.15 (b), published in the **Federal Register** on February 28, 1992 established the criteria for a certificate of waiver test and 493.15 (c) contains a list of the certificate of waiver tests. This notice lists those waived tests by manufacturer and product name.

**DATES:** *Effective date:* This list is effective September 1, 1992.

*Comment date:* Written comments on this list of tests will be considered if they are received at the address indicated below, no later than 5 p.m. on September 28, 1992.

**ADDRESSES:** Comments on the content of this Notice—only—should be addressed to: Public Health Service, Attention: CLIA **Federal Register** Notice, 1600 Clifton Rd. NE., (Mail Stop MLR5), Atlanta GA 30333.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. Nor can we accept comments by telephone.

**FOR FURTHER INFORMATION CONTACT:** Miley A. Robinson, (404) 639-1701.

**SUPPLEMENTARY INFORMATION:** As described in 42 CFR 493.17, seven criteria were used to classify laboratory test systems, assays or examinations as moderate or high complexity using a grading scheme for level of complexity that assigned scores of 1, 2 or 3 for each of the seven criteria. Test systems, assays or examinations receiving total scores of 12 or less were categorized as moderate complexity, while those receiving total scores of 13 through 21 were categorized as high complexity. As provided under 42 CFR 493.17, the following laboratory test systems, assays and examinations have been either categorized as moderate or high complexity or are waived procedures as noted.

Dated: August 19, 1992.

**James O. Mason,**

*Assistant Secretary for Health.*

### Additions to the Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity Published as a Notice in the Federal Register on February 28, 1992

*Complexity:* Moderate

*Speciality/Subspeciality:* General Chemistry

**Analyte: Acid Phosphatase**

*Category:* Automated procedures that do not require operator intervention during the analytic process

*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Alanine Aminotransferase (ALT) (SGPT)**

*Category:* Automated procedures that do not require operator intervention during the analytic process

*Test System, Assay or Examination:*
Ames Clinistat
Ames Seralyzer
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Albumin**

*Category:* Automated procedures that do not require operator intervention during the analytic process

*Test System, Assay or Examination:*
Ames Clinistat
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Alkaline Phosphatase (ALP)**

*Category:* Automated procedures that do not require operator intervention during the analytic process

*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Spectrum
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Abbott VP
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 737
Dupont ACA II
Dupont ACA III
Electronucleonics Gem-Profiler
Electronucleonics Gemini
Electronucleonics Gemstar
Instrumentation Laboratory IL Monarch
Roche Cobas FARA
Roche Cobas Mira
Technicon RA 1000

**Analyte: Ammonia**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Spectrum
Abbott Spectrum EPX
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Dupont ACA II
Dupont ACA III

**Analyte: Amylase**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Apolipoprotein A1**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Olympus AU 800

**Analyte: Apolipoprotein B**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Olympus AU 800

**Analyte: Asparate Aminotransferase (AST) (SGOT)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Ames Clinistat
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Bilirubin, Direct**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Bilirubin, Neonatal**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Bilirubin, Total**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Boehringer Mannheim Biodynamics Unimeter 250
Boehringer Mannheim Biodynamics Unimeter 300
Boehringer Mannheim Biodynamics Unimeter 330K

**Analyte: Blood Gases With pH**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
AVL 947
Ciba Corning 238 pH/Blood Gas Analyzer

**Analyte: Calcium, Ionized**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
AVL 9140
Radiometer ICA 1
Radiometer ICA2 Ionized Calcium Analyzer

**Analyte: Calcium, Total**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Carbon Dioxide, Total ($CO_2$)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Carboxyhemoglobin**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Ciba Corning 2500 CO-oximeter
Ciba Corning 270 CO-oximeter
Instrumentation Laboratory IL 482

**Analyte: Cerebrospinal Fluid Protein (CSF)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 800

**Analyte: Chloride**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223

Olympus AU 5231
Olympus AU 800

**Analyte: Cholesterol**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
ChemTrak AccuMeter
Medical Technology Corp. QuikRead

**Analyte: Cholinesterase**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Electronucleonics Gemstar II

**Analyte: Cortisol**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Creatine Kinase (CK)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Creatine Kinase MB Fraction (CKMB)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Creatinine**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Folate (Folic acid)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S

**Analyte: Follicle Stimulating Hormone (FSH)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Cirrus Diagnostics Immulite

**Analyte: Gamma Glutamyl Transferase (GGT)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Spectrum EPX
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Glucose**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Beckman System One
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Boehringer Mannheim Biodynamics Unimeter 250
Boehringer Mannheim Biodynamics Unimeter 300
Boehringer Mannheim Biodynamics Unimeter 330K
HemoCue B-Glucose System

**Analyte: Glycosylated Hemoglobin (Hgb A1C)**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Ames DCA 2000 Analyzer

**Analyte: HCG, Serum, Qualitative**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Becton Dickinson Directigen 1–2–3 hCG
Becton Dickinson QTest Pregnancy Combo
Disease Detection International ImmunoCard hCG Test

**Analyte: HCG, Serum, Quantitative**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Cirrus Diagnostics Immulite

**Analyte: HCG, Urine, Qualitative (non-waived procedures)**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Ampcor Monoclonal Pregnancy beta-HCG Liquid Card Test
Ampcor Quik-Dot Pregnancy beta-HCG Dry Card Test
Carter Products Answer Pregnancy Test
Stanbio Fertiter Pregnancy Slide Test
Stanbio QuickTell

**Analyte: HDL Cholesterol (no manual precipitation VLDL/LDL)**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Medical Technology Corp. QuikRead

**Analyte: Iron**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Ketone, Blood**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Ames Acetest

**Analyte: Lactate Dehydrogenase (LDH)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Lactate Dehydrogenase Heart Fraction (LDH–1)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Lactate Dehydrogenase Liver Fraction (LLDH)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Lactic Acid (Lactate)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Lipase**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Electronucleonics Gemstar II

**Analyte: Luteinizing Hormone (LH)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Cirrus Diagnostics Immulite

**Analyte: Magnesium**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott VP
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Oxyhemoglobin/Oxygen Saturation**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Ciba Corning 2500 CO-oximeter
Ciba Corning 270 CO-oximeter
Instrumentation Laboratory IL 482

**Analyte: Phosphorus**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Potassium**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
AVL 9140
Dupont ACA II
Dupont ACA III
Dupont ACA IV
Dupont ACA V
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Boehringer Mannheim Biodynamics Unimeter 250
Boehringer Mannheim Biodynamics Unimeter 300
Boehringer Mannheim Biodynamics Unimeter 330K

**Analyte: Protein, Total**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Ames Clinistat
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Pseudocholinesterase**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Sodium**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
AVL 9140
Dupont ACA II
Dupont ACA III
Dupont ACA IV
Dupont ACA V
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Thyroid Stimulating Hormone—high sens. (TSH-HS)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Baxter Stratus II
Cirrus Diagnostics Immulite

**Analyte: Thyroxine (T4)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Cirrus Diagnostics Immulite
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Dupont ACA II
Dupont ACA III
Instrumentation Laboratory IL Monarch
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira

Roche Cobas Mira S
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Access Medical Systems dChem
Medical Technology Corp. d-CHEM
Photest Diagnostics dChem

**Analyte: Thyroxine, Free (FT4)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Becton Dickinson Affinity

**Analyte: Triglyceride**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Medical Technology Corp. QuikRead

**Analyte: Triiodothyronine (T3)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Cirrus Diagnostics Immulite
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S

**Analyte: Triiodothyronine Uptake (T3U)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Cirrus Diagnostics Immulite
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Dupont ACA II
Dupont ACA III
Instrumentation Laboratory IL Monarch
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU-800
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Access Medical Systems dChem
Medical Technology Corp. d-CHEM
Photest Diagnostics dChem

**Analyte: Urea (BUN)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Beckman System One
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Boehringer Mannheim Biodynamics Unimeter 250
Boehringer Mannheim Biodynamics Unimeter 300
Boehringer Mannheim Biodynamics Unimeter 330K

**Analyte: Uric Acid**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

**Analyte: Vitamin B12**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Becton Dickinson Affinity
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S

**Analyte: Zinc Protoporphyrin**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Helena ProtoFluor-Z Hematofluorometer
*Speciality/Subspeciality:* General Immunology

**Analyte: Allergen specific IgE**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Abbott Matrix Aero Plus
In Vitro Technologies Central Allergy Screen
In Vitro Technologies Northeast Allergy Screen
In Vitro Technologies Southeast Allergy Screen
In Vitro Technologies Southwest Allergy Screen
In Vitro Technologies Western Allergy Screen

**Analyte: Anti-DNP Antibodies**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
NCS SLE—Slide Latex Test
V-Tech V-Trend Kit LE

**Analyte: Anti-Nuclear Antibodies (ANA)**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Baxter ImmunoSCAN SLE Test

**Analyte: Anti-Streptolysin O (ASO)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Instrumentation Laboratory IL Monarch
Roche Cobas FARA
Roche Cobas Mira
Technicon RA 1000
Technicon RA XT
*Category:* Manual or semi-automated procedures with limited steps and limited sample or reagent preparation
*Test System, Assay or Examination:*
Ampcor ASO Card Test
Baxter ImmunoSCAN ASO Test
NCS ASO Slide Test

Stanbio ASO Quicktest
V-Tech Target ASO

**Analyte: C-Reactive Protein (CRP)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Dupont ACA II
Dupont ACA III
Instrumentation Laboratory IL Monarch
Roche Cobas FARA
Roche Cobas Mira
Roche Cobas Mira S
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Ampcor CRP Card Test
Becton Dickinson BBL CRP Precipitin Test
Difco Bacto CRP Capillary Tube Test
Gamma C-Reactive Protein Latex Test
V-Tech V-Trend Kit CRP

**Analyte: Cytomegalovirus Antibodies (IgG/IgM)**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
General Biometrics ImmunoDot Infectious Mono Syndrome Panel
General Biometrics ImmunoDot T.E.C.H. Test

**Analyte: Epstein-Barr virus Antibodies**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
General Biometrics ImmunoDot Infectious Mono Syndrome Panel
General Biometrics ImmunoDot T.E.C.H. Test

**Analyte: HIV Antibodies**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Cambridge BioScience Recombigen HIV-1 LA Test
Murex SUDS HIV-1 Test

**Analyte: Helicobacter pylori Antibodies**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Wellcome Pyloriset

**Analyte: Hepatitis B Core Antibody—IgM**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott IMX

**Analyte: Herpes simplex I and/or II Antibodies**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
General Biometrics ImmunoDot T.E.C.H. Test

**Analyte: Immunoglobulins IgA**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Immunoglobulins IgE**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Abbott Matrix Aero Plus
Biomerica CAST Color Allergy Screening Test
In Vitro Technologies Central Allergy Screen
In Vitro Technologies Northeast Allergy Screen
In Vitro Technologies Southeast Allergy Screen
In Vitro Technologies Southwest Allergy Screen
In Vitro Technologies Western Allergy Screen
MAST Total IgE Test

**Analyte: Immunoglobulins IgG**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Immunoglobulins IgM**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Infectious Mononucleosis Antibodies (Mono)**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Ampcor IM Card Test
Baxter MicroScan Cards O.S. Mono
Gamma Slide Test for Infectious Mononucleosis
NCS Infectious Mononucleosis Test
Organon Teknika Monosticon Dri-Dot
Stanbio IM Quicktest
Wampole Mono-Plus
Wampole Mono-Test (FTB)

**Analyte: Lyme Disease Antibodies (Borrelia burgdorferi Abs)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Vitek Systems Vidas (antibodies)
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
General Biometrics ImmunoDot Borrelia w/Recombinant Protein

**Analyte: Rheumatoid Factor (RA)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Instrumentation Laboratory IL Monarch
Roche Cobas FARA
Roche Cobas Mira
Technicon RA 1000
Technicon RA XT
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Ampcor RF Card Test
Gamma RF-Latex Test
Isolab Rapid-RF
NCS RA Latex Test
V-Tech Target RF
V-Tech V-Trend Kit RF
V-Tech V-Trend Kit Red Cell RF

**Analyte: Rickettsia conorii (Mediterranean Spotted Fvr Ab)**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
INDX Latex—Rickettsia conorii (MSF) Kit

**Analyte: Rickettsia rickettsii (Rocky Mt. Spotted Fever Ab)**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
INDX DIP-S-TICKS Rocky Mt. Spotted Fever (RMSF) Test
INDX Latex—Rickettsia rickettsii (RMSF) Kit

**Analyte: Rickettsia typhi (Typhus Antibodies)**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
INDX Latex—Rickettsia typhi Kit

**Analyte: Rubella Antibodies—IgG/IgM**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Vitek Systems Vidas (antibodies)
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Baxter ImmunoSCAN Rubella Latex Test
Wellcome Rubalex

**Analyte: Toxoplasma gondii Antibodies—IgG/IgM**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Vitek Systems Vidas (antibodies)
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
General Biometrics ImmunoDot Infectious Mono Syndrome Panel
General Biometrics ImmunoDot T.E.C.H. Test

**Analyte: Treponema pallidum Antibodies**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Baxter ImmunoSCAN RPR Card Test
Difco Bacto USR
Gamma Biologicals RPR/USR Antigen
NCS RPR CARD TEST—manual
Remel RPR CARD Test Kit
Stanbio Syphilis (RPR) Quicktest
V-Tech V-Trend RPR Raindrop Card Test

**Analyte: Trichinella Antibodies**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Difco Latex Flocculation Test—Trichinosis
Speciality/Subspeciality: Hematology

**Analyte: Activated Clotting Time (ACT)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
HemoTec ACT
HemoTec Automated Coagulation Timer
HemoTec Hepcon/HMS
HemoTec Hepcon/System A-10
HemoTec Hepcon/System B-10
HemoTec Hepcon/System Four

**Analyte: Activated Partial Thromboplastin Time (APTT)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
HemoTec Automated Coagulation Timer
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Boehringer Manneheim Unimeter CA-600
Lancer Coagulyzer Jr. III
Logos elvi 818 Digiclot
Logos elvi 819 Multi Clot
Logos elvi 820 Digiclot II
Ortho KoaguLab M
Sherwood Medical Coagulizer Jr.

**Analyte: Antithrombin III (ATIII)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
DuPont ACA SX
Dupont ACA II
Dupont ACA III

**Analyte: Bleeding Time**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Ivy/Template Bleeding Time
Simplate Bleeding Time

**Analyte: Body Fluid Microscopic Elements**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
IRIS The Yellow IRIS model 250
IRIS The Yellow IRIS model 450

**Analyte: Erythrocyte Sedimentation Rate (non-waived proced)**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Hi Chem-Vega Ves-Matic ESR System

**Analyte: Fibrin Split Products (Fibrin Degradation)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
DuPont ACA SX
Dupont ACA II
Dupont ACA III
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Biopool Minutex D-dimer
Diagnostica Stago D-Di
Diagnostica Stago F.S. Test
Diagnostica Stago Spli-Prest

**Analyte: Fibrinogen**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
DuPont ACA SX
Dupont ACA II
Dupont ACA III
Roche Cobas Mira
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Logos elvi 819 Multi Clot
Logos elvi 820 Digiclot II
Sigma AccuStasis 1000
Sigma AccuStasis 2000

**Analyte: Hematocrit**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Bio-Chem Laboratory Systems ATAC 4300 Cell Counter
Roche Cobas HELIOS 5 DIFF
Sysmex CC-108
Sysmex CC-120
Sysmex CC-170
Sysmex CC-800
Sysmex F-500
Sysmex F-800
Sysmex M-2000
Sysmex NE-1500
Sysmex NE-5500

Wampole STAT-CRIT

**Analyte: Hemoglobin**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Ames Clinistat
Electronucleonics Gemstar II
Roche Cobas HELIOS 5 DIFF
Sysmex CC–108
Sysmex CC–120
Sysmex CC–170
Sysmex CC–800
Sysmex F–300
Sysmex F–500
Sysmex F–800
Sysmex M–2000
Sysmex NE–1500
Sysmex NE–5500
Wampole STAT-CRIT
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
BMS Hemoglobinometer 10–101
BMS Hemoglobinometer 10–101D
Becton Dickinson QBC
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer
Boehringer Mannheim Biodynamics Unimeter 250
Boehringer Mannheim Biodynamics Unimeter 300
Boehringer Mannheim Biodynamics Unimeter 330K
Cambridge Instruments Hb-Meter Hemoglobinometer
Coulter Hemoglobinometer
Coulter Hemoglobinometer W
Isolab Hb-Direct
Sysmex Hemoglobinometer HB–100
Sysmex Hemoglobinometer HB–110

**Analyte: Hemoglobin S**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Ampcor Sickle Cell—HbS Screening Kit
Chembio Sickle-STAT
Key Scientific Sickle-Screen Test Kit
Organon Teknika Sicklequik

**Analyte: Heparin**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
DuPont ACA SX
Dupont ACA II
Dupont ACA III

**Analyte: Heparin Dose Response (HDR)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
HemoTec Hepcon/HMS
HemoTec Hepcon/System A–10
HemoTec Hepcon/System B–10
HemoTec Hepcon/System Four

**Analyte: Heparin/Protamine Titration (HPT)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
HemoTec Hepcon/HMS
HemoTec Hepcon/System A–10
HemoTec Hepcon/System B–10
HemoTec Hepcon/System Four

**Analyte: Plasminogen**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
DuPont ACA SX
Dupont ACA II
Dupont ACA III

**Analyte: Platelet Count**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Roche Cobas HELIOS 5 DIFF
Sysmex CC–800
Sysmex F–800
Sysmex M–2000
Sysmex NE–1500
Sysmex NE–5500
Sysmex PL–100
Sysmex PL–110

**Analyte: Prothrombin Time (PT)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
HemoTec Automated Coagulation Timer
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Boehringer Manneheim Unimeter CA–600
Boehringer Manneheim Unimeter CU–500
DuPont Coumatrak
Lancer Coagulyzer Jr. III
Logos elvi 818 Digiclot
Logos elvi 819 Multi Clot
Logos elvi 820 Digiclot II
Ortho KoaguLab M
Sherwood Medical Coagulizer Jr.

**Analyte: Red Blood Cell Count (Erythrocyte Count)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Bio-Chem Laboratory Systems ATAC 4300 Cell Counter
Roche Cobas HELIOS 5 DIFF
Sysmex CC–108
Sysmex CC–110
Sysmex CC–120
Sysmex CC–170
Sysmex CC–800
Sysmex F–300
Sysmex F–500
Sysmex F–800
Sysmex M–2000
Sysmex NE–1500
Sysmex NE–5500
Sysmex PL–110
Sysmex R–3000

**Analyte: Thrombin Time**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Logos elvi 818 Digiclot
Logos elvi 819 Multi Clot
Logos elvi 820 Digiclot II
Sigma AccuStasis 1000
Sigma AccuStasis 2000

**Analyte: White Blood Cell (WBC) Differential**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Roche Cobas HELIOS 5 DIFF
Sysmex NE–1500
Sysmex NE–5500

**Analyte: White Blood Cell Count (Leukocyte Count)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Bio-Chem Laboratory Systems ATAC 4300 Cell Counter
Roche Cobas HELIOS 5 DIFF
Sysmex CC–108
Sysmex CC–110
Sysmex CC–120
Sysmex CC–170
Sysmex CC–800
Sysmex F–300
Sysmex F–500
Sysmex F–800
Sysmex M–2000
Sysmex NE–1500
Sysmex NE–5500
Sysmex PL–110
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Becton Dickinson QBC II Plus

*Speciality/Subspeciality:* Immunohematology

**Analyte: RBC Antigen Type Other Than A or B**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
American Red Cross Bld Group Reagents—Indirect Antiglobulin
American Red Cross Blood Grouping Reagents—direct Ag
*Speciality/Subspeciality:* Toxicology/TDM

**Analyte: Acetaminophen**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 800

**Analyte: Amikacin**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Amphetamines**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus

**Analyte: Barbiturates**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 717
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus
Technicon RA 1000
Technicon RA XT

**Analyte: Benzodiazepines**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 717
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus
Technicon RA 1000
Technicon RA XT

**Analyte: Benzodiazepines, Urine**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Syva Emit ETS Plus

**Analyte: Cancer Antigen 125 (CA 125)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 717

**Analyte: Cannabinoids (THC)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 704
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus

**Analyte: Carbamazepine**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Ames Seralyzer
Dupont ACA II
Dupont ACA III
Olympus AU 800

**Analyte: Cocaine Metabolites**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 717
Dupont ACA II
Dupont ACA III
Olympus AU 5000
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus
Technicon RA 1000
Technicon RA XT

**Analyte: Digitoxin**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Digoxin**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Ames Seralyzer
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 738
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Cirrus Diagnostics Immulite
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S

**Analyte: Ethanol (Alcohol)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 704
Dupont ACA II
Dupont ACA III
Olympus AU 800
Syva Emit ETS Plus
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Enzymatics Q.E.D. A150 Saliva Alcohol Test
Enzymatics Q.E.D. A350 Saliva Alcohol Test

**Analyte: Ethosuximide**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Gentamicin**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Dupont Dimension
Olympus AU 800

**Analyte: Lidocaine**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Methadone**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus

**Analyte: Methaqualone**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus

**Analyte: Methotrexate**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: N-Acetylprocainamide (NAPA)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Opiates**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 717
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus
Technicon RA 1000
Technicon RA XT
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
V-Tech Target Opiates-R (Reader)
V-Tech Target Opiates-V (Visual)

**Analyte: Phencyclidine (PCP)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 717
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus
Technicon RA 1000
Technicon RA XT

**Analyte: Phenobarbital**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Dupont ACA II
Dupont ACA III
Olympus AU 800
Roche Cobas Mira
Roche Cobas Mira S

**Analyte: Phenytoin**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Dupont ACA II
Dupont ACA III
Olympus AU 800
Roche Cobas Mira
Roche Cobas Mira S

**Analyte: Primidone**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 800

**Analyte: Procainamide**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Propoxyphene**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus

**Analyte: Quinidine**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 800

**Analyte: Salicylates**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Olympus AU 800

**Analyte: Theophylline**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736

Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Dupont ACA II
Dupont ACA III
Olympus AU 800
Roche Cobas Mira
Roche Cobas Mira S
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
Access Medical Systems dChem
Photest Diagnostics dChem

**Analyte: Tobramycin**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Dupont Dimension
Olympus AU 800

**Analyte: Tricyclic Antidepressants**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Syva Emit ETS Plus

**Analyte: Valproic Acid**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III

**Analyte: Vancomycin**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
*Speciality/Subspeciality:* Urinalysis

**Analyte: Total Solids (Specific Gravity)**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Biovation Model 300 Digital Urinometer
*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
All Manual Specific Gravities by Urinometers
American Optical TS Meter
Reichert TS Meter

**Analyte: Urinary Protein, Qualitative**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
All Manual Acid Precipitation Urine Protein Screening Tests
Sclavo Albumin Screen

**Analyte: Urinary Sediment Microscopic Elements**

*Category:* Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
*Test System, Assay or Examination:*
IRIS The Yellow IRIS model 250
IRIS The Yellow IRIS model 450

**Analyte: Urine Qualitative Dipstick Chemistries**

*Category:* Automated procedures that do not require operator intervention during the analytic process
*Test System, Assay or Examination:*
Ames Clinitek 10
Ames Clinitek 200
IRIS The Yellow IRIS model 250
IRIS The Yellow IRIS model 450
*Complexity:* High
*Speciality/Subspeciality:* General Chemistry

**Analyte: 17 OH Progesterone**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems 17alpha-OH Progesterone RIA Kit

**Analyte: Acid Phosphatase**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Adrenocorticotropic Hormone (ACTH)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems ACTH RIA Kit

**Analyte: Alanine Aminotransferase (ALT) (SGPT)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Technicon SMA 12/60
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Albumin**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Helena Laboratories Low Level Quiplate System for RID
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Alkaline Phosphatase (ALP)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Technicon SMAC
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM

**Analyte: Ammonia**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Amylase**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Androstanediol Glucuronide (3 alpha-diol G)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems Androstanediol Glucuronide RIA Kit

**Analyte: Androstenedione**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems Active Androsteindione RIA Kit
Diagnostic Systems Androsteindione RIA Kit

**Analyte: Apolipoprotein B**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Behring M-partigen Kit

**Analyte: Asparate Aminotransferase (AST) (SGOT)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Bilirubin, Direct**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Bilirubin, Total**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: C-Peptide**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems C-Peptide RIA Kit

**Analyte: Calcitonin**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems Calcitonin RIA Kit
Diagnostic Systems Ultra-Sensitive Calcitonin RIA Kit

**Analyte: Calcium, Total**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Carbon Dioxide, total (CO2)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Chloride**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Cholesterol**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Cholinesterase**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Cortisol**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Milenia
Diagnostic Systems Active Cortisol EIA Kit
Diagnostic Systems Active Cortisol RIA Kit
Diagnostic Systems Cortisol RIA Kit
Kallestad Quanticoat

**Analyte: Cortisol, Urine**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems Active Cortisol

EIA Kit
Diagnostic Systems Active Cortisol RIA Kit

**Analyte: Creatine Kinase (CK)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Creatine Kinase BB Fraction (CKBB)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems CK-B Protein RIA Kit

**Analyte: Creatine Kinase MB Fraction (CKMB)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems CK-B Protein RIA Kit

**Analyte: Creatinine**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Biochromatic ABA 50
Boehringer Mannheim Biodynamics Unimeter 250
Boehringer Mannheim Biodynamics Unimeter 300
Boehringer Mannheim Biodynamics Unimeter 330K
Electronucleonics FLEXIGEM

**Analyte: Dehydroepiandrosterone Sulfate (DHEA-SO4)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems Active DHEA-Sulfate EIA Kit
Diagnostic Systems Active DHEA-Sulfate RIA Kit
Diagnostic Systems DHEA-Sulfate RIA Kit

**Analyte: Erythropoietin**

*Category.* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems Erythropoietin (EPO) RIA Kit

**Analyte: Estradiol**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Milenia
Diagnostic Systems Estradiol RIA Kit

**Analyte: Estriol-Total**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems Total Estriol RIA Kit

**Analyte: Estriol-unconjugated**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems Ultra-Sens. Unconjugated Estriol RIA Kit

**Analyte: Ferritin**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Becton Dickinson MAb Solid Phase Component System
Diagnostic Products Corp. Milenia
Diagnostic Systems Active Ferritin IEMA Kit
Diagnostic Systems Active Ferritin IRMA Kit

**Analyte: Follicle Stimulating Hormone (FSH)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Becton Dickinson SimulTRAC
Diagnostic Products Corp. Milenia

**Analyte: Gamma Glutamyl Transferase (GGT)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Glucose**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: HCG, Serum, Qualitative**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Milenia
Hybritech Tandem-E

**Analyte: HCG, Serum, Quantitative**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*

Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Milenia

**Analyte: HDL Cholesterol (post-precipitation VLDL & LDL)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Electronucleonics FLEXIGEM
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Insulin**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Corning Medical IMMO PHASE RIA
Diagnostic Systems Insulin RIA Kit

**Analyte: Insulin-like Growth Factor-1 (IGF-1)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems Active Insulin-Like Growth Factor-1

**Analyte: Iron**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Iron Binding Capacity (post saturation/separation)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Dupont ACA II
Dupont ACA III
Electronucleonics FLEXIGEM
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Lactate Dehydrogenase (LDH)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Lactate Dehydrogenase Heart Fraction (LDH-1)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Biochromatic ABA 50

**Analyte: Lactate Dehydrogenase Liver Fraction (LLDH)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Biochromatic ABA 50

**Analyte: Lipase**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Luteinizing Hormone (LH)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Becton Dickinson SimulTRAC
Diagnostic Products Corp Milenia

**Analyte: Magnesium**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Parathyroid Hormone—C-Terminal**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems C-Parathyroid Hormone RIA Kit

**Analyte: Parathyroid Hormone—Intact**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems Active Intact Parathyroid Hormone

**Analyte: Parathyroid Hormone—Mid-molecule (PTH-M)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems Mid-Molecule Parathyroid Hormone RIA Kit

**Analyte: Phosphorus**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Potassium**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50

**Analyte: Progesterone**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Bio-Rad Cotube
Diagnostic Products Corp. Milenia
Diagnostic Systems Active Progesterone RIA Kit
Diagnostic Systems Progesterone RIA Kit

**Analyte: Prolactin**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Milenia

**Analyte: Prostatic Acid Phosphatase**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Milenia

**Analyte: Protein, Total**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Retinol binding protein**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Behring LC-partigen Kit

**Analyte: Sex Hormone Binding Globulin**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Systems Sex Hormone Binding Globulin RIA Kit

**Analyte: Sodium**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50

**Analyte: Testosterone**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Bio-Rad Cotube
Diagnostic Systems Active Testosterone RIA Kit
Diagnostic Systems Testosterone RIA Kit

**Analyte: Thyroid Stimulating Hormone (TSH)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Milenia

**Analyte: Thyroid Stimulating Hormone (TSH) (Neonatal)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus

**Analyte: Thyroid Stimulating Hormone—high sens. (TSH-HS)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus

**Analyte: Thyroxine (T4)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Bio-Rad Quanta-Count
Diagnostic Products Corp. Milenia
Kallestad Quanticoat

**Analyte: Thyroxine (T4), Neonatal**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus

**Analyte: Thyroxine, Free (FT4)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Bio-Rad Cotube
Bio-Rad Quantimune

**Analyte: Triglyceride**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Triiodothyronine (T3)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*

Ciba Corning Magic Lite
Kallestad Quanticoat

**Analyte: Triiodothyronine Uptake (T3U)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Kallestad Quanticoat

**Analyte: Urea (BUN)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Uric Acid**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Abbott Bichromatic ABA 100
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Technicon SMA 12/60
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Urinary Calculi**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Oxford Qualitative Stone Analysis Set
*Speciality/Subspeciality:* General Immunology

**Analyte: Allergen specific IgE**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Dexall Biomedical AllergEns ActiTip System
Diagnostic Products Corp. AlaTOP Allergy Screen
Diagnostic Products Corp. Milenia AlaSTAT
In Vitro Technologies IVT RAST Tracer Unit
Pharmacia CAP System RAST FEIA
Pharmacia CAP System RAST RIA
Pharmacia Phadebas RAST
Pharmacia Phadebas RAST Penicilloyl G/Penicilloyl V
Pharmacia Phadezym RAST
Pharmacia Phadiatop EIA
Pharmacia Phadiatop RIA
Ventrex Specific IgE EIA
Ventrex Specific IgE RAST Isotope Unit
Ventrex TURBO-RAST Specific IgE Isotope Unit

**Analyte: Allergen specific IgG**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Pharmacia IgG RAST EIA
Pharmacia IgG RAST RIA

**Analyte: Anti-Cardiolipin Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Biopool Imulyse ACA
General Biometrics ImmunoWELL Cardiolipin Ab (IgG) Test
General Biometrics ImmunoWELL Cardiolipin Ab (IgM) Test
Immuno Concepts Anti-cardiolipin Ab Semi-quant. Test System

**Analyte: Anti-DNA Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
BioWhittaker RheumElisa Plus Microwell Assay
General Biometrics ImmunoWELL dsDNA Ab Test
*Category:* Test kits requiring microscopic evaluations
*Test System, Assay or Examination:*
Immuno Concepts Colorzyme nDNA Test System
Immuno Concepts Fluorescent nDNA Ab Test System

**Analyte: Anti-Mitochondrial Antibodies (AMTA)**

*Category:* Test kits requiring microscopic evaluations
*Test System, Assay or Examination:*
Zeus Autoantibody Screen (AAS) Test System

**Analyte: Anti-Nuclear Antibodies (ANA)**

*Category:* Test kits requiring microscopic evaluations
*Test System, Assay or Examination:*
Behring AFT System HEp
Immuno Concepts Colorzyme ANA Test System
Incstar Fluoro-Kit
Zeus ANA HEp-2 Cell Culture IFA Test System
Zeus Autoantibody Screen (AAS) Test System

**Analyte: Anti-Parietal Cell Antibodies**

*Category:* Test kits requiring microscopic evaluations
*Test System, Assay or Examination:*
Zeus Autoantibody Screen (AAS) Test System

**Analyte: Anti-RNP (Ribonucleoprotein)**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Immuno Concepts Sm/RNP Ab Test System
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
BioWhittaker RheumElisa Plus Microwell Assay
General Biometrics ImmunoWELL RNP/Sm AB Test
Shield Diagnostics DIASTAT ENA Profile Kit

**Analyte: Anti-SS-A/Ro**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Immuno Concepts SS-A/SS-B Autoantibody Test System
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
BioWhittaker RheumElisa Plus Microwell Assay
General Biometrics ImmunoWELL SS-A (Ro) Antibody Test
Shield Diagnostics DIASTAT ENA Profile Kit

**Analyte: Anti-SS-B/La**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Immuno Concepts SS-A/SS-B Autoantibody Test System
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
BioWhittaker RheumElisa Plus Microwell Assay
General Biometrics ImmunoWELL SS-B (La) Antibody Test
Shield Diagnostics DIASTAT ENA Profile Kit

**Analyte: Anti-Sm (Smith)**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Immuno Concepts Sm/RNP Ab Test

System
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
BioWhittaker RheumElisa Plus Microwell Assay
General Biometrics ImmunoWELL RNP/Sm AB Test
Shield Diagnostics DIASTAT ENA Profile Kit

**Analyte: Anti-Smooth Muscle Antibodies (ASMA)**

*Category:* Test kits requiring microscopic evaluations
*Test System, Assay or Examination:*
Zeus Autoantibody Screen (AAS) Test System

**Analyte: Anti-Thyroglobulin Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
General Biometrics ImmunoWELL Thyroglobulin Ab Test

**Analyte: Anti-Thyroid Microsomal Antibodies (AMA)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
General Biometrics ImmunoWELL Microsome (TPO) Ab Test

**Analyte: Aspergillus Antibodies**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Immuno-Mycologics Aspergillus Antigens and Control Sera

**Analyte: Beta-2 microglobulin**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Milenia
Diagnostic Systems Beta2-Microglobin (IEMA)
Diagnostic Systems Beta2-Microglobin (RIA)

**Analyte: C-Reactive Protein (CRP)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Reagents Applications RAICHEM SPIA Test Kit

**Analyte: Cancer Antigen 125 (CA 125)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Abbott CA 125 RIA

**Analyte: Coccidioides Antibodies**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Meridian Diagnostics Coccidioides Immunodiffusion System

**Analyte: Complement C3**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Reagents Applications RAICHEM SPIA Test Kit

**Analyte: Complement C4**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Reagents Applications RAICHEM SPIA Test Kit

**Analyte: Complement, Total**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Kallestad Quantiplate RID

**Analyte: Cryptococcus Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Immuno-Mycologics YA-Crypto Ab Tube Agglutination Test

**Analyte: Cytomegalovirus Antibodies (IgG/IgM)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Olympus PK7100 Automated Pretransfusion Blood Test System
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Pharmacia CMV IgG ELISA
Syva MicroTrak CMV-M EIA
Syva MicroTrak CMV-TA EIA
Zeus CMV IgM ELISA Test System
*Category:* Test kits requiring microscopic evaluations
*Test System, Assay or Examination:*
Immuno Concepts CMV IgG Ab Test System
Immuno Concepts CMV IgM Ab Test System

**Analyte: DNase-B Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Wampole Streptonase-B

**Analyte: Entamoebia histolytica Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
LMD Laboratories Amebiasis Microtiter ELISA

**Analyte: Epstein-Barr virus Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Amico Amizyme EB-VCA Virus Antigen IgM Test
Pharmacia Epstein Barr Virus Viral Capsid Antigen IgG ELISA
Pharmacia Epstein Barr Virus Viral Capsid Antigen IgM ELISA
*Category:* Test kits requiring microscopic evaluations
*Test System, Assay or Examination:*
Hillcrest Biologicals EBNA Ab IFA Test
Hillcrest Biologicals EBV Early Antigen IFA Test
Hillcrest Biologicals EBV VCA(IgG) IFA Test
Hillcrest Biologicals EBV VCA(IgM) IFA Test
Immuno Concepts Colorzyme EA Ab Test System
Immuno Concepts Colorzyme EBNA Ab Test System
Immuno Concepts Colorzyme EBV-VCA IgG Ab Test System
Immuno Concepts Colorzyme EBV-VCA IgM Ab Test System
Immuno Concepts EBNA Ab Test System
Immuno Concepts EBV-EA Ab Test System
Immuno Concepts EBV-VCA IgG Ab Test System
Immuno Concepts EBV-VCA IgM Ab Test System
Zeus EBV-VCA IFA Test System
Zeus EBV-VCA IgM Antibody IFA Test System

**Analyte: HIV Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Abbott HIVAB HIV-1/HIV-2 (rDNA) EIA

**Analyte: HTLV Antibody**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Cambridge Biotech HTLV-1 ELISA

**Analyte: Helicobacter pylori Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Biomerica Helicobacter pylori Antibody Test (IgG ELISA)
Hycor PYLORAGEN H. pylori Test Kit
Meridian Premier Helicobacter pylori HM-CAP
Quidel Helicobacter pylori Microwell EIA Test

**Analyte: Hepatitis A Antibody (HAVAb)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Syva MicroTrak II Total Anti-HAV EIA

**Analyte: Hepatitis B Surface Antibody**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
ADI Heprofile Anti-HBs

**Analyte: Hepatitis B Surface Antigen (HBS Ag)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
ADI Heprofile HBsAg
ADI Heprofile HBsAg Specificity Test Kit

**Analyte: Hepatitis Be Antibody**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Syva MicroTrak II Anti-HBe EIA

**Analyte: Hepatitis Be Antigen**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Syva MicroTrak II HBeAg EIA

**Analyte: Herpes simplex I and/or II Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Pharmacia Herpes simplex Virus, Type 1 IgG ELISA
Pharmacia Herpes simplex Virus, Type 2 IgG ELISA
Zeus HSV–1 and HSV–2 ELISA Test Systems

**Analyte: Histamine**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Biomerica Histamine RIA

**Analyte: Immunoglobulins—monoclonal/polyclonal**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Helena Laboratories Titan Gel ImmunoFix Plus
Helena Laboratories Titan IV Immunoelectrophoresis

**Analyte: Immunoglobulins IgA**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Behring S-partigen Kit
Kallestad Endoplate Low Level Immunoglobulin Test Kit
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Helena Laboratories Low Level Quiplate System for RID
Reagents Applications RAICHEM SPIA Test Kit

**Analyte: Immunoglobulins IgE**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Dexall Biomedical AllergE ActiTip System
Diagnostic Products Corp. Milenia
Kallestad QuantiCLONE
Kallestad Quantizyme IgE
MAST CLA Allergy Systems (chemiluminescence
Medix Biotech IgE Enzyme Immunoassay Test
Pharmacia CAP System IgE FEIA
Pharmacia CAP System IgE RIA
Pharmacia IgE EIA
Pharmacia IgE EIA Ultra
Pharmacia IgE RIA
Pharmacia IgE RIA Ultra
Pharmacia IgE RIACT
Pharmacia Phadebas IgE PRIST
Pharmacia Phadezym IgE PRIST
Ventrex PD IgE RIA
Ventrex Total IgE EIA Extended Range
Ventrex Total IgE RIA Extended Range

**Analyte: Immunoglobulins IgG**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Helena Laboratories Quiplate RID Mid-Level IgG
Kallestad Endoplate Low Level Immunoglobulin Test Kit
Kallestad Endoplate Ultra Low Level IgG Test Kit
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Helena Laboratories Low Level Quiplate System for RID
Reagents Applications RAICHEM SPIA Test Kit

**Analyte: Immunoglobulins IgM**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Behring S-partigen Kit
Kallestad Endoplate Low Level IgM Test Kit
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Helena Laboratories Low Level Quiplate System for RID
Reagents Applications RAICHEM SPIA Test Kit

**Analyte: Kappa Light Chains**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Helena Laboratories Titan IV Double Diffusion

**Analyte: Lambda Light Chains**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Helena Laboratories Titan IV Double Diffusion

**Analyte: Leptospira Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Hillcrest Biologicals Leptospirosis IHA

**Analyte: Lyme Disease Antibodies (Borrelia burgdorferi Abs)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diamedix Lyme IgM Microassay
Hillcrest Biologicals Lyme Disease ELISA
Sanofi Pasteur Platelia Lyme
*Category:* Test kits requiring microscopic evaluations
*Test System, Assay or Examination:*
Hillcrest Biologicals Lyme Disease IFA (IgG) Test

**Analyte: Lysozyme**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Kallestad Quantiplate RID

**Analyte: Mumps Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Pharmacia Mumps IgG ELISA

**Analyte: Protein Fractions**

*Category:* Electrophoretic separations
*Test System, Assay or Examination:*
Helena Lab. Titan Gel Multi-Slot SP Electrophoresis System
Helena Laboratories REP SPE
Helena Laboratories REP SPE Plus
Helena Laboratories REP SPE Template (Ponceau S) Proced.
Helena Laboratories REP SPE Template Procedure
Helena Laboratories Titan Gel Serum Protein System

**Analyte: Rickettsia rickettsii (Rocky Mt. Spotted Fever Ab)**

*Category:* Test kits requiring microscopic evaluations
*Test System, Assay or Examination:*
Hillcrest Biologicals Rickettsia IFA (IgG) Test
Hillcrest Biologicals Rickettsia IFA (IgM) Test

**Analyte: Rickettsia typhi (Typhus Antibodies)**

*Category:* Test kits requiring microscopic evaluations
*Test System, Assay or Examination:*
Hillcrest Biologicals Rickettsia IFA (IgG) Test
Hillcrest Biologicals Rickettsia IFA (IgM) Test

**Analyte: Rubella Antibodies—IgG/IgM**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Pharmacia Rubella IgG ELISA
Sanofi Pasteur Platelia Rubella IgG
Syva MicroTrak Rubella-G EIA
Syva MicroTrak Rubella-M EIA

**Analyte: Rubeola Antibodies (measles)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Pharmacia Measles IgG ELISA
Pharmacia Measles IgM ELISA

**Analyte: Staphylococcus aureus Antibodies**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Meridian Diagnostics Endo-Staph

**Analyte: Taenia solium Antibodies (Cysticercosis)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
LMD Laboratories Cysticercosis (T. solium) Microtiter ELISA

**Analyte: Toxoplasma gondii Antibodies—IgG/IgM**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
LMD Laboratories Toxoplasma IgG Microtiter ELISA
Pharmacia Toxoplasma gondii IgG ELISA
Sanofi Pasteur Platelia Toxo IgG
Sanofi Pasteur Platelia Toxo IgM
Syva MicroTrak Toxo-G EIA
Syva MicroTrak Toxo-M EIA
Wampole TPM-TEST

**Analyte: Transferrin**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Reagents Applications RAICHEM SPIA Test Kit

**Analyte: Treponema pallidum Antibodies**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Olympus PK7100 Automated Pretransfusion Blood Test System
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Ames Sera-tek
Becton Dickinson BBL Syphilis Serology Reagents (VDRL)
Diagnostic Chemicals Syphilis-G Test Kit
Diagnostic Chemicals Syphilis-M Test Kit
Gamma Biologicals VDRL
*Category:* Test kits requiring microscopic evaluations
*Test System, Assay or Examination:*
Becton Dickinson BBL Reagents for Syphilis Serol. (FTA-ABS)
Difco Bacto FTA-ABS
Roach Laboratories FTA-ABS
Zeus FTA-ABS Double Stain Test System

**Analyte: Trichinella Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
LMD Laboratories Trichinella Microtiter ELISA

**Analyte: Trypsin**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Sorin Biomedica Trypsik

**Analyte: Varicella-Zoster Virus Antibodies**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Pharmacia Varicella-Zoster Virus IgG ELISA
Pharmacia Varicella-Zoster Virus IgM ELISA
*Category:* Test kits requiring microscopic evaluations
*Test System, Assay or Examination:*
Gull Laboratories VZV IgM IFA Test
*Speciality/Subspeciality:* Hematology

**Analyte: Alpha-2-Antiplasmin**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Organon Teknika Chromostrate Alpha-2-Antiplasmin Assay

**Analyte: Antiplasmin**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostica Stago STACHROM Antiplasmin

**Analyte: Antithrombin III (ATIII)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostica Stago LIATEST AT III
Organon Teknika Chromostrate Antithrombin III Assay

**Analyte: Beta-Thromboglobulin**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostica Stago ASSERACHROM B-TG

**Analyte: Coagulation Factors**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Sigma AccuStasis 1000
Sigma AccuStasis 2000

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Biopool Spectrolyse Factor VIII:C
Diagnostica Stago Stachrom VIII:C
Lancer Coagulyzer Jr. III
Logos elvi 818 Digiclot
Logos elvi 819 Multi Clot
Logos elvi 820 Digiclot II
Ortho KoaguLab M
Sherwood Medical Coagulizer Jr.

**Analyte: Factor IX Antigen**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Diagnostica Stago Assera-Plate IX:Ag
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostica Stago ASSERACHROM IX:Ag

**Analyte: Factor VIII Related Antigen**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Helena Laboratories Factor VIII Related Antigen Rocket Sys.

**Analyte: Factor VIII:C**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Biopool Spectrolyse Factor VIII:C
Diagnostica Stago Stachrom VIII:C

**Analyte: Fibrin Split Products (Fibrin Degradation)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostica Stago ASSERACHROM D-Di
Organon Teknika Fibrinostika FbDP Microelisa System

**Analyte: Fibrinopeptide A**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostica Stago ASSERACHROM FPA

**Analyte: Hemoglobin**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Electronucleonics FLEXIGEM

**Analyte: Hemoglobin A2**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Helena Laboratories Beta-Thal HbA2 Quik Column
Helena Laboratories Sickle-Thal Quik Column

**Analyte: Hemoglobin Barts**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Isolab Quik-Sep Alpha-Thal Screen

**Analyte: Hemoglobin F**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Isolab Quik-Sep Hemoglobin F Assay
Isolab Quik-Sep Sickle-Cell F Test

**Analyte: Hemoglobin S**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Isolab HemoCard Hb A and S
Isolab HemoCard Hemoglobin S Assay

**Analyte: Heparin**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostica Stago Stachrom Heparin
Organon Teknika Chromostrate Heparin Anti-Xa Assay

**Analyte: Plasminogen**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostica Stago Stachrom PLG
Organon Teknika Chromostrate Plasminogen Assay

**Analyte: Platelet Aggregation**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Chrono-log Aggregometer 400VS
Chrono-log Aggregometer 430VS
Chrono-log Aggregometer 440VS
Chrono-log Aggregometer 460VS
Chrono-log Aggregometer 470VS
Chrono-log Aggregometer 500Ca
Chrono-log Aggregometer 500VS
Chrono-log Aggregometer 530VS
Chrono-log Aggregometer 540VS
Chrono-log Aggregometer 560Ca
Chrono-log Aggregometer 560VS
Chrono-log Aggregometer 570VS
Chrono-log P.I.C.A.
Helena PACKS4
Logos elvi 840 Aggregometer
Sienco Platelet Aggregation Meter (DP–247)

**Analyte: Platelet Factor IV**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostica Stago ASSERACHROM PF4

**Analyte: Protein C**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Diagnostica Stago Assera-Plate Protein C
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Biopool Spectrolyse Protein C
Diagnostica Stago ASSERACHROM Protein C
Diagnostica Stago Stachrom Protein C
Ramco Spectro C

**Analyte: Protein S**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Biopool Protein S EID Kit
Diagnostica Stago Assera-Plate Protein S
Helena Laboratories Protein S Antigen Rocket EID
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostica Stago ASSERACHROM Protein S
Diagnostica Stago LIATEST Protein S

**Analyte: Prothrombin Fragment 1.2 (F1.2)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Organon Teknika Thrombonostika

**Analyte: Red Blood Cell Count (Erythrocyte Count)**

*Category:* Microscopic evaluation and/or enumeration of cells, formed elements, or microorganisms in unstained preparations
*Test System, Assay or Examination:*
All Manual Red Blood Cell Count Procedures

**Analyte: White Blood Cell Count (Leukocyte Count)**

*Category:* Microscopic evaluation and/or enumeration of cells, formed elements, or microorganisms in unstained preparations
*Test System, Assay or Examination:*
All Manual White Blood Cell Count Procedures

**Analyte: von Willebrand Factor**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Diagnostica Stago Assera-Plate vWF
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostica Stago ASSERACHROM vWF
General Diagnostics von Willebrand Factor Assay
Ramco Spectro vWF

**Analyte: von Willebrand Multimers**

*Category:* Immunoprecipitation procedures
*Test System, Assay or Examination:*
Ramco vWF Multimer Immunoblot
*Speciality/Subspeciality:*
Immunohematology

**Analyte: D(Rho) Type**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
All Immunohem. Absorption/Elution Procedures-Ag confirma.

**Analyte: Du (Weak D RBC antigen)**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Gamma STS–M Automated Blood Grouping Instrument

**Analyte: Fetal RBCs—Maternal Blood (fetal-maternal bleed)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Manual Modified Kleihauer-Betke Acid Elution Stain
Sigma Diagnostics Fetal Hemoglobin Kit
Simmler, Inc. Fetal Cell Stain Kit

**Analyte: Isohemagglutinins**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
All Manual Isohemagglutinin Titrations, untreated serum

**Analyte: Platelet Antibody—detection**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Immucor Capture-P
Immucor Capture-P Ready-Screen
Immucor MCP (Modified Capture-P)

**Analyte: RBC antigen type other than A or B**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Dade Lectin-H—RBC, quantitative
*Speciality/Subspeciality:* Toxicology/TDM

**Analyte: Acetaminophen**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Amphetamines**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Milenia
Sigma SIA Test Kit (ELISA)

**Analyte: Cannabinoids (THC)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Milenia
Sigma SIA Test Kit (ELISA)

**Analyte: Cocaine Metabolites**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Coat-A-Count
Diagnostic Products Corp. Milenia
Sigma SIA Test Kit (ELISA)

**Analyte: Digoxin**

*Category:* Automated or semi-automated procedures that do require operator intervention during the analytic process
*Test System, Assay or Examination:*
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Amersham Amerlite
Kallestad Quanticoat
Organon NML Digi-Tab RIA

**Analyte: Ethanol (Alcohol)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

**Analyte: Methamphetamines**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Milenia

**Analyte: Opiates**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Milenia
Sigma SIA Test Kit (ELISA)

**Analyte: Phencyclidine (PCP)**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Products Corp. Milenia
Sigma SIA Test Kit (ELISA)

**Analyte: Salicylates**

*Category:* Manual procedures with multiple steps in sample/reagent preparation or analytic process
*Test System, Assay or Examination:*
Diagnostic Chemicals Ltd. Assay Kit

Waived tests listed by manufacturer and product name includes but is not limited to the following:

**Analyte: Erythrocyte Sedimentation Rate, nonautomated**

*Test System, Assay, or Examination:* All procedures

**Analyte: Fecal Occult Blood**

*Test System, Assay, or Examination:*
ABCO Test for Fecal Occult Blood
Ames Hema-Chek
Ames Hematest
Biomerica EZ Detect Stool Blood Test
CIDA ColoCheck
Cambridge Diagnostic CAMCO GUAIAC-TABS
Cambridge Diagnostic CAMCO PAK GUAIAC
Gamma FE-Cult Plus
Helena ColoCARE
Helena ColoScreen
LMI Medical DigiWipe II System
LMI Medical HemaWipe System
Labsystems FECATWIN
Labsystems FECATWIN SENSATIVE
Smith Kline Hemoccult
Smith Kline Hemoccult SENSA

**Analyte: Glucose by Monitoring Devices Cleared by the FDA Specifically for Home Use**

*Test System, Assay, or Examination:*
Ames Dextrostix Blood Glucose Reagent Strips
Ames Glucofilm Blood Glucose Test Strips
Ames Glucometer 3 Blood Glucose Meter
Ames Glucometer Blood Glucose Meter
Ames Glucometer GX Blood Glucose Meter
Ames Glucometer II Blood Glucose Meter
Ames Glucometer M Blood Glucose Meter
Ames Glucometer M+ Blood Glucose Meter
Ames Glucostix Blood Glucose Reagent Strips
Boehringer Mannheim Accu-Chek II
Boehringer Mannheim Accu-Chek II Freedom
Boehringer Mannheim Accu-Chek III
Boehringer Mannheim Accu-Chek IIm
Boehringer Mannheim Accu-Chek bG Monitor
Boehringer Mannheim Chemstrip bG
Boehringer Mannheim Tracer II
Boehringer Mannheim Tracer bG Monitor
Boehringer Mannheim Tracer bG Test Strips
British American SUPREME bG Monitor
British American SUPREME bG Test Strips
Cascade Medical CheckMate Blood Glucose Monitor
Cascade Medical CheckMate Blood Glucose Test Strips
Home Diagnostics DIASCAN Blood Glucose Reagent Strips
Home Diagnostics DIASCAN Blood Glucose Self Monitor
Home Diagnostics DIASCAN-S Blood Glucose Monitor
Home Diagnostics ULTRA Blood Glucose Monitor
Home Diagnostics ULTRA Blood Glucose Reagent Strips
Lifescan GLUCOSCAN 2000
Lifescan GLUCOSCAN 3000
Lifescan GLUCOSCAN Test Strips
Lifescan GLUCOSCAN Test Strips (modified)
Lifescan ONE TOUCH Blood Glucose Meter
Lifescan ONE TOUCH Blood Glucose Test Strips
Lifescan ONE TOUCH II Blood Glucose Meter
Lifescan ONE TOUCH II Hospital Blood Glucose Meter
MediSense Companion 2 Sensor
MediSense ExacTech Blood Glucose Test Strips
MediSense ExacTech Companion Blood Glucose Sensor
MediSense ExacTech Pen Blood Glucose Sensor
MediSense Pen 2 Sensor
MediSense Pen 2/Companion 2 Sensor Electrodes

**Analyte: Hemoglobin by Copper Sulfate, Nonautomated**

*Test System, Assay, or Examination:* All Procedures

**Analyte: Ovulation Test (Luteinizing Hormone) by Visual Color Comparison**

*Test System, Assay, or Examination:*
Becton Dickinson QTest Stick Ovulation Test
BioGenex OvuGen Ovulation Prediction Test
Biomerica COT Color Ovulation Test
Biomerica Fortel Home Ovulation Test
Carter Products ANSWER Ovulation Test
Carter Products FIRST RESPONSE Ovulation Predictor Test
Monoclonal Antibodies OvuKIT Self-Test
Monoclonal Antibodies OvuQUICK Self-Test
NMS Pharmaceuticals COT Color Ovulation Test
NMS Pharmaceuticals Fortel Home Ovulation Test
Quidel Concieve 1–Step Ovulation Predictor
Quidel OvuKIT Self-Test for Ovulation Prediction
Quidel OvuQUICK Self-Test for Ovulation Prediction
Vanguard Biomedical HomeClinic Ovulation Prediction
Whitehall Labs CLEARPLAN Easy Ovulation Predictor

**Analyte: Spun Microhematocrit**

*Test System, Assay, or Examination:* All Procedures

**Analyte: Urine Dipstick or Tablet Analytes, Nonautomated**

*Test System, Assay, or Examination:*
Ames ACETEST
Ames ALBUSTIX
Ames BILI-LABSTIX
Ames CLINISTIX
Ames CLINITEST
Ames COMBISTIX
Ames DIASTIX
Ames HEMA-COMBISTIX
Ames HEMASTIX
Ames ICTOTEST
Ames KETO-DIASTIX
Ames KETOSTIX
Ames LABSTIX
Ames MICRO-BUMINTEST
Ames MULTISTIX
Ames MULTISTIX 10 SG
Ames MULTISTIX 2
Ames MULTISTIX 7
Ames MULTISTIX 8 SG
Ames MULTISTIX 9 SG
Ames MULTISTIX SG
Ames MUTLISTIX 9
Ames N-MULTISTIX
Ames N-MULTISTIX SG
Ames URISTIX 4
Ames UROBILISTIX
Behring Rapignost Total Screen L
Biomerica EZ Detect Urine Blood Test
Boehringer Mannheim Chemstrip 10 UA
Boehringer Mannheim Chemstrip 10 with SG
Boehringer Mannheim Chemstrip 2 GP
Boehringer Mannheim Chemstrip 2 LN
Boehringer Mannheim Chemstrip 4 The OB
Boehringer Mannheim Chemstrip 6
Boehringer Mannheim Chemstrip 7
Boehringer Mannheim Chemstrip 8
Boehringer Mannheim Chemstrip 9
Boehringer Mannheim Chemstrip K
Boehringer Mannheim Chemstrip Micral
Boehringer Mannheim Chemstrip uG
Boehringer Mannheim Chemstrip uGK
Wako Pretest 5A
Wako Pretest 6A
Wako Pretest 8A

**Analyte: Urine HCG by Visual Color Comparison Tests**

*Test System, Assay, or Examination:*
AMPCOR QuickDIP Pregnancy Test
Abbott TESTPACK PLUS hCG COMBO
Abbott TESTPACK PLUS hCG-URINE
Access Medical Systems ImmunoCLONE hCG Test
Advanced Care Products ADVANCE Pregnancy Test
Advanced Care Products FACT PLUS Pregnancy Test
Becton Dickinson Directigen 1–2–3 hCG
Becton Dickinson Precise hCG
Becton Dickinson QTest Pregnancy
Becton Dickinson QTest Pregnancy Combo
Becton Dickinson QTest Stick Pregnancy Test
Carter Products ANSWER PLUS Pregnancy Test
Carter Products ANSWER QUICK & SIMPLE Pregnancy Test
Carter Products FIRST RESPONSE 1–Step Pregnancy Test
Carter Products FIRST RESPONSE Pregnancy Test
Disease Detection ImmunoCARD hCG
Disease Detection ImmunoCARD hCG One Step
Hybritech Concise HCG-Urine Test
Hybritech ICON II HCG (urine)

Hybritech ICON II HCG (urine/serum)
Kodak SURECELL hCG-Urine
Medical Technology Corp OPTITEC HCG
Medical Technology Corp OPTITEC UniStep HCG
Meridian Diagnostics ImmunoCard hCG
Monoclonal Antibodies RAMP Urine hCG Assay
Pacific Biotech CARDS O.S. HCG-Urine
Pacific Biotech CARDS Early Pregnancy Test
Pacific Biotech CARDS HCG-SERUM/URINE
Pacific Biotech CARDS HCG-URINE
Pacific Biotech PERFECT ONE STEP Early Pregnancy Test
Parke-Davis E.P.T. Early Pregnancy Test
Quidel RAMP Urine hCG Assay
V-Tech TARGET HCG
V-Tech TARGET HCG ONE STEP
Vanguard Biomedical HomeClinic One-Step Pregnancy
Vanguard Biomedical HomeClinic Pregnancy Test
Vanguard Biomedical ProClinic One-Step Urine HGC Test
Vanguard Biomedical ProClinic Urine HCG Pregnancy
Wampole Clearview hCG
Whitehall Labs CLEARBLUE Easy Pregnancy Test
Whitehall Labs CLEARBLUE Pregnancy Test

[FR Doc. 92-20614 Filed 8-27-92; 8:45 am]

BILLING CODE 4160-18-M

## Health Resources and Services Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services is amended to reflect the following changes in the Bureau of Health Resources Development: 1. Assign the functions of Special Projects of National Significance Program to the Office of Science and Epidemiology.

*Under HB-10, Organization and Functions* amend the functional statements for the Bureau of Health Resources Development (HBB), Health Resources and Services Administration (HB), the *Office of Science and Epidemiology (HBB 15):* Change the period at the end of item # (9) to a semicolon; and add the following "and (10) administers and coordinates AIDS-related grants programs of National Significance".

Dated: August 17, 1992.

**John H. Kelso,**

*Administrator.*

[FR Doc. 92-20651 Filed 8-27-92; 8:45 am]

BILLING CODE 4160-15-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

**[Docket No. N-92-1917; FR-2934-93]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**ADDRESSES:** For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 56 FR 23789 (may 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411) as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address),

providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW., rm. 4133, Washington, DC 20314-1000; (202) 272-0520; (This is not a toll-free number).

Dated: August 21, 1992.

**Paul Roitman Bardack,**

*Deputy Assistant Secretary for Economic Development.*

**Title V, Federal Surplus Property Program; Federal Register Report for 08/28/92**

*California—Fort Ord*

Fort Ord is located 7 miles north of the City of Monterey and 120 miles southeast of San Francisco, California 93941-5000. The installation is scheduled for closure on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 26,720 acres and 14 million square feet of permanent facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance and storage facilities; and other more specialized structures.

For specific information concerning Fort Ord, please contact Commander, 7th ID, ATTN: AFZW-RM (LTC Anderson), Fort Ord, California 93941-5000.

**Suitable/Available Properties**

Property Number: 329210039
Type Facility: Housing—1431 family houses; majority are 2-story.

Property Number: 329210040
Type Facility: Temporary Living Quarters—254 buildings; wood, concrete and concrete block structures including barracks.

Property Number: 329210041
Type Facility: Office/Administration—311 buildings; wood, concrete, concrete block and steel structures including personnel bldgs. and general purpose bldgs.

Property Number: 329210042
Type Facility: Recreation—53 facilities including bowling center, guest houses, community and youth centers, library, gym and recreation bldgs.

Property Number: 329210043
Type Facility: Aircraft/Airport Facilities—18 facilities including hangars, runway, taxiways aprons, fire station, maintenance bldg. and control tower.

Property Number: 329210044
Type Facility: Maintenance/Engineering Facilities—24 buildings; wood, concrete block and steel structures.

Property Number: 329210045
Type Facility: Mess/Dining Halls—95 buildings; wood; concrete and concrete block dining facilities.

Property Number: 329210046
Type Facility: Child Care—7 buildings; wood and concrete child care centers.

Property Number: 329210047
Type Facility: Stores and Services—23 buildings; wood, concrete, concrete block and steel structures including stores, snack bars, commissary and service station exchange.

Property Number: 329210048
Type Facility: Hospital Facilities—10 buildings; wood, concrete and concrete block structures including a hospital, clinics and vet. facilities.

Property Number: 329210049
Type Facility: Chapels—10 buildings; wood, concrete, concrete block chapels and chapel center facilities.

Property Number: 329210050
Type Facility: Fire Facilities—2 fire stations.

Property Number: 329210051
Type Facility: Audio Visual Facilities—8 buildings; wood, concrete and steel structures including photo labs and training centers.

Property Number: 329210052
Type Facility: Communications/Electronics Facilities—6 buildings; concrete, concrete block and steel structures including a communication center and radio bldgs.

Property Number: 329210053
Type Facility: Warehouses—224 buildings; wood, concrete, concrete block and steel structures including storage bldgs. and sheds.

Property Number: 329210054
Type Facility: Vehicle Shops—84 buildings; wood, concrete, concrete block and steel structures including maintenance shops and oil storage bldgs.

Property Number: 329210055
Type Facility: Miscellaneous Facilities—440 facilities including hdqts. bldgs., reserve centers, classrooms, day rooms, roads, vehicle parks and training areas.

Property Number: 329210056
Type Facility: Multi-Purpose Facilities—27 facilities.

Property Number: 329210057
Type Facility: Fuel Facilities—31 buildings; concrete, concrete block and steel structures including gas station bldgs.

Property Number: 329210058
Type Facility: Hazardous Storage Facilities—6 buildings; concrete, concrete block and steel structures.

Property Number: 329210059
Type Facility: Explosives/Munitions Facilities—31 buildings; concrete and steel structures including igloo storages and magazine storages.

**Suitable/Available Properties**

*Connecticut*

15 Family Houses
Portland CT 36
Portland Co: Middlesex, CT 06484
Landholding Agency: COE-BC
Property Numbers: 319011218-319011232
Status: Excess
Base Closure
Comment: 1000-1300 sq. ft., 1 story wood frame residences.

**Unsuitable Properties**

**Land (by State)**

*Florida*

Cape St. George Reservation
Fort Rucker, Alabama Installation #12050
Apalachicola Co: Franklin GC FL 32320
Landholding Agency: COE-BC
Property Number: 329140001
Status: Unutilized
Reason: Floodway; inaccessbile.

*Hawaii—Kapalama Military Reservation Phase III*

Kapalama Military Reservation is located in the Harbor district in the City of Honolulu. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 30, 1994. Properties shown below as suitable will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base comprises 21.22 acres and contains nine buildings which are currently being used for storage.

**Suitable/Unavailable Properties**

Property Numbers: 329210003-329210011
Type Facility: Nine buildings currently used for storage; 116 to 39854 sq. ft.; one story wood frame; needs minor rehab.

**Suitable/Available Properties**

*Illinois*

12 Worth Family Houses
Fort Sheridan
Worth Co: Cook IL 60482
Landholding Agency: COE-BC
Property Number: 329210002
Status: Excess
Base closure
Comment: 1-story residences, possible asbestos, off-site use only, scheduled to be vacated 05/93.

**Suitable/Unavailable Properties**

*Illinois*

12 Addison Family Houses
Fort Sheridan
Addison Co: DuPage IL 60101
Landholding Agency: COE-BC
Property Number: 329210001
Status: Excess
Base closure
Comment: 1-story residences, possible asbestos, scheduled to be vacated 05/93.

*Indiana—Fort Benjamin Harrison*

Fort Benjamin Harrison is located northeast of Indianapolis in the City of Lawrence 46216-5000. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2,501 acres and has 4.7 million square feet of facilities. The properties that HUD has determined suitable

and which are available include family housing residences, temporary living quarters, office/administration buildings, various types of recreational facilities, child care centers and chapels, dining halls, a hospital, warehouses, miscellaneous and other specialized structures. More specific information concerning properties at the base can be obtained by contacting LTC Gregory Miller, US Army Soldier Support Center, Attn: ATZI-IS, Fort Benjamin Harrison, Indiana 46216-5000; (317) 542-5382.

**Suitable/Available Properties**

Property Numbers: 329210068-329210069
Type Facility: Housing—90 family residences, 1 and 2 story brick frame; 29 temporary living quarters (barracks), brick or concrete frame.

Property Number: 329210070
Type Facility: Office/Administration—26 buildings; wood, brick, concrete or concrete block frame; includes personnel and general purpose buildings.

Property Number: 329210071
Type Facility: Recreational Facilities—28; wood, brick, concrete or concrete block frame; includes gym, canteen, golf course, swimming pool, riding stable, tennis court, bowling center, recreation buildings, basketball and handball courts, baseball fields, tract, and playgrounds.

Property Number: 329210072
Type Facility: Child Care Centers—2 buildings; brick frame; 5,818 & 14,457 sq. ft.

Property Number: 329210073
Type Facility: Dining Halls—4; brick frame; 11,075 to 31,439 sq. ft.

Property Number: 329210074
Type Facility: Stores/Services—12 buildings; 140 to 68,899 sq. ft.; brick, wood, concrete or concrete block frame; includes restaurant, commissary, sales stores, exchange branches, and service outlet.

Property Number: 329210075
Type Facility: Hospital, brick frame.

Property Number: 329210076
Type Facility: 2 Chapels; 3,747 & 16,587 sq. ft., brick and aluminum frame.

Property Number: 329210078
Type Facility: 2 Fire Facilities; 2,243 & 3,835 sq. ft.; includes fire station and hose house.

Property Numbers: 329210079, 329210083
Type Facility: 2 Vehicle Shops and Fuel Facility; concrete/asbestos frame; 1 gas station building, 327 sq. ft.

Property Number: 329210080
Type Facility: Maintenance Engineering—6 buildings; 168 to 14,074 sq. ft.; wood, brick or concrete block frame.

Property Numbers: 329210081, 329210082
Type Facility: Explosives/Munitions and Hazardous Storage—10 buildings; 103 to 1,138 sq. ft.; brick, steel, concrete or wood frame; includes ammo magazines and flammable materials storage.

Property Number: 329210084
Type Facility: 23 Warehouses; 960 to 56,650 sq. ft.; brick, concrete or steel frame.

Property Number: 329210085
Type Facility: 150 Miscellaneous Buildings; 31 to 211,364 sq. ft.; includes headquarters & general instruction buildings; training centers and detached garages.

Property Number: 329210086
Type Facility: 5 Multipurpose Buildings.

**Land**

Property Number: 329210077
Type Facility: 2 Aircraft/Airport Facilities; 938 sq. yds.

**Unsuitable Properties**

Property Number: 329210087
Type Facility: 1 Recreational Facility; within a floodway.

**Suitable/Available Properties**

**Land (by State)**

*Indiana*

Land—Plant II
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: COE-BC
Property Number: 329220004
Status: Excess
Base Closure
Comment: 858.63 acres; 34 acres subject to flooding; access over private property by easement of a roadway; manufacturing facility for black powder not operative for 20 years; environmentally protected; scheduled to be vacated 11/92.

*Massachusetts—Fort Devens*

Fort Devens military base is located at Fort Devens, Massachusetts 01433-5000. It is approximately 45 miles west of Boston. All the properties will be excess to the needs of the Army Corps of Engineers on or about October 31, 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation covers 9,283 acres and has approximately 7.4 million square feet of facilities. The properties that HUD determined suitable and which are available include over 550 single family and multifamily housing units; office and administration buildings, indoor and outdoor recreational facilities; warehouses and multi-use buildings; hospital facilities; stores and service facilities; dining facilities; a chapel; a child care facility; and other miscellaneous and specialized structures.

For specific information concerning Fort Devens, please contact Commander, Fort Devens, Attn: AFZD-T (Mr. Carter Hunt), Fort Devens, Massachusetts 01433-5000.

**Suitable/Available Properties**

Property Number: 329210012
Type Facility: 54 Office/Administration Buildings; 1,174 to 71,781 sq. ft.; wood, brick or concrete block frame including personnel bldgs., general purpose and support services bldgs.

Property Number: 329210029
Type Facility: 404 Housing units; 1,200 to 4,380 sq. ft.; wood or brick frame; single and duplex residences, multifamily residences—up to 14 units per bldg.

Property Number: 329210015
Type Facility: 150 Temporary Living Quarters; 1,028 to 19,120 sq. ft.; wood, brick or concrete block structures including barracks.

Property Number: 329210013
Type Facility: 27 Recreational Facilities; 155 to 30,000 sq. ft.; wood, brick, steel or concrete block construction including a gym, library, swimming pool, golf clubhouse, and bowling center.

Property Numbers: 329210016, 329210025
Type Facility: Aircraft/Fuel Facilities—7; six gas station bldgs. and pump stations; wood, steel or concrete block structures.

Property Numbers: 329210017, 329210021
Type Facility: Maintenance Engineering/Vehicle Shops—34 buildings; 120 to 20,310 sq. ft.; wood, brick, steel or concrete block frame including maintenance shops, entomology facility, vehicle maintenance bldgs., oil storage bldgs.

Property Number: 329210018
Type Facility: 11 Stores/Service Buildings; 271 to 107,208 sq. ft.; wood, concrete block or brick frame including commissary, sales store, exchange service station, exchange retail stores.

Property Number: 329210019
Type Facility: 7 Hospital Facilities; 493 to 126,835 sq. ft.; wood, concrete, concrete block or brick frame including clinics, hospital, veterinarian facility, and dental clinic.

Property Number: 329210022
Type Facility: 4 Audio Visual/Photo Labs; 480 to 10,612 sq. ft.; wood or concrete block construction.

Property Number: 329210027
Type Facility: 24 Mess/Dining Halls; 2,403 to 2,717 sq. ft.; wood frame.

Property Number: 329210024
Type Facility: 2 Communication Buildings; 1,322 to 1,749 sq. ft.; concrete block or brick frame; communication centers.

Property Number: 329210026
Type Facility: 92 Warehouses; 49 to 85,790 sq. ft.; wood, concrete, concrete block or steel construction including sheds, storehouse, medical supply, vehicle storage, general purpose bldgs.

Property Number: 329210014
Type Facility: Child Care Facility; 6,012 sq. ft.; wood frame.

Property Number: 329210020
Type Facility: Chapel; 22,250 sq. ft.; brick frame.

Property Number: 329210023
Type Facility: 8 Hazardous Storage Buildings; 64 to 6,000 sq. ft.; concrete, steel or concrete block structures including oxygen storage facilities and flammable materials storage.

Property Number: 329210028
Type Facility: 172 Miscellaneous Facilities; 320 to 114,000 sq. ft.; wood, concrete block, brick or steel construction including general purpose bldgs., training facilities, RG houses, reserve centers, garages.

Property Number: 329210030
Type Facility: 4 Multi-purpose buildings.

**Unsuitable Properties**

Property Number: 329210032
Type Facility: 3 Recreation Facilities; within 2,000 feet from flammable or explosive material.

Property Numbers: 329210033, 329210038

Type Facility: One Temporary Living Quarters and 2 housing residences; within 2,000 feet from flammable or explosive material.

Property Number: 329210031
Type Facility: One Office/Administration Building; within 2,000 feet from flammable or explosive material.

Property Numbers: 329210034, 329210037
Type Facility: 6 Miscellaneous Buildings—including stores, service facilities, etc.

Property Number: 329210035
Type Facility: One Vehicle Shop; within 2,000 feet from flammable explosive material.

Property Number: 329210036
Type Facility: One Warehouse; within 2,000 feet from flammable explosive material.

*New Jersey—Fort Dix*

Fort Dix is located in the eastern edge of Burlington County, and part of the western edge of Ocean County, New Jersey. It is approximately 17 miles southeast of Trenton, New Jersey. The installation is scheduled for closure on or about October 1, 1993. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

In particular, the Sheridanville Family Housing complex will be available on or about December 31, 1992. The Sheridanville complex is located on Sailors Pond Road, approx. 1 mile east of State Highway 68.

The Kennedy Courts Family Housing complex is located at the corner of Pemberton-Pointville and Juliustown Roads, approx. 1 mile southeast of County Route 616 (Pemberton-Wrightstown Road). It is not available for homeless assistance use at this time. The majority of the base is being retained for Federal use.

Both complexes contain various types of housing, service stores, maintenance buildings, miscellaneous buildings and other more specialized structures.

For specific information concerning Fort Dix, please contact U.S. Army Training Center, Attn: ATZD-EHP, Jean M. Johnson, Fort Dix, NJ 08640-5506.

**Suitable/Available Properties**

Sheridanville Family Housing Complex

Property Number: 329220014
Type Facility: Housing—25, 6-unit buildings; 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.

Property Number: 329220015
Type Facility: Housing—one, 8-unit building, 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.

Property Number: 329220016
Type Facility: Housing—one, 10-unit building; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.

Property Number: 329220017
Type Facility: Housing—11, 12-unit buildings; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.

Property Number: 329220018
Type Facility: 33 detached sheds; 1 story, wood frame.

Property Number: 329220020
Type Facility: Maintenance Engineering—3 buildings.

Property Number: 329220021
Type Facility: Service Store—1 building, most recent use—PX, wood frame.

Property Number: 329220022
Type Facility: Miscellaneous—3 buildings; waiting shelters.

Property Number: 329220019
Type Facility: Recreational/land—basketball court and softball field.

**Suitable/Unavailable Properties**

Kennedy Courts Family Housing Complex

Property Numbers: 329220005-329220009
Type Facility: Housing—2, 4, 6, 8 & 10-unit buildings; 1 to 4 bedrooms, wood frame w/brick veneer facing.

Property Number: 329220010
Type Facility: Detached Sheds—48; wood frame, needs rehab.

Property Numbers: 329220023, 329220035, 329220043
Type Facility: Office/Administration—42 buildings; concrete or cinderblock w/brick veneer facing, 1, 2 or 3 story, includes classrooms, instructional bldgs., administration & supplies, regimental headquarters, personnel-supply services.

Property Numbers: 329220024, 329220036, 329220044
Type Facility: Recreational—12 facilities; includes gym, theater, tennis court, recreation center, museums, community centers.

Property Numbers: 329220025, 329220045
Type Facility: Maintenance Engineering—5 buildings; wood, concrete or cinderblock, 1 or 2 story, includes generator and gas meter house.

Property Numbers: 329220026, 329220037, 329220046
Type Facility: Service Stores—3 PXs.

Property Numbers: 329220027, 329220038
Type Facility: Hospitals—2 buildings; 1 story, concrete or cinderblock w/brick veneer facing.

Property Numbers: 329220028, 329220039
Type Facility: Chapels—2; 1 story.

Property Numbers: 329220029-329220030, 329220047, 329220050
Type Facility: Vehicle/Fuel—10 facilities; includes gas stations, oil storage bldgs., vehicle greaser, automotive shop.

Property Numbers: 329220031, 329220040
Type Facility: Dining Halls—8 facilities; includes enlisted personnel dining, 1 story, concrete or cinderblock w/brick veneer facing.

Property Numbers: 329220032, 329220041
Type Facility: Housing—22 buildings; enlisted barracks, 3 story.

Property Number: 329220048
Type Facility: Hazardous storage—3 buildings; 1 story.

Property Number: 329220049
Type Facility: Communications/Electronics—2; 1 & 2 story.

Property Numbers: 329220012-329220013, 329220033, 329220042, 329220051-329220052
Type Facility: Miscellaneous—30 buildings; includes heat plant, waiting shelters, warehouses, and other specialized structures.

Property Number: 329220053
Type Facility: Area Confinement Facility; 109,668 sq. ft., 2 story concrete & block frame.

Property Number: 329220011
Type Facility: Recreational/land—2; basketball courts.

**Unsuitable Properties**

Property Number: 329220034
Type Facility: Sewage Pump.

**Suitable/Unavailable Properties**

*New Jersey*

24 Family Houses
Franklin Lakes
Patrick Brems Court
Mahwah Co: Bergen NJ 07430
Landholding Agency: COE-BC
Property Numbers: 319010734-319010757
Status: Excess
Base Closure
Comment: 1196 sq. ft., 1 story wood frame residences.

32 Family Houses
Livingston Family Housing
Hornung Court
East Hanover Co: Morris NJ 07936
Landholding Agency: COE-BC
Property Numbers: 319010758-319010789
Status: Surplus
Base Closure
Comment: 1196 sq. ft., 1 story wood frame residences, possible asbestos in floor tiles.

*New York*

37 Nike Houses
New York 01
Tappan Co: Rockland NY
Landholding Agency: COE-BC
Property Numbers: 319011049, 319011070-319011105
Status: Excess
Base Closure
Comment: 897 sq. ft., 1 story wood frame residences on concrete slab.

27 Dry Hill Family Housing
Route 3
Watertown Co: Jefferson NY 13601
Landholding Agency: COE-BC
Property Numbers: 319030015-319030041
Status: Excess
Base Closure
Comment: 816-1300 sq. ft., 1 story wood frame residences.

**Suitable/Unavailable Properties**

*Pennsylvania*

12 Family Houses
C.E. Kelly Support Facility
Finleyville Area Site 52, S-101-Q
Finleyville Co: Washington PA 15332
Location: Route 88 to Mineral Beach and turn left
Landholding Agency: COE-BC
Property Numbers: 319011407, 319011409-319011419
Status: Excess
Base Closure
Comment: 1 story frame residences, possible asbestos.

12 Family Houses
Monroeville Area Site 25
C.E. Kelly Support Facility
Lindsey Lane R.D. #2

Monroeville Co: Allegheny PA 15239
Landholding Agency: COE-BC
Property Numbers: 319030051-319030062
Status: Excess
Base Closure
Comment: 1 story frame residences with playground area, possible asbestos.

**Land (by State)**

*Pennsylvania*

C.E. Kelly Support Facility
Finleyville Area Site 452
Finleyville Co: Washington PA 15332
Landholding Agency: COE-BC
Property Number: 319011408
Status: Excess
Base Closure
Comment: 11.63 acres, potential utilities, most recent use—playground area.

*Virginia—Harry Diamond Laboratories*

Harry Diamond Laboratories, Woodbridge Facility is located in Prince William County, Virginia, 22191. The installation is scheduled for closure on or about September 1994. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 76,000 square feet of facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include a warehouse, communications facilities and miscellaneous facilities.

For specific information concerning Harry Diamond Laboratories, please contact Commander, U.S. Army Laboratory Command, ATTN: AMSLC-MC (Ms. Ann Barnett), 2800 Powder Mill Road, Adelphi, Maryland 20783-1145.

**Suitable/Available Properties**

Property Number: 329210060
Type Facility: Communications/Electronic Facilities—3 brick structures.

Property Number: 329210061
Type Facility: Warehouse—1 brick storehouse.

Property Number: 329210062
Type Facility: Miscellaneous Facilities—3 facilities including roads and a vehicle park.

Property Number: 329210063
Type Facility: Multi-Purpose Facilities—2 brick structures including an administrative building.

[FR Doc. 92-20563 Filed 8-27-92; 8:45 am]
BILLING CODE 4210-29-M

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**[Docket No. N-92-3388; FR-3189-N-02]**

## Funding Availability for Technical Assistance for Economic Development in the Community of West Dallas; Announcement of Funding Awards

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Announcement of funding award.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of the funding decision made by the Department in a competition for funding under a Notice of Funding Availability for Technical Assistance for Economic Development in the Community of West Dallas, published on March 2, 1992 (57 FR 7460). The announcement contains the name and address of the award winner and the amount of the award.

**DATES:** August 28, 1992.

**FOR FURTHER INFORMATION CONTACT:** David Sowell, Office of Economic Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-3484. The TDD number for the hearing impaired is (202) 708-2565. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The purpose of the competition was to make available $475,000 in Community Development Block Grant Technical Assistance program funds for a cooperative agreement with an eligible applicant to promote economic development activities in the West Dallas community of Dallas, Texas. The competition was the result of the Department's commitment to address issues arising out of a case entitled *Debra Walker* v. *HUD*, No. CA-3-85-1210-R (N.D. Texas).

The award announced in this Notice was selected for funding in a competition announced in a **Federal Register** Notice published on March 2, 1992 (57 FR 7460). Only one application was received. After review of the application and scoring under the criteria contained in the Notice, the Department determined that the proposal warranted the award.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the name, address, and amount of that award as follows: $475,000 to the Southern Dallas Development Corporation, Dallas, Texas.

Dated: August 21, 1992.

**Paul Roitman Bardack,**

*Deputy Assistant Secretary for Economic Development.*

[FR Doc. 92-20669 Filed 8-27-92; 8:45 am]
BILLING CODE 4210-29-M

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# DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NV-940-02-4212-22]**

## Filing of Plat of Survey; Nevada

August 14, 1992.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plat of Survey in Nevada.

**EFFECTIVE DATES:** Filing was effective at 10 a.m. on August 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-785-6543.

**SUPPLEMENTARY INFORMATION:** The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on August 10, 1992:

**Mount Diablo Meridian, Nevada**

T. 22 N., R. 21 E.—Dependent Resurvey.

This survey was accepted July 22, 1992, and was executed to meet certain administrative needs of the Bureau of Land Management.

The above-listed survey is now the basic record for describing the lands for all authorized purposes.

This survey will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the survey and related field notes may be furnished to the public upon payment of the appropriate fees.

**Marla B. Bohl,**

*Acting Deputy State Director, Nevada.*

[FR Doc. 92-20649 Filed 8-27-92; 8:45 am]
BILLING CODE 4310-HC-M

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## Fish and Wildlife Service

## Availability of a Draft Recovery Plan for the Pallid Sturgeon (Scaphirynchus albus) for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the pallid sturgeon (*Scaphirhynchus albus*). This fish occurs

in the Mississippi, Missouri, and Yellowstone Rivers. The Service solicits review and comment from the public on this draft recovery plan.

**DATES:** Comments on the draft recovery plan must be received on or before October 27, 1992 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 1500 East Capitol Avenue, Bismarck, North Dakota 58501. Written comments and materials regarding this draft recovery plan should be sent to the Field Supervisor at the Bismarck address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mark Dryer, Biologist (See ADDRESSES above) at telephone (701) 250–4491.

**SUPPLEMENTARY INFORMATION:**

## Background

Restoring an endangered or threatening animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

The pallid sturgeon is a large, ancient-looking fish which can weigh up to 85 pounds. It has a flat, shovel-shaped snout and a long slender tail. Pallid sturgeon require large, free-flowing, turbid, riverine habitat with sandy or rocky substrate. The pallid sturgeon occurs in the Missouri River, in the Yellowstone River in Montana and North Dakota, and in the Mississippi River downstream of the confluence with the Missouri River. It may also occur in the lower reaches of the major tributaries of these rivers.

The pallid sturgeon was listed under the Act as a threatened species on September 6, 1990 (55 FR 36641), primarily due to extensive modifications to its habitat from dam construction and channelization. Such activities have blocked the species movements, reduced its food sources or its ability to obtain food, altered water temperatures, and destroyed or altered spawning areas. Overfishing, pollution, and hybridization may have also led to the species dramatic decline.

Recovery efforts for this species include measures to protect the pallid sturgeon and its habitat, such as reducing take, restoring habitats, and clean-up of contaminant sources. Recovery will also be accomplished through implementing an artificial propagation program, obtaining additional information on the species biology and ecology, and establishing a nationwide network for coordinating recovery efforts.

## Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified in the **DATES** section above will be considered prior to approval of the recovery plan.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 20, 1992.

**Robert A. Karges,**

*Acting Regional Director.*

[FR Doc. 92–20680 Filed 8–27–92; 8:45 am]

BILLING CODE 4310-55-M

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# INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 32011]**

## Union Pacific Corporation—Control—Skyway Freight Systems, Inc.; Decision

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of decision accepting application for consideration.

**SUMMARY:** The Commission accepts for consideration the application filed July 31, 1992, by Union Pacific Corporation (UPC) and Skyway Freight Systems, Inc. (Skyway), (collectively applicants). UPC seeks to purchase all outstanding shares of Skyway common stock for a payment per share determined by a formula, but at a minimum total price of $10 million. The Commission has previously found this a minor transaction under 49 CFR part 1180.

**DATES:** Written comments must be filed with the Interstate Commerce Commission no later than September 28, 1992, and concurrently served on applicants' representatives, the United States Secretary of Transportation, and the Attorney General of the United States. Comments from the Secretary of Transportation and the Attorney General must be filed by October 13, 1992. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list and confirmed by certificate of service filed with the Commission indicating that all designated individuals and organizations on the service list have been properly served. Applicants' reply is due by October 27, 1992.

**ADDRESSES:** Send original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32011, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and to applicants' representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 8201, 400 Seventh St. SW. Washington, DC 20590.

Attorney General of the United States, United States Department of Justice, 10th & Constitution Ave., NW. Washington, DC 20530.

Richard J. Ressler, Union Pacific Corporation, Martin Tower, Eighth and Eaton Avenues, Bethlehem, PA 18018.

Malcolm M. B. Sterrett, Pepper, Hamilton & Scheetz, 1300 19th Street, NW. Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Felder, (202) 927–5610. (TDD for hearing impaired: (202 927–5721)

**SUPPLEMENTARY INFORMATION:** Applicants seek Commission approval under 49 U.S.C. 11343, *et seq.*, for UPC to purchase all of Skyway's issued and outstanding stock for a minimum purchase price of $10 million. The exact price will be determined by a formula

based on Skyway's average annual operating income and the average price/operating income ratio for a number of named motor transportation companies, adjusted by Skyway's outstanding indebtedness and the number of outstanding Skyway common stock equivalents. UPC intends to finance the purchase price through public/private long/short term borrowings or equity issuances. To the extent borrowings are evidenced by securities, UPC requests that the Commission exempt the security issuances from the requirements of 49 U.S.C. 11301, pursuant to 49 U.S.C. 10505. Applicants intend to consummate the transaction on or before June 30, 1993, but the Commission's approval of this application is a condition to closing.

UPC controls two class I rail carriers, Union Pacific Railroad Company (UPRR) and Missouri Pacific Railroad Company (MoPac), as well as a motor common carrier, Overnite Transportation Company (Overnite). Skyway is a multimodal transportation and logistics management company that arranges transportation for its customers and also conducts motor common carrier operations under authority issued by this Commission.

In 1987, UPC bought a 30-percent interest in Skyway's convertible preferred non-voting stock for $7.5 million and paid $3.5 million to Skyway's founders for the right to establish a formula for the future acquisition of Skyway. Applicants have submitted an application in accordance with the railroad consolidation procedures, 49 CFR part 1180. By decision served March 6, 1992, we found that, although section 1180 does not specifically apply to a rail/motor transaction, those regulations provide suitable guidance for this proposal and that it would be treated as a minor transaction as defined in § 1180.2(c).

Applicants contend that, with the proposed purchase of Skyway, UPC can offer shippers additional customer services. UPC's acquisition of Skyway assertedly will result in enhanced motor and multimodal service and lead to greater use of UPC's rail service. Applicants contend that the proposed transaction will also lead to operational efficiency and cost savings with respect to certain logistical services and provide Skyway access to additional capital to develop more sophisticated transportation information systems. In their view, Skyway would also benefit from access to UPC's rail lines and rolling stock and from expanded service options and the more efficient use of stack train technology.

Applicants believe the effects on competition will be minimal in that Skyway and UPC do not currently compete to any significant degree and less than 28 percent of Skyway's $46.8 million 1990 revenue came from regulated motor carrier operations. Applicants contend further, that numerous transportation alternatives exist and there is pervasive competition by other motor carriers.

Applicants expect no material impact on UPC or Skyway employees for the foreseeable future; rather, if traffic volumes increase in later years as applicants expect, additional jobs will be created. For rail employees, any authority granted will be subject to the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), as clarified in *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C.2d 799 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n* versus *ICC*, 930 F.2d 511 (6th Cir. 1991).

In our prior decision served March 6, 1992, we found the proposal should be processed as a minor transaction under section 1180.2(c). Because the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Office of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicant's representatives named above.

Any interested person or government entity may participate in this proceeding by submitting written comments. Any person or entity who files timely written comments shall be considered a party of record if the comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment on the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing minor transactions are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

*It is Ordered:* 1. This application is accepted for consideration as a minor transaction under 29 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective August 27, 1992.

*Decided:* August 21, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. 92-20704 Filed 8-27-92; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *J&D Enterprises, Inc.* (D.N.D.), (Civil Action number A3-92-143) was lodged on August 17, 1992 with the United States District Court for the District of North Dakota. The decree provides for J&D Enterprises, Inc. to pay a civil penalty of $5,500 pursuant to the provision of section 113(b) of the Clean Air Act, 42 U.S.C. 7513(b), in effect in 1989. The civil penalty is for a violation occurring in late 1989 of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") promulgated for asbestos pursuant to sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414. The decree further requires defendant J&D Enterprises, Inc. to ensure that all inspectors, supervisors, and those handling or removing asbestos have successfully completed specified training courses, and to allow access to EPA for inspection of J&D demolition or renovation operations. It likewise requires compliance with the

asbestos NESHAP and provides for stipulated penalties for future violations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *J&D Enterprises, Inc.*, DOJ reference #90-5-2-1-1427.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of North Dakota, 219 Federal Building, 655 First Avenue North, Fargo, North Dakota, 58102, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $4.25 (25 cents per page reproduction costs), payable to "Consent Decree Library".

**John C. Cruden,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 92-20550 Filed 8-27-92; 8:45 am]

BILLING CODE 4410-01-M

## Foreign Claims Settlement Commission

**AGENCY:** Foreign Claims Settlement Commission of the United States, DOJ.

**ACTION:** Notice.

**SUMMARY:** This notice announces the commencement by the Foreign Claims Settlement Commission of a program for registration of claims of United States nationals (U.S. citizens, corporations and other legal entities) against the Governments of Estonia, Latvia, and Lithuania for losses resulting from uncompensated nationalization, expropriation, confiscation, or other taking of real property and other property rights and interests by those governments, by the governments of the former Estonian Soviet Socialist Republic ("S.S.R."), Latvian S.S.R., and Lithuanian S.S.R., or by the government of the former Soviet Union acting within the territory of those countries, after July 28, 1922. The program is intended to cover real property and other property rights and interests owned by United States nationals at the time of such taking.

**DATES:** The deadline for registration of claims is November 30, 1992

**FOR FURTHER INFORMATION CONTACT:** David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 601 D Street NW., room 10430, Washington, DC 20579, (202) 208-7730 or FAX (202) 208-2816.

### Notice of Commencement of Claims Registration Program, and of Program Completion Date

The Foreign Claims Commission of the United States (FCSC), an independent, quasi-judicial agency within the U.S. Department of Justice, has begun a program which will enable United States nationals (private citizens, corporations, and other legal entities) to register claims against the Governments of Estonia, Latvia, and Lithuania for losses resulting from uncompensated nationalization, expropriation, confiscation, and other taking of real property and other property rights and interests by those governments, by the governments of the former Estonian S.S.R., Latvian S.S.R., and Lithuanian S.S.R., or by the government of the former Soviet Union acting within the territory of those countries, after July 28, 1922. The program is intended to cover real property and other property rights and interests owned by United States nationals at the time of such taking.

Diplomatic relations between the Government of the United States and the independent Governments of Estonia, Latvia, and Lithuania were established on September 2, 1991. Memoranda of Understanding signed by the parties provide that, at the request of any of the respective Governments, negotiations will be undertaken to achieve prompt settlement of claims and other financial and property matters that remain unresolved.

The information collected in the FCSC's claims registration program will be turned over to the U.S. Department of State for use in determining whether to pursue claims settlement agreements with the Government of Estonia, Latvia, or Lithuania, and to serve as the possible basis for negotiation, should the U.S. Government pursue any such claims settlement agreements. The information will otherwise remain confidential.

Requests for claim registration forms should be directed to the following address: Foreign Claims Settlement Commission, Attn: Baltic States Claims Registration, Washington, DC 20579.

Forms may also be requested in person at the offices of the FCSC, 601 D Street, Northwest, room 10430, Washington, DC, or by telephone at 202-208-7730.

The deadline for filing a registration form is November 30, 1992.

Note: The registration of a claim in this program will not constitute the filing of a formal claim against Estonia, Latvia, or Lithuania. Nor will it ensure that a claim will be covered by any future agreement that may be concluded. Should a government-to-government settlement be pursued, provisions for the formal filing of claims will be made at a later date. However, failure to file will lessen the amount of information available to the Department of State in deciding whether to pursue such claims agreements and in satisfactorily concluding any future claims negotiations. This could reduce the amount of any recovery available to pay claims.

Approval has been obtained from the Office of Management and Budget for the collection of this information. Approval No. 1105-0053, expiration date August 31, 1993.

**Stanley J. Glod,**

*Chairman.*

[FR Doc. 92-20679 Filed 8-27-92; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

## Employment and Training Administration

[TA-W-27, 384]

### BTS, Broadcast Television Systems, Inc., Salt Lake City, UT; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 15, 1992 in response to a worker petition which was filed on June 15, 1992 on behalf of workers at BTS, Broadcast Television Systems Inc., Salt Lake City, Utah.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 17th day of August, 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-20710 Filed 8-27-92; 8:45 am]

BILLING CODE 4510-30-M

### Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of August 1992.

In order for an affirmative determinations to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-27,209; Doehler-Jarvis, Pottstown, PA*

*TA-W-27,242; Newell Stamping & Mfg., Poplar Bluff, MO*

*TA-W-27,572; Quebec Sports, Allentown, PA*

*TA-W-27,339; All Fab Corp., Everett, WA*

*TA-W-27,340; Certified Aerospace, Inc., Shelton, WA*

*TA-W-27,396; Wm. F. Surgi Equipment Corp., Harahan, LA*

*TA-W-27,367; D S Squared Computer Sales, Robbinsville, NJ*

*TA-W-27,426; Ashland Forge & Machine, Ashland, WI*

*TA-W-27,426A; Ashland Scissors, Inc., Ashland, WI*

*TA-W-27,196; Emco Wheaton, Inc., Conneaut, OH*

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

*TA-W-27,296; Valley Steel Products, Centralia, IL*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-27,341; Quiltex Co., Inc., New York, NY*

U.S. imports of women's, girls', men's and boys' coats and jackets decreased absolutely in full year period from April 1991 to March 1992 compared to same 1990–1991 period and decreased absolutely and relative in 1991 compared to 1990.

*TA-W-27,375; Conemaugh & Black Lick Railroad, Co., Johnstown, PA*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-27,418; Tobin-Hamilton Co., Inc., Mansfield, MO*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-27,407; Trojan Yacht Co., Lancaster, PA*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-27,320; Mobil Pipeline Co., Dallas, TX*

Increased imports did not contribute importantly to worker separations at the firm.

**Affirmative Determinations**

*TA-W-27,262; Morrison Bershire, Inc., North Adams, MA*

A certification was issued covering all workers separated on or after May 5, 1991.

*TA-W-27,278; Cadence Technologies, Inc., Tucson, AZ*

A certification was issued covering all workers separated on or after April 30, 1991.

*TA-W-27,321; Hercules, Inc., Vero Beach Plant, Vero Beach, FL*

A certification was issued covering all workers separated on or after May 21, 1991.

*TA-W-27,357; Sterling Oil of Oklahoma City, Tulsa, OK*

A certification was issued covering all workers separated on or after May 26, 1991.

*TA-W-27,419; A.C. Leather Co., Inc., Danvers, MA*

A certification was issued covering all workers separated on or after June 15, 1991 and before March 31, 1992.

*TA-W-27,325; Schoolhouse Togs, Inc., Rockland, ME*

A certification was issued covering all workers separated on or after May 20, 1991.

*TA-W-26,201; Tru-Tag Systems, Inc., Houston, TX*

A certification was issued covering all workers separated on or after April 24, 1991.

*TA-W-26,534; Snows Cards & Gift Shop, Inc., Birmingham, AL*

A certification was issued covering all workers separated on or after December 7, 1991.

*TA-W-27,324; Wire Rope Corp. of America, Inc., Kansas City, MO*

A certification was issued covering all workers separated on or after April 13, 1991.

*TA-W-27,319; Mobil Corp., Headquarters, Fairfax, VA*

A certification was issued covering all workers separated on or after May 20, 1991.

*TA-W-27,389, TA-W-27,390, TA-W-27,391 & TA-W-27,392; NOWSCO Well Service, Wooster, OH, Cottondale, AL, Clarksburg, WV and Brookville, PA*

A certification was issued covering all workers separated on or after May 18, 1991.

*TA-W-27,393, TA-W-27,394, TA-W-27,395; NOWSCO Well Service, Dunbar, WV, Williamstown, WV and Gaylord, MI*

A certification was issued covering all workers separated on or after May 18, 1991.

*TA-W-27,381; Mountain Fir Lumber Co., Independence, OR*

A certification was issued covering all workers separated on or after June 3, 1991.

*TA-W-27,387; Coastal Oil and Gas Corp., Jackson, MS*

A certification was issued covering all workers separated on or after June 6, 1991.

*TA-W-27,410, TA-W-27,411 & TA-W-27,412; Mitchell Energy Corp., Denver, CO, Oklahoma City, OK and Woodland, TX*

A certification was issued covering all workers separated on or after June 6, 1991.

*TA-W-27,343; The Jade Corp., Huntingdon Valley, PA*

A certification was issued covering all production workers separated on or after May 18, 1991.

*TA-W-27,504; Coastal Oil & Gas Corp., Jackson, MS and Operating at Various Locations in the Following States A; AL, B; CA, C; CO, D; KS, E; LA, F; MI, G; MS, H; MT, I; NE, J; ND, K; OK, L; TX, M; UT, N; VA, O; WY*

A certification was issued covering all production workers separated on or after June 21, 1991.

*TA-W-27,405; Atlantic Pacific Marine Corp., Houma, LA*

A certification was issued covering all workers separated on or after June 9, 1991.

I hereby certify that the aforementioned determinations were issued during the month

of August 1992. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: August 24, 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-20711 Filed 8-27-92; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-26,944]

## Manville Sales Corp., Denver, CO; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Manville Sales Corporation, Denver, Colorado. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-26,944; Manville Sales Corporation

Denver, Colorado (August 18, 1992)

Signed at Washington, DC, this 24th day of August 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-20712 Filed 8-27-92; 8:45 am]

BILLING CODE 7510-30-M

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## Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, and instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 8, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 8, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 17th day of August 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (Union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Tekgraphics, Div. of Tektronix (Wkrs) | Beaverton, OR | 8/17/92 | 8/28/92 | 27,604 | Printed manuals. |
| Teleco Oilfield Services, Inc(Co) | Meriden, CT | 8/17/92 | 7/29/92 | 27,605 | Oil services. |
| Frigidaire Co., Distribution Center (Workers) | Ontario, OH | 8/17/92 | 8/6/92 | 27,606 | Distribution, warehouse for Frigidaire. |
| NCR Corp. (UAW) | Dayton, OH | 8/17/92 | 8/5/92 | 27,607 | Point of sales terminals. |
| Clarostat, Inc, (Workers) | Norway, ME | 8/17/92 | 7/29/92 | 27,608 | Potentiometers. |
| Eastman Teleco (Workers) | Broussard, LA | 8/17/92 | 8/13/92 | 27,609 | Oilfield service. |
| Baker Oil Tools (Workers) | Houston, TX | 8/17/92 | 7/22/92 | 27,610 | Oil field equipment. |
| Sunstrand ATG (Workers) | Denver, CO | 8/17/92 | 8/4/92 | 27,611 | Aerospace parts. |
| Garry Screw Machine, Inc (Workers) | N. Brunswick, NJ | 8/17/92 | 7/27/92 | 27,612 | Contact connectors. |
| Sure Fit Products (Workers) | El Paso, TX | 8/17/92 | 8/4/92 | 27,613 | Women's apparel, bedspreads & comforters. |
| Brown Shoe Co (Workers) | ST. Louis, MO | 8/17/92 | 8/4/92 | 27,614 | Administrative office. |
| Banner Elk Glove Co (Workers) | Banner Elk, NC | 8/17/92 | 8/7/92 | 27,615 | Industrial gloves. |
| Sunbeam Outdoor Products (PIC) | Baraboo, WI | 8/17/92 | 8/4/92 | 27,616 | Patio furniture. |
| Fujitsu Imaging Systems of America (Workers) | Danbury, CT | 8/17/92 | 6/22/92 | 27,617 | Fax machines. |
| Compaq Computer Corp. (Workers) | Houston, TX | 8/17/92 | 7/12/92 | 27,618 | Computers |
| Armco Steel Co., L.P. (USWA) | Ashland, KY | 8/17/92 | 8/7/92 | 27,619 | Carbon steel sheets and coils. |
| Endicott Johnson (Co) | Endicott, NY | 8/17/92 | 8/3/92 | 27,620 | Rubber boots & footwear. |
| Central Plastics Co (Workers) | Shawnee, OK | 8/17/92 | 7/23/92 | 27,621 | Plastic pipe connectors. |
| White GMC Trucks of Baltimore (Workers) | Baltimore, MD | 8/17/92 | 7/10/92 | 27,622 | Retail truck dealership. |
| Unocal Corp. (Co) | Sugar Land, TX | 8/17/92 | 8/11/92 | 27,623 | Oil and gas. |
| Unocal Corp (Co) | Surfside, TX | 8/17/92 | 8/11/92 | 27,624 | Oil and gas. |
| Unocal Corp (Co) | Ganado, TX | 8/17/92 | 8/11/92 | 27,625 | Oil and gas. |
| Unocal Corp (Co) | Van, TX | 8/17/92 | 8/11/92 | 27,626 | Oil and gas. |
| Unocal Corp (Co) | Lovelady, TX | 8/17/92 | 8/11/92 | 27,627 | Oil and gas. |
| Unocal Corp (Co) | Mobile, AL | 8/17/92 | 8/11/92 | 27,628 | Oil and gas. |
| Unocal Corp. (Co) | Chunchula, AL | 8/17/92 | 8/11/92 | 27,629 | Oil and gas. |
| Unocal Corp. (Co) | Vicksburg, MS | 8/17/92 | 8/11/92 | 27,630 | Oil and gas. |
| Hollytex Carpet Mills, Inc (Co) | Anadarko, OK | 8/17/92 | 8/3/92 | 27,631 | Carpet. |
| Rupe Oil Co., Inc (Workers) | Wichita, KS | 8/17/92 | 8/13/92 | 27,632 | Oil and gas. |
| Teleco Oilfield Services, Inc. (Co) | Houston, TX | 8/17/92 | 7/29/92 | 27,633 | Oil services. |
| Teleco Oilfield Services, Inc. (Co) | Casper, WY | 8/17/92 | 7/29/92 | 27,634 | Oil services. |
| Teleco Oilfield Services, Inc. (Co) | Lafayette, LA | 8/17/92 | 7/29/92 | 27,635 | Oil services. |
| Teleco Oilfield Services, Inc. (Co) | Anchorage, AK | 8/17/92 | 7/29/92 | 27,636 | Oil services. |
| Teleco Oilfield Services, Inc. (Co) | Ventura, CA | 8/17/92 | 7/29/92 | 27,637 | Oil services. |
| Dunham Brothers Co (Co) | Brattleboro, VT | 8/17/92 | 7/28/92 | 27,638 | Distribution & sales of footwear, boots. |

APPENDIX—Continued

| Petitioner (Union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Dunham Footwear Outlet (Co) | Bennington, VT | 8/17/92 | 7/28/92 | 27,639 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Brattleboro, VT | 8/17/92 | 7/28/92 | 27,640 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Manchester Center, VT | 8/17/92 | 7/28/92 | 27,641 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Rutland, VT | 8/17/92 | 7/28/92 | 27,642 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Shelburne, VT | 8/17/92 | 7/28/92 | 27,643 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Concord, NH | 8/17/92 | 7/28/92 | 27,644 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Keene, NH | 8/17/92 | 7/28/92 | 27,645 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Keene, NH | 8/17/92 | 7/28/92 | 27,646 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Laconia, NH | 8/17/92 | 7/28/92 | 27,647 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Manchester, NH | 8/17/92 | 7/28/92 | 27,648 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Nashua, NH | 8/17/92 | 7/28/92 | 27,649 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | North Conway, NH | 8/17/92 | 7/28/92 | 27,650 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Salem, NH | 8/17/92 | 7/28/92 | 27,651 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Kittery, ME | 8/17/92 | 7/28/92 | 27,652 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | South Portland, ME | 8/17/92 | 7/28/92 | 27,653 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Cranston, RI | 8/17/92 | 7/28/92 | 27,654 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | East Providence, RI | 8/17/92 | 7/28/92 | 27,655 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | North Kingstown, RI | 8/17/92 | 7/28/92 | 27,656 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Mystic, CT | 8/17/92 | 7/28/92 | 27,657 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Norwalk, CT | 8/17/92 | 7/28/92 | 27,658 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Branford, CT | 8/17/92 | 7/28/92 | 27,659 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Matawan, NJ | 8/17/92 | 7/28/92 | 27,660 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Brockton, MA | 8/17/92 | 7/28/92 | 27,661 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Burlington, MA | 8/17/92 | 7/28/92 | 27,662 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Fall River, MA | 8/17/92 | 7/28/92 | 27,663 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Falmouth, MA | 8/17/92 | 7/28/92 | 27,664 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Fitchburg, MA | 8/17/92 | 7/28/92 | 27,665 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Franklyn, MA | 8/17/92 | 7/28/92 | 27,666 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Hadley, MA | 8/17/92 | 7/28/92 | 27,667 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Lenox, MA | 8/17/92 | 7/28/92 | 27,668 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Plymouth, MA | 8/17/92 | 7/28/92 | 27,669 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Quincy, MA | 8/17/92 | 7/28/92 | 27,670 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Sagamore, MA | 8/17/92 | 7/28/92 | 27,671 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Saugus, MA | 8/17/92 | 7/28/92 | 27,672 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Somerville, MA | 8/17/92 | 7/28/92 | 27,673 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Sturbridge, MA | 8/17/92 | 7/28/92 | 27,674 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | West Springfield, MA | 8/17/92 | 7/28/92 | 27,675 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Yarmouth, MA | 8/17/92 | 7/28/92 | 27,676 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Albany, NY | 8/17/92 | 7/28/92 | 27,677 | Distribution & sales of footwear/boots. |

APPENDIX—Continued

| Petitioner (Union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Dunham Footwear Outlet (Co) | Amsterdam, NY | 8/17/92 | 7/28/92 | 27,678 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Colonie, NY | 8/17/92 | 7/28/92 | 27,679 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | East Greenbush, NY | 8/17/92 | 7/28/92 | 27,680 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Lake George, NY | 8/17/92 | 7/28/92 | 27,681 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Latham, NY | 8/17/92 | 7/28/92 | 27,682 | Distribution & sales of footwear/boots. |
| Dunham Footwear Outlet (Co) | Saratoga Springs, NY | 8/17/92 | 7/28/92 | 27,683 | Distribution & sales of footwear/boots. |

[FR Doc. 92-20713 Filed 8-27-92; 8:45am]

BILLING CODE 4810-30-M

## Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Addition to the Annual List of Labor Surplus Areas

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**DATES:** This addition to the annual list of labor surplus areas is effective September 1, 1992.

**SUMMARY:** The purpose of this notice is to announce an addition to the annual list of labor surplus areas.

**FOR FURTHER INFORMATION CONTACT:** William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., room N-4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-535-0189.

**SUPPLEMENTARY INFORMATION:** Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 25, 1991 (56 FR 55339).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Assistant Secretary of Labor as a labor surplus area pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and is effective September 1, 1992.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on August 18, 1992.

**Roberts T. Jones,**

*Assistant Secretary of Labor.*

### Addition to the Annual List of Labor Surplus Areas

(September 1, 1992)

Labor Surplus Areas, Civil Jurisdictions Included

Kentucky: Pendleton County

[FR Doc. 92-20714 Filed 8-27-92; 8:45 am]

BILLING CODE 4510-30-M

## Advisory Panel for The Dictionary of Occupational Titles (APDOT); Open Meeting

**AGENCY:** Employment and Training Administration, Labor.

**SUMMARY:** The Advisory Panel for the Dictionary of Occupational Titles (APDOT) was established in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) on August 28, 1990, and renewed on August 7, 1992.

The APDOT was established as part of the Secretary of Labor's Workforce Quality Agenda to improve the quality of the work force. The APDOT will assist the Department of Labor in meeting the goals of the Secretary's Agenda by providing a diversified range of user prespectives on the Dictionary of Occupational Titles (DOT). The DOT is a document which is used extensively in business, education and government. It defines, classifies and describes occupations in the labor market. A revised fourth edition of the DOT was published in September 1991. The APDOT will provide advice on a new, fifth edition.

The APDOT will report to and advise the Assistant Secretary for Employment and Training on the development, publication and dissemination of the DOT.

*TIME:* The meeting will begin at 9 a.m. on September 24, 1992, and adjourn at 12 p.m. that day.

*PLACE:* The Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

*AGENDA:* Matters to be considered as part of the agenda for the APDOT meeting include:

- Subcommittee on Purpose and Uses status report
- Subcommittee on Skills Issues status report

• Staff reports on status of User Survey, status of responses to APDOT Interim Report and status of other project activities

• Status report on related DOL activities

• Public Comment

**PUBLIC PARTICIPATION:** The meeting will be open to the public. A half hour (9 a.m.–9:30 a.m.) will be set aside for public comments. Individuals wishing to speak to the panel should call Dr. Marilyn Silver at 202–535–0161. Seating will be available for the public on a first-come, first-serve basis.

Individuals or organizations wishing to submit written statements should send 14 copies to Dr. Marilyn B. Silver, Executive Director, Advisory Panel for the Dictionary of Occupational Titles, room N4470, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Dr. Marilyn B. Silver, Executive Director, Advisory Panel for the Dictionary of Occupational Titles, Room N4470, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 535–0161.

Signed at Washington, DC this 19th day of August, 1992.

**Roberts T. Jones,**

*Assistant Secretary for Employment and Training.*

[FR Doc. 92–20715 Filed 8–27–92; 8:45 am]

BILLING CODE 4510-30-M

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## Employment Standards Administration; Wage and Hour Division

## Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

### New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

*VOLUME I*

South Carolina:
- SC91–27 (Aug. 28, 1992).... p. all
- SC91–28 (Aug. 28, 1992).... p. all
- SC91–29 (Aug. 28, 1992).... p. all
- SC91–30 (Aug. 28, 1992).... p. all
- SC91–31 (Aug. 28, 1992).... p. all
- SC91–32 (Aug. 28, 1992).... p. all
- SC91–33 (Aug. 28, 1992).... p. all
- SC91–34 (Aug. 28, 1992).... p. all

### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*VOLUME I*

Connecticut:
- CT91–1 (Feb. 22, 1991)..... p. 63, pp. 64–65, 67
- CT91–3 (Feb. 22, 1991)..... p. 78a, p. 78b
- CT91–4 (Feb. 22, 1991)..... p. 78g, pp. 78h–78i

District of Columbia, DC91–1 (Feb. 22, 1991). p. all

Georgia:
- GA91–3 (Feb. 22, 1991)..... p. all
- GA91–22 (Feb. 22, 1991).... p. all
- GA91–31 (Feb. 22, 1991).... p. all
- GA91–32 (Feb. 22, 1991).... p. all

Maryland:
- MD91–2 (Feb. 22, 1991)..... p. all
- MD91–15 (Feb. 22, 1991)... p. all
- MD91–19 (Feb. 22, 1991)... p. all
- MD91–21 (Feb. 22, 1991)... p. all
- MD91–22 (Feb. 22, 1991)... p. all
- MD91–23 (Feb. 22, 1991)... p. all

New York:
- NY91–7 (Feb. 22, 1991)..... p. 837, pp. 838, 849–856b
- NY91–9 (Feb. 22, 1991)..... p. 869, p. 870

Virginia, VA91–34 (Feb. 22, 1991). p. all

*VOLUME II*

Illinois:
- IL91–1 (Feb. 22, 1991)..... p. 69, p. 73
- IL91–8 (Feb. 22, 1991)..... p. 145, p. 147
- IL91–11 (Feb. 22, 1991)..... p. 163, p. 164
- IL91–12 (Feb. 22, 1991)..... p. 171, p. 172
- IL91–13 (Feb. 22, 1991)..... p. 183, p. 184
- IL91–14 (Feb. 22, 1991)..... p. 195, pp. 196, 198

IL91-15 (Feb. 22, 1991) ..... p. 205, p. 208
IL91-18 (Feb. 22, 1991) ..... p. all
Indiana:
IN91-2 (Feb. 22, 1991)..... p. 259, p. 260
IN91-3 (Feb. 22, 1991)..... p. 279, pp. 280, 285
Nebraska, NE91-2 (Feb. 22, 1991). p. all
Wisconsin:
WI91-18 (Feb. 22, 1991) .... p. all
WI91-19 (Feb. 22, 1991) .... p. 1285, pp. 1290, 1298

*VOLUME III*

Alaska, AK91-1 (Feb. 22, 1991). p. all
California, CA91-4 (Feb. 22, 1991). p. all
Idaho, ID91-1 (Feb. 22, 1991). p. all
Washington, WA 91-9 (Feb. 22, 1991). p. all

## General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 21st Day of August 1992.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 92-20462 Filed 8-27-92; 8:45 am]

BILLING CODE 4510-27-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-47]

## NASA Advisory Council (NAC), Commercial Programs Advisory Committee (CPAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NAC, Commercial Programs Advisory Committee.

**DATES:** September 16, 1992, 8:30 a.m. to 2:30 p.m.

**ADDRESSES:** Fairmont Hotel, Orleans Room, 123 Barrone Street, New Orleans, LA 70140.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Stone, Office of Commercial Programs, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-0692.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Communications and Remote Sensing Division Overview.
—Space Remote Sensing Center Overview.

Dated: August 21, 1992.

**John W. Gaff,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 92-20658 Filed 8-27-92; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL SCIENCE FOUNDATION

## Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting two notices of information collections that will affect the public. Interested persons are invited to submit comments by September 24, 1992. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335, and to

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

*Title:* Antarctic Conservation Act Application and Permit Form.

*Affected Public:* Individuals, Businesses or other for profit, Federal agencies or employees, Non-profit institutions, and Small businesses or organizations.

*Respondents/Reporting Burden:* 20 respondents, 20 minutes per response.

*Abstract:* The National Science Foundation, pursuant to the Antarctic Conservation Act of 1978 (P.L. 95-541), regulates via a permit system certain activities in Antarctica. The subject form is used by NSF to collect information needed in permit administration.

Dated: August 25, 1992.

**Herman G. Fleming,**

*Reports Clearance Officer.*

[FR Doc. 92-20753 Filed 8-27-92; 8:45 am]

BILLING CODE 7555-01-M

## Committee Management; Establishment

The Chairman of the National Science Board and the Director of the National Science Foundation have determined that the establishment of the National Science Board Commission on the Future of the National Science Foundation is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

*Name of Committee:* National Science Board Commission on the Future of the National Science Foundation.

*Purpose:* The Nation increasingly looks to science and engineering for the innovation and advanced training necessary for economic prosperity and improved quality of life. The importance of continued U.S. scientific and technological progress requires that NSF's future role and direction be given thoughtful examination.

The Commission will report its recommendations to the National Science Board within 75 days after the initial meeting of the Commission.

*Balanced Membership Plan:* The Commission will be composed of about 15 persons whose wisdom, knowledge and abilities can promote an objective examination of NSF's role in contributing to major national objectives, such as research excellence, education and human resource

development, economic and international competitiveness, and quality of life.

*Responsible NSF Official:* Dr. Charles N. Brownstein, Director, Office of Planning and Assessment, room 546, National Science Foundation, Washington, DC 20550, telephone: (202) 357-1201.

Dated: August 25, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-20702 Filed 8-27-92; 8:45 am]

BILLING CODE 7555-01-M

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## Special Emphasis Panel in Biological and Critical Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings.

*Date & Time:* September 14, 1992; 8:30 a.m. to 5 p.m.

*Place:* Room 1133, NSF, 1800 G Street NW., Washington, DC.

*Contact Person:* Fred Heineken, Program Director, Division of Biological and Critical Systems, Rm. 1132, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7218.

*Date & Time:* September 16 and 23, 1992; 8:30 a.m. to 5 p.m.

*Place:* Room 1130, NSF, 1800 G Street NW., Washington, DC.

*Contact Person:* Karen Mudry, Program Director, Division of Biological and Critical Systems, Rm. 1132, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7217.

*Type of Meetings:* Closed.

*Purpose of Meetings:* To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

*Agenda:* To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 25, 1992.

**Modestine Rogers,**

*Acting Committee Management Officer.*

[FR Doc. 92-20751 Filed 8-27-92; 8:45 am]

BILLING CODE 7555-01-M

## Special Emphasis Panel in Environmental Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* September 9-11, 1992; 8 a.m. to 5 p.m.

*Place:* Room 1243, 1800 G Street NW., Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* Dr. James E. Rodman, Program Director, Division of Environmental Biology, rm. 215, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9588.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

*Reason for Late Notice:* Difficulty in arranging for a suitable meeting time for full committee.

Dated: August 25, 1992.

**Modestine Rogers,**

*Acting Committee Management Officer.*

[FR Doc. 92-20703 Filed 8-27-92; 8:45 am]

BILLING CODE 7555-01-M

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## Special Emphasis Panel in Information, Robotics and Intelligent Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* September 11, 1992; 8:30 a.m. to 5 p.m.

*Place:* Ramada Renaissance Hotel, 950 North Stafford Street, Arlington, VA

*Type of Meeting:* Closed

*Contact Person:* Dr. Laurence Rosenberg, Deputy Division Director, Division of Information, Robotics and Intelligent Systems, Rm. 310, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9592.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

*Reason for Late Notice:* Inadvertently missed the proper publication date.

Dated: August 25, 1992.

**Modestine Rogers,**

*Acting Committee Management Officer.*

[FR Doc. 92-20752 Filed 8-27-92; 8:45 am]

BILLING CODE 7555-01-M

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# NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 70-2910 and 70-2928]**

## Finding of No Significant Impact and Notice of Opportunity for a Hearing Renewal of Special Nuclear Material License Nos. SNM-1861 and SNM-1873, Tennessee Valley Authority, Watts Bar Nuclear Plant Units 1 and 2, Spring City, TN

The U.S. Nuclear Regulatory Commission is considering the renewal of Special Nuclear Material License Nos. SNM-1861 and SNM-1873 for the continued storage of fuel assemblies for the Tennessee Valley Authority (TVA), Watts Bar Nuclear Plant, Unit 1 (WBN 1) and Unit 2 (WBN 2), located in Spring City, Tennessee.

### Summary of the Environmental Assessment

*Identification of the Proposed Action:* The proposed action is the renewal of special nuclear material licenses SNM-1861 and SNM-1873 until September 30, 1997. This action will allow TVA to continue to receive, possess, inspect, and store fuel assemblies at each of the two units. The proposed action also authorizes TVA to receive, possess, inspect, and store up to 100 individual fuel rods at each unit.

Additionally, TVA is seeking procedural and administrative changes to modify the existing radiological controls in the licenses to reflect current industry practices during handling of new fuel, revise the responsible manager's position title, and use the new distance unit (meter) for radiation surveys.

*The Need for the Proposed Action:* The proposed action of extending the

two licenses is needed so TVA can continue to store the unirradiated fuel rods and assemblies onsite until operating licenses have been issued for the two units.

*Environmental Impacts of the Proposed Action:* WBN 1 and WBN 2 are located approximately 50 miles northeast of Chattanooga is Spring City, Rhea County, Tennessee. The two units are on an approximately 1,770-acre site, just south of the Watts Bar Dam. Each unit is a pressurized water reactor, designed to produce 3,411 mega-watts, thermal.

In December 1978, a Final Environmental Statement was issued by the NRC which described the expected impacts from construction and operation of the two units. Based on this evaluation, the environmental impact from all plant operations is expected to be small. Since new fuel receipt, handling, and storage are only a very small part of the overall operations, the environemental impacts resulting from the handling and storage of new fuel are expected to be insignificant.

Fuel storage licenses were originally issued to WBN 1 on September 5, 1979, and to WBN 2 on February 17, 1980. Due to construction delays, the expiration dates for two licenses have been extended several times.

The new fuel is stored in the Auxiliary Building. Criticality safety in the storage locations is maintained by limiting interaction between adjacent fuel assemblies. In addition, the design of these storage locations, combined with plant procedures, will ensure acceptable protection of the general public and plant personnel either under normal or abnormal conditions.

Since the fresh fuel assemblies are essentially sealed sources, the principal exposure pathway to an individual is via external radiation. For the low-enriched uranium fuel assembly (<4 percent U-235 enrichment), the exposure rate at 1 foot from the surface is normally less than 1 mR/hr; therefore, it is estimated that the exposure level to an individual from unirradiated fuel would be less than 25 percent of the maximum permissible exposure specified in 10 CFR part 20. Because of the low radiation exposure levels associated with the requested materials and activities and TVA's radiation protection procedures, the staff concludes that fuel handling and storage activities can be carried out without any significant occupational dose to workers or impact to the environment.

In the event that assemblies must be returned to the fuel fabricator, all packaging and transport of fuel will be in accordance with 10 CFR part 71.

The package will meet NRC approval requirements for normal conditions of transport and hypothetical accident conditions. No significant external radiation hazards are associated with the unirradiated assemblies because the radiation level from the clad fuel pellets is low and because the shipping packages must meet the external radiation standards in 10 CFR part 71. Therefore, any shipment of unirradiated fuel is expected to have an insignificant impact.

TVA has installed redundant engineered-safety features on equipment intended for use in fuel handling and storage handling operations. The safety features combined with administrative controls minimize the likelihood of an accident situation occurring during fuel handling activities. In addition, TVA has analyzed the possible consequences that may result from various postulated accidents, the worst being an assembly (either within or outside its shipping container) dropped during transfer. The fuel cladding is not expected to rupture. Even if the cladding were breached and the pellets were released, an insignificant environmental impact would result. The fuel pellets are composed of ceramic $UO_2$ that has been pelletized and sintered to a very high density. In this form, release of $UO_2$ aerosol is highly unlikely except under conditions of deliberate grinding. Additionally, $UO_2$ is soluble only in acid solution so dissolution and release to the environment are extemely unlikely.

*Conclusion*: Based upon the information presented above, the environmental impacts associated with new fuel storage at WBN 1 and WBN 2 are expected to be insignificant. Essentially no effluents, liquid or airborne, will be released, and acceptable controls are in place to prevent a radiological accident. Therefore, the staff concludes that there will be no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*: There are essentially two alternatives to the proposed action. One alternative is to deny the proposed license action entirely. The other alternative is to reduce the amount of radioactive material authorized for the sites. These alternatives would not provide any environmental advantage because as already discussed, no environmental impacts are expected from the proposed action.

*Agencies and Persons Consulted*: The staff utilized the application dated May 1, 1992, and NUREG-0498, The Final Environmental Statement Related to the Operation of Watts Bar Nuclear Plant, Units Nos. 1 and 2, dated December 1978 in the completion of this review.

*Finding of No Significant Impact*: The Commission has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License Nos. SNM-1861 and SNM-1873. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

**Opportunity for a Hearing**

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publications of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the license (Tennessee Valley Authority, 5N 157B Lookout Place, Chattanooga, TN 37401); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the

requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 20th day of August 1992.

For the Nuclear Regulatory Commission.

**John W.N. Hickey,**

*Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*

[FR Doc. 92-20677 Filed 8-27-92; 8:45 am]

BILLING CODE 7590-01-M

## Systematic Assessment of Licensee Performance (SALP) Program

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing its plans to conduct a public meeting to discuss proposed changes to its Systematic Assessment of Licensee Performance (SALP) Program. The purpose of the meeting is to provide a forum for obtaining input from interested members of the public on these and other possible changes to the program. Proposed changes to the SALP Program guidance are contained in the draft of Management Directive 8.6, "Systematic Assessment of Licensee Performance". Once approved, Management Directive 8.6 will replace the current program guidance contained in Manual Chapter 0516, "Systematic Assessment of Licensee Performance".

**DATES:** The meeting will be held on September 29, 1992, from 9 a.m. to 5 p.m. Persons planning to attend the meeting should submit a completed registration form (see below) by September 18, 1992. Interested persons unable to attend the meeting may submit written comments by September 29, 1992.

**ADDRESSES:** The meeting will be held at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Md.

Send completed registration forms to: Mr. Cornelius Holden, M/S 10-A-19, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Submit written comments to: Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

A draft copy of Management Directive 8.6 is available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Cornelius Holden, M/S 10-A-19, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone (301) 504-1037.

**SUPPLEMENTARY INFORMATION:**

The SALP Program is an integrated agency effort to collect and evaluate available agency insights, data, and information in a structured manner to assess and better understand licensee performance.

The NRC is considering making changes to its SALP Program. These changes are contained in the draft NRC Management Directive 8.6, "Systematic Assessment of Licensee Performance." Operators of commercial nuclear power plants, holders of construction permits, interested State parties, and interested members of the public are invited to participate in a public meeting to discuss these and other possible changes to the program.

The NRC staff intends to make a brief presentation on the contents of the SALP Program at the meeting. However, the main focus of the meeting will be to solicit public and industry comments on the proposed changes. The NRC staff will consider comments received during this public meeting as well as written comments on the proposed changes in finalizing its recommendations to the Commission on the SALP Program.

Dated at Rockville, Maryland, this 24th day of August, 1992.

For the Nuclear Regulatory Commission.

**Anthony J. Mendiola,**

*Section Chief, Quality Assurance Section, Performance and Quality Evaluation Branch, Division of Licensee Performance, and Quality Evaluation, Office of Nuclear Reactor Regulation.*

Registration Form United States Nuclear Regulatory Commission Systematic Assessment of Licensee Performance Program Holiday Inn Crowne Plaza Hotel September 29, 1992

Name _____

Title _____

Company/Organization _____

_____

_____

Address _____

_____

_____

Telephone Number _____

Suggested Topics Related to the SALP Program To Be Considered for Discussion:

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Send registration form to: Cornelius Holden, M/S 10 A 19, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

[FR Doc. 92-20676 Filed 8-27-92; 8:45 am]

BILLING CODE 7590-01-M

## Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 10-12, 1992, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on August 20, 1992.

**Thursday, September 10, 1992**

*8:30 a.m.-8:35 a.m.: Opening Remarks by ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest.

*8:35 a.m.-9:30 a.m.: Meeting with Thomas E. Murley, Director, Office of Nuclear Reactor Regulation* (Open)—The Committee will discuss items of mutual interest, including use of PRA in the regulatory process, staff action regarding Individual Plant Examination for the James A. FitzPatrick Nuclear Plan, status of implementation of the Regulatory Impact Survey, and the policy implications of the NRC staff decision on the use of Bayesian statistical methodology in the evaluation of the Watts Bar nuclear plant quality assurance records.

*9:30 a.m.-9:45 a.m.: Priorities for ACRS Reports* (Open)—The Committee will discuss the priorities for preparation of ACRS reports.

*9:45 a.m.-12 Noon: Policy Issues for Evolutionary and Passive Plant Designs* (Open)—The Committee will meet with representatives of the NRC staff to discuss policy issues identified by the NRC staff regarding certification of evolutionary and passive LWR nuclear plants. Representatives of the nuclear industry will participate, as appropriate.

*1 p.m.-2 p.m.: Use of Probabilistic Risk Assessment in the Regulatory Process* (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding use of PRA in the regulatory process. Representatives of the nuclear industry will participate, as appropriate.

*2 p.m.-3 p.m.: Environmental Qualification of Safety Grade Digital Computer Protection and Control System* (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff to discuss the NRC research program regarding this matter. Representatives of the nuclear industry will participate, as appropriate.

*3:15 p.m.–4:15 p.m.: Implementation of NRC Safety Goal Policy* (Open)—The Committee will discuss proposed ACRS activities regarding use of the NRC Safety Goal in determining where unnecessary regulations exist.

*4:15 p.m.–5 p.m.: Compatibility of NRC reactor Safety Goals with Risk Analysis Results Regarding Core Melt* (Open)—The Committee will discuss a report by an Ad Hoc group of ACRS members.

*5 p.m.–6 p.m.: Preparation for Meeting with NRC Commissioners* (Open)—The Committee will discuss ACRS position/comments regarding items of mutual interest, including implementation of NRC Safety Goals, Use of Design Acceptance Criteria, and Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) in the certification process, status of ACRS reviews and recommendations regarding advanced LWRs, and the impact of the regulatory process on reactor safety.

*6 p.m.–6:30 p.m.: Proposed ACRS Reports* (Open)—The Committee will discuss proposed Committee positions and recommendations regarding matters considered during this session.

**Friday, September 11, 1992**

*8:30 a.m.–9:30 a.m.: Impact of the Regulatory Process* (Open)—The Committee will hold a briefing by and discussion with representatives of NUMARC on the impact of the regulatory process on reactor safety.

*10 a.m.–11:30 a.m.: Meeting with NRC Commissioners* (Open)—The Committee will discuss items of mutual interest regarding the NRC regulatory process and reactor safety.

*1 p.m.–1:30 p.m.: Proposed ACRS Reports* (Open)—The Committee will discuss the scope and content of selected (high-priority) ACRS reports.

*1:30 p.m.–3 p.m.: Evaluation of Risk During Shutdown and Low-Power Operation of Nuclear Power Plants* (Open)—The Committee will review and report on the NRC staff evaluation of risk associated with shutdown and low-power operations at nuclear power plants. Representatives of the nuclear industry will participate, as appropriate.

*3:15 p.m.–4:15 p.m.: GE Generic Power Uprate Program/Fermi Unite 2 Power Increase* (Open/Closed)—The Committee will review and report on the GE Nuclear Energy generic power uprate program and the proposed power level increase for the Fermi Unit 2 nuclear power plant. Representatives of the NRC staff and the licensee will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this station.

*4:15 p.m.–5 p.m.: Future Activities* (Open)—The Committee will discuss the report of the ACRS Planning and Procedures Subcommittee regarding matters proposed for consideration by the full Committee.

*5 p.m.–6 p.m.: Proposed ACRS Reports* (Open)—The Committee will discuss proposed Committee positions and recommendations regarding matters considered during this session.

**Saturday, September 12, 1992**

*8:30 a.m.–11 a.m.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during this meeting.

*11 a.m.–11:45 a.m.: Appointment of ACRS Members* (Open/Closed)—The Committee will discuss the status of members' appointments and qualifications of candidates proposed for appointment to the Committee.

This session will be closed to discuss information of a personal nature, the release of which would represent a clearly unwarranted invasion of personal privacy.

*11:45 a.m.–12:30 p.m.—Subcommittee Activities*—(Open/Closed)—The Committee will hear a report and recommendations of the ACRS Planning and Procedures Subcommittee regarding conduct of Committee activities, including the Subcommittee's recommendations as to the qualifications of prospective candidates for ACRS membership.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

*12:30 p.m.–1 p.m.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss NRC Executive Director for Operations responses to ACRS comments and recommendations.

*1 p.m.–1:30 p.m.: Miscellaneous* (Open)—The Committee will complete discussion of matters considered during this meeting, administrative matters regarding Committee and agency activities and matters which were not completed at previous meetings, as time and availability of information permit.

Procedures for the conduct of any participation in ACRS meetings were published in the **Federal Register** on October 1, 1991 (56 FR 49800). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Mr. Raymond F. Fraley, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered in accordance with 5 U.S.C. 552(c)(4) and information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepared telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301–492–8049), between 8 a.m. and 4:30 p.m. E.s.t.

Dated: August 24, 1992.

**John C. Hoyle,**

*Advisory, Committee Management Officer.*

[FR Doc. 92–20678 Filed 8–27–92; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–413 and 50–414]**

## Duke Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–35 issued to the Duke Power Company, et al. (the licensee), for operation of the Catawba Nuclear Station, Unit 1 located in York County, South Carolina.

The proposed amendment would change Technical Specification (TS) Sections 3/4.4.5 Steam Generators, and 3/4.4.6 Reactor Coolant System Leakage along with their associated Bases to revise the repair criteria for Unit 1 Steam Generators for Catawba Unit 1 Cycle 7 operation. The proposed change would allow the use of an interim tube plugging criteria, which will utilize a bobbin voltage-based plugging criteria.

The licensee is requesting that this amendment be processed on an exigent or, if necessary, emergency basis pursuant to 10 CFR 50.91(a) (5) or (6). The licensee states that during the Unit 1 end of cycle 6 refueling outage, which is currently underway, Catawba began its inspection of Unit 1 steam generators. The following was provided by the licensee in support of their request:

Bobbin coil inspections of the steam generator tubes were completed by August 8,

1992. [Approximately 7000 indications were found which affected approximately 4500 tubes.] When an indication is found using the bobbin coil technique, the Motorized Rotating Pancake Coil (MRPC) is used to confirm the existence of the indication. Use of the MRPC on a sample population of Catawba Unit 1 tubes confirmed the presence of indications in approximately 23% of those tubes sampled. This effort was completed, and the data was available, on August 10, 1992. Using this confirmation [sic] data and the current criteria required by the Catawba Technical Specifications, Catawba has projected that approximately 1020 tubes would require repair.

With this data available, and after balancing these considerations, Catawba management decided on August 11, 1992, to pursue the possibility of amending Unit 1's Tech Specs to permit the use of interim plugging criteria. On August 11, 1992, Duke requested Westinghouse to begin its analyses to support such a change. That same day, Duke also contacted the NRC Staff to inform them of the results of the steam generator inspection and analyses.

During the August 11, 1992, conversation, Duke and the Staff discussed a preliminary schedule for development and submittal of the proposed Tech Spec change and its justification. A date of August 14, 1992, was tentatively set for submittal of the application, to include the proposed Tech Spec pages and a No Significant Hazards analysis. Because of the complexity of the analyses involved, Duke and Westinghouse were unable to meet this schedule and on August 14, 1992, Duke so informed the Staff. Late the afternoon of August 19, 1992, Duke received draft analyses and submittals for review from Westinghouse. Since that time Duke and Westinghouse have been engaged in an iterative process of reviewing and developing the pertinent documents and analyses to assure, among other things, that the assumptions made by Westinghouse in its analyses are consistent with the accident and dose analyses used by Duke in the licensing of Unit 1. During this entire process, Catawba has been in a daily telephone contact with NRC Staff to keep the Staff informed on the progress of this Tech Spec submittal.

In sum, grant of the proposed amendments to the Unit 1 Tech Specs to allow implementation of the Interim Tube Plugging Criteria will, by decreasing the inspection and repair requirements under the existing Tech Specs:

- Save about 100 days in unplanned refueling outage time
- Reduce projected personnel exposures by approximately 45 person-rem
- Save approximately 8 million dollars, and
- Maintain a larger Reactor Coolant flow margin

Therefore, for the reasons set out above, Duke requests that this amendment be processed on an exigent or, if necessary, an emergency basis as provided in 10 CFR 50.91(a) (5) or (6). The steam generator tube inspections and repairs required during the current outage under existing Tech Specs could not have been projected by Duke based on the plant-specific and industry-wide data available prior to the outage. When, during the outage, actual inspections showed that the number of needed inspections and repairs could significantly exceed its projections, Duke took immediate action to develop the Interim Tube Plugging Criteria for Unit 1. The proposed amendment is necessary to meet the schedule for return to operation of Unit 1. This requested Tech Spec amendment has been pursued in a timely manner and in full consultation with the NRC Staff. The need for exigent or, if necessary, emergency processing of this Tech Spec amendment was not because of dilatory behavior on the part of Duke Power Company.

The licensee transmitted their application to the NRC on August 25, 1992. Catawba Unit 1 is currently scheduled to enter Mode 4 on or about September 12, 1992, and this amendment will be necessary to declare the Steam Generators operable at that time. Consequently, it will be necessary to issue this amendment in order not to delay startup of the unit. This schedule does not provide the requisite time for the publication of the appropriate Notice in the **Federal Register** for the 30-day period pursuant to 10 CFR 50.91(a)(2)(ii). The staff has reviewed the schedular information and the actions undertaken by the licensee and has decided to process the amendment on an exigent basis because a failure to do so would result in a delay in the startup of the unit past the currently scheduled date. Based on the information provided, it appears that the licensee's actions have reflected their best efforts to make a timely application for the needed changes to the TSs.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the three factor test of 10 CFR 50.92(c), implementation of the proposed license amendment is analyzed using the following standards and found not to: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in margin of safety.

Conformance of the proposed amendment to the standards for a determination of no significant hazard as defined in 10 CFR 50.92 (three factor test) is shown in the following:

(1) Operation of Catawba Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free span tubing (no tube support plate restraint) at room temperature conditions show burst pressures in excess of 5475 psi for indications of outer diameter stress corrosion cracking with voltage measurements as high as 11 volts (Reference 1). Burst testing performed on pulled tubes from Catawba Unit 1 with up to a 1.5 volt indications show measured burst pressures in excess of 4800 psi at room temperature. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature, tube burst capability significantly exceeds the R.G. 1.121 criterion requiring the maintenance of a margin of 3 times normal operating pressure differential on tube burst. The 3 times normal operating pressure differential for the Catawba Unit 1 steam generators corresponds to 3750 psi. Based on the existing data base, this criterion is satisfied with ¾" diameter tubing with bobbin coil indications with signal amplitudes less than 4.1 volts, regardless of the indicated depth measurement. This structural limit is based on a lower 95% confidence level limit of the data. A 1.0 volt plugging criterion compares favorable with the structural limit considering the calculated growth rates for ODSCC within the Catawba Unit 1 steam generators. Considering a voltage increase of 0.58 volts, and adding 20% NDE uncertainty of 0.2 volts (90% Cumulative Probability) to the interim plugging criterion of 1.0 volts results in an EOC voltage of 1.78 volts. The growth rate used to determine the projected EOC voltage is based on the review of growth rates for 541 TSP intersections. These indications were selected by Duke Power Company based on their largest amplitudes from the original analyses. The 541 indications were made up of 90, 117, 197, and 137 from steam generators A, B, C and D, respectively. This end of cycle voltage compares favorably with the Structural Limit 4.1 volt. The corresponding safety margin to the tube structural limit at end of cycle 7 upon implementation of the 1.0 volt steam generator tube interim plugging limit is 2.3 volts. The necessary plugging limit to meet tube structural limits is 2.5 volts.

Only three indications of ODSCC have been reported to have operating leakage—all three have been in European plants. No field leakage has been reported at other plants from tubes with indications with a voltage level of under 6.2 volts (from ¾" tubing). Relative to the expected leakage during

accident condition loadings, the accidents that are affected by primary to secondary leakage and steam release to the environment are: Feedwater System Malfunction, Loss of External Electrical Load and/or Turbine Trip, Loss of All AC Power to Station Auxiliaries, Uncontrolled Single Rod Withdrawal at Power, Major Secondary System Pipe Failure, Steam Generator Tube Rupture, Reactor Coolant Pump Locked Rotor, and Rupture of a Control Rod Drive Mechanism Housing. In support of implementation of the interim plugging criterion, it has been determined that the distribution of cracking indications at the tube support plate intersections at the end of cycle 7 are projected to be such that primary to secondary leakage would result in site boundary doses within a small fraction of the 10 CFR 100 guidelines.

Monte Carlo analyses methods are used to calculate the potential SLB leakage at the EOC–7 at Catawba Unit 1. The Monte Carlo analyses methods utilize the distributions for indications left inservice, NDE uncertainties, voltage growth and SLB leak rate. The methods account for the tails of the distribution and yield eddy current voltages with an associated probability of occurrence and the cumulative probability of EOC voltages. The SLB leak rates applied to the Monte Carlo voltage distribution are 0.0 gpm for volts less than or equal to 1.8 volts, 1 liter/hr for 1.8 to 3.5 volts, and 10 liter/hr for greater than 3.5 volts. Applying these leak rates to the projected EOC voltage distribution leads to a projected SLB leak rate of 0.54 gpm for steam generator D, the most limiting steam generator (3492 TSP elevation indications). The 0.54 gpm SLB leak rate compares favorably with the accident analyses assumptions of 1.0 gpm in the affected steam generator identified in Table 15.3 of the Catawba Unit 1 Safety Evaluation Report. The projection indicates a maximum EPC–7 of 3.1 volts (90% cumulative probability). The analyses yields a negligible likelihood of tube exceeding the 3.5 volt threshold for a 10 liter/hr SLB leak rate.

Upon application of the interim plugging criterion, only a negligible increase in leakage above normal operating leakage would be expected during plant transients, other than steam line break, which have lower peak differential pressures.

Therefore, as steam generator tube burst capability and leaktightness during Cycle 7 operation following implementation of the proposed 1.0 volt interim plugging criterion remains consistent with the current licensing basis, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated with the Catawba Unit 1 FSAR.

(2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed interim tube support plate elevation steam generator tube plugging criterion does not introduce any significant changes to the plant design basis. Use of the criterion does not provide a mechanism which could result in an accident outside of the region of the tube support plate elevations; no ODSCC is occurring outside the thickness of the tube support plates. A tube rupture event would not be expected in a steam generator in which the plugging criterion has been applied (during all plant conditions).

Upon application of the interim plugging criterion, no primary to secondary leakage during normal operating is anticipated during all plant conditions due to degradation at the tube support plate elevations in the Catawba Unit 1 steam generators. However, additional conservatism is built into the operating leakage limit with regard to protection against the maximum permissible single crack length which may be achieved during Cycle 7 operation due to the potential occurrence of through wall cracks at locations other than the tube support plate intersections.

Specifically, Duke Power Company will implement a maximum leakage rate limit of 150 gpd (0.1 gpm) per steam generator to help preclude the potential for excessive leakage during all plant conditions. The currently proposed Cycle 7 Reload Technical Specification limits on primary to secondary leakage at operating conditions is a maximum of 0.5 gpm (720 gpd) for all steam generators, or, a maximum of 200 gpd for any one steam generator. The R.G. 1.121 criterion for establishing operational leakage rate limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture. The 150 gpd limit should provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. R.G. 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a factor of safety of 3 against bursting at normal operating pressure differential. A voltage amplitude of 4.1 volts for typical ODSCC corresponds to meeting this tube burst requirement at a lower 95% uncertainty limit on the burst correlation. Alternate crack morphologies can correspond to 4.1 volts so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus through-wall crack length correlations are used below to define the "longest permissible crack" for evaluating operating leakage limits.

The single through-wall crack lengths that result in tube burst at 3 times normal operating pressure differential and SLB conditions are 0.48 inch and 0.76 inch, respectively. Nominal leakage for these crack lengths would range from about 0.10 gpm to 3 gpm, respectively, while lower 95% confidence level leak rates would range from about 0.015 gpm to 0.4 gpm, respectively. A leak rate of 150 gpd will provide for detection of 0.40 inch long cracks at nominal leak rates and 0.60 inch long cracks at the lower 95% confidence level leak rates.

Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths for SLB conditions at leak rates less than a lower 95% confidence level and for three times normal operating pressure differential at less than nominal leak rates.

Application of the 1.0 volt interim steam generator tube plugging criterion at Catawba Unit 1 is not expected to result in tube burst during all plant conditions during Cycle 7 operation. Tube burst margins are expected to meet R.G. 1.121 acceptance criteria. The limiting consequence of the application of the interim plugging criterion is a potential for primary to secondary leakage of approximately 0.54 gpm. This amount of leakage does not result in unacceptable radiological consequences. No unacceptable leakage is anticipated at normal operating or RCP locked rotor conditions. Therefore, as the existing tube integrity criteria and accident analyses assumptions and results continue to be met, the proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed license amendment does not involve a significant reduction in margin of safety.

Based on the analysis which shows the new leakage values proposed and the leakage characteristics expected during accidents creating high differential pressures across the steam generator tubes (main steam line break) new dose analyses were run to determine offsite dose consequences. A new analysis of the Main Steam Line Break accident using pre-existing leakage's of 0.1 gpm per steam generator and leakage growth of 1.1 gpm in the faulted generator determined that the EAB and Low Population Zone doses remain well within 10% of the allowed 10 CFR100 values of 25 Rem whole body and 300 Rem thyroid. The most restrictive dose analysis is the Reactor Coolant Pump Locked Rotor accident which requires that total steam generator leakage remains less than 0.7 gpm. This is a new analysis which has been submitted to support Unit 1 Cycle 7. This accident does not create excessive differential pressure conditions across the steam generator tubes and by limiting the initial allowed primary to secondary leakage to 0.4 gpm total, 10% of 10 CFR100 dose limits are again not exceeded. Reruns of the above accident dose analyses show that there is no significant increase in dose consequences.

The use of the voltage based bobbin probe interim tube support plate elevation plugging criterion at Catawba Unit 1 is demonstrated to maintain steam generator tube integrity commensurate with the criteria of Regulatory Guide 1.121. R.G. 1.21 describes a method acceptable to the NRC staff for meeting GDCs 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criterion, even under the worst case conditions, the Occurrence of ODSCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant

conditions. The end of cycle distribution of crack indications at the tube support plate elevations is calculated to result in minimal primary to secondary leakage during all plant conditions and radiological consequences are not adversely impacted.

In addressing the combined effects of LOCA + SSE on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case as the tube support plates may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to the combined effects of the LOCA rarefaction wave and SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

There are two issues associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase Peak Clad Temperature (PCT). Second, there is a potential that partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse.

Analyses results show that for the Catawba Unit 1 steam generators several tubes near wedge locations may significantly deform or collapse and secondary to primary inleakage may result. These tubes have been precluded from application of interim plugging criterion (Reference 3). For all other steam generator tubes, the possibility of secondary to primary leakage in the event of a LOCA + SSE event is not significant. In actuality, the amount of secondary to primary leakage in the event of a LOCA + SSE is expected to be less than that associated with the application of this criterion, i.e., 150 gpd per steam generator. Secondary to primary inleakage would be less than primary to secondary leakage for the same pressure differential since the cracks would tend to close under a secondary to primary pressure differential. Additionally, the presence of the tube support plate is expected to reduce the amount of in-leakage.

Addressing R.G. 1.83 considerations, implementation of the bobbin probe voltage based interim tube plugging criterion of 1.0 volt is supplemented by: enhanced eddy current inspection guidelines to provide consistency in voltage normalization, a 100% eddy current inspection sample size at the tube support plate elevations, and rotating pancake coil inspection requirements for the larger indications left inservice to characterize the principal degradation as ODSCC.

As noted previously, implementation of the tube support plate elevation plugging criterion will decrease the number of tubes which must be repaired or taken out of service by plugging the installation of steam generator tube plugs or sleeves reduces the RCS flow margin. Thus, implementation of the alternate plugging criterion will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any BASES of the plant Technical Specifications.

## Conclusion

Based on the preceding analysis, it is concluded that using the TSP elevation bobbin coil probe voltage-based interim steam generator tube plugging criterion for removing tubes from service at Catawba Unit 1 is acceptable and the proposed license amendment does not involve a Significant Hazards Consideration Finding as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 28, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the

petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 24, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 25th day of August 1992.

For the Nuclear Regulatory Commission.

**David B. Matthews,**

*Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-20859 Filed 8-27-92; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 24, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities and Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Jacobs Engineering Group, Inc.
Common Stock, $1.00 Par Value (File No. 7-8927)

Praxair, Inc.
Common Stock, $.01 Par Value (File No. 7-8928)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 15, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-20689 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31065; File Nos. SR-GSCC-92-04; SR-GSCC-92-05; and SR-GSCC-92-06]

## Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving, on a Temporary Basis, Proposed Rule Changes Relating to the Netting of Zero Coupon Government Securities; the Netting of Forward-Settling Trades in Government Securities; and the Clearing Fund Formula

August 21, 1992.

### I. Introduction

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule changes relating to the netting of zero coupon government securities (File No. SR-GSCC-92-04); the netting of forward-settling trades in government securities (File No. SR-GSCC-92-05); and the clearing fund formula (File No. SR-GSCC-92-06).[2] GSCC has requested that these proposed rule changes be made permanent by the Commission or, in the alternative, that the Commission further extend these proposed rule changes on a temporary basis. Notices of the proposed rule changes were published in the **Federal Register** on June 5, 1992.[3] No comments were received. This order approves the proposed rule changes on a temporary basis through October 30, 1992.

### II. Discussion

As discussed in more detail in the orders temporarily approving the proposed rule changes, the Commission preliminarily believes that GSCC's proposed rule changes are consistent with the requirements of the Act. In particular, the Commission believes the proposals are consistent with sections 17A(b)(3)(A) and (F).[4] These Sections require a clearing agency to be so organized and its rules designed to facilitate the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in its custody or control or for which it is responsible.

GSCC has filed a proposed rule change, File No. SR-GSCC-91-04, that will have a substantial impact on GSCC's risk reduction program,[5] including various aspects of GSCC's clearing fund and forward mark allocation payments. The Commission believes it is prudent to complete its review process of File No. SR-GSCC-91-04 before granting permanent approval to these proposals. Thus the Commission is extending the proposed rule changes for an additional period of sixty days.

### III. Conclusion

For the reasons discussed above, the Commission preliminarily finds that the proposals are consistent with the requirements of the Act, in particular with section 17A of the Act, and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule changes (File Nos. SR-GSCC-92-04; SR-GSCC-92-05; and SR-GSCC-92-06) be, and hereby are, approved on a temporary basis through October 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92-20668 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b) (1990).

[2] The Commission previously granted temporary approval of these rule changes through April 30, 1992 (Securities Exchange Act Release No. 28842 (January 31, 1991), 56 FR 5032; Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066; and Securities Exchange Act Release No. 27006 (July 7, 1989), 54 FR 29798). Subsequently, the Commission granted temporary approval of the proposals through July 31, 1992 (Securities Exchange Act Release No. 30661 (April 30, 1992), 57 FR 19654).

[3] Securities Exchange Act Release No. 30754 (May 28, 1992), 57 FR 24071 [File No. SR-GSCC-92-04]; Securities Exchange Act Release No. 30755 (May 28, 1992), 57 FR 24072 [File No. SR-GSCC-92-05]; and Securities Exchange Act Release No. 30748 (May 28, 1992), 57 FR 24069 [File No. SR-GSCC-92-06].

[4] 15 U.S.C. 78q-1(b)(3) (A) and (F).

[5] See Securities Exchange Act Release No. 30135 (December 31, 1991), 57 FR 942, publishing notice of the proposed rule change. The proposal would: (1) Authorize GSCC to sue its own price volatility data to determine margin requirements; (2) allow GSCC to include in the calculation of a netting member's required margin deposit the weighted average of the netting member's forward net settlement positions over the most recent 20 business days; (3) remove the 75% limitation on forward mark allocation payments; (4) establish new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocation payments; and (5) make certain other changes to the margin fund collection process.

[6] 17 CFR 200.30-3(a)(12).

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 24, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Computervision Corporation
Common Stock, $.01 Par Value (File No. 7-8923)
Japan Equity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-8924)
PHP Healthcare Corporation
Common Stock, $.01 Par Value (File No. 7-8925)
T2 Medical, Inc.
Common Stock, $.01 Par Value (File No. 7-8926)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 15, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92-20690 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31063; File No. SR-PSE-92-27]

## Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to an Extension of the Exchange's Lead Market Maker System Pilot Program

August 21, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1992, the Pacific Stock Exchange, Inc. ("PSE" or

"Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PSE proposes to extend for three months its Lead Market Maker ("LMM") System pilot program through October 31, 1992. The Exchange's LMM System supplements the standard PSE options trading pit by establishing LMMs for certain options classes. In a separate filing, the Exchange has proposed amendments to its LMM system,[1] but the Commission at this time only is considering an extension of the existing LMM system pilot program.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On January 17, 1990, the Commission approved, on a pilot basis, a PSE proposal to establish an LMM system in order to enhance the ability of the Exchange to compete in a multiple trading environment.[2] The Exchange's LMM system is designed primarily for new options classes and option classes with comparatively low volume. Under the existing pilot program, members appointed as LMMs assume responsibilities and acquire rights in their appointed options classes beyond the obligations and rights of market makers that trade in the same options class. In addition to the normal obligations of a market maker, an LMM must assume additional obligations designed to strengthen the market making in his designated options class. The LMM, among other things, is responsible for ensuring the accurate dissemination of market quotations, determining the algorithm for the PSE's Auto-Quote System, assuring that each market quotation is honored consistent with minimum obligations established by Exchange rules, and must participate in applicable automatic execution systems. Moreover, an LMM must be present at the trading post for his LMM-designated options class throughout every trading day.

The PSE believes, based on the pilot's performance, that the LMM system is viable and effective and that an uninterrupted continuation of the pilot program is warranted based on the importance of maintaining the quality and efficiency of the Exchange's Markets. The Exchange, rather than seeking permanent approval of the pilot program, however, proposes a three month extension of the pilot program in order to be able to evaluate better the effectiveness, impact, and merits of the LMM program as well as any benefits to the public that may inure from the operation of the pilot program.

The PSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will facilitate securities transactions, enhance competition, and promote the protection of investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act so that the LMM pilot program can continue uninterrupted. The Commission finds that the proposed rule change to extend the pilot program for three months is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and requirements thereunder.[3] The Commission concludes, as it did when approving the commencement of the pilot program, that the PSE proposal may enhance the market-making mechanism on the PSE, thereby improving the markets for listed options on the Exchange. Specifically, the Commission believes the LMM pilot may improve the PSE's market making capabilities by creating long-term commitments to options classes. Moreover, the pilot program will continue with adequate due process safeguards in the LMM selection and termination procedures and retain procedures that prevent the misuse of material non-public LMM information by either an LMM or a broker-dealer affiliated with an LMM. The Commission notes, however, that before the pilot program can be approved on a permanent basis, or extended again on a pilot basis, that the PSE must provide the Commission with a report on the operation of the pilot program by September 15, 1992.

Specifically, before requesting permanent approval or further extension the pilot program the PSE must submit by September 15, 1992, a pilot program report that addresses: (1) Whether there have been any complaints regarding the operation of the pilot; (2) whether the PSE has taken any disciplinary or performance action against any member due to the operation of the pilot; (3) the number of LMM's involved in the pilot; (4) the extent to which the pilot has been used on the PSE; (5) whether the PSE has terminated or replaced an LMM and the reasons therefore; (6) the impact of the pilot on the bid/ask spreads, depth and continuity in PSE options markets; and (7) whether the PSE has taken any action or there has been any complaints against LMMs or associated broker-dealers relating to improper activity as a result of LMM affiliations with upstairs firms.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because the PSE has indicated that there have not been any problems associated with the operation of the LMM systems.[4] In addition,

[1] See Securities Exchange Act Release No. 29055 (April 5, 1991), 56 FR 14959 (File No. SR-PSE-91-08).

[2] See Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462. Subsequently, the Commission extended the pilot program to July 31, 1992. See Securities Exchange Act Release No. 29475 (July 23, 1991), 56 FR 36183.

[3] 15 U.S.C. 78f(b)(5)(1982).

[4] Telephone conversation between David Semak, Vice President Regulation, PSE and Mark McNair, Attorney, Division of Market Regulation, August 20, 1992.

because the Commission has not received any adverse comments concerning the Exchange's LMM pilot program, the Commission believes good cause exists to approve the extension of the pilot program on an accelerated basis to allow it to continue uninterrupted.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 18, 1992.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (JR-PSE-92-27) is approved and, accordingly, that the Lead Market Maker pilot program is extended until October 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-20686 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

[5] 15 U.S.C. 78s(b)(2) (1982).

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

August 24, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Computervision Corporation
Common Stock, $.01 Par Value (File No. 7-8937)
T2 Medical, Inc.
Common Stock, $.01 Par Value (File No. 7-8938)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 15, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-20687 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 24, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

T2 Medical, Inc.
Common Stock, $.01 Par Value (File No. 7-8929)
TJX Companies, Inc.
Common Stock, $1.00 Par Value (File No. 7-8930)
Japan Equity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-8931)
Public Service Electric and Gas Company
$7.44 Cum. Pfd Stock, $1.00 Par Value (File No. 7-8932
Computervision Corporation
Common Stock, $.01 Par Value (File No. 7-8933
PHP Healthcare Corporation
Common Stock, $0.01 Par Value (File No. 7-8934
Alabama Power Company
7.60 PC Class A Pfd Stock, Second 1992 Series, $1.00 Par Value (File No. 7-8935)
Duke Power Company
7.72 Cum. Pfd Stock, $25 Par Value (File No. 7-8936)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 15, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-20688 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. IC-18903; 811-5146]

## The Fortius III Fund, Inc.; Notice of Application

August 21, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** The Fortius III Fund, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on July 31, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 15, 1992, and should be received by the SEC by 5:30 p.m. on September 15, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o BV Capital Management, Inc., 575 Fifth Avenue, 17th Floor, New York, New York 10017.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus, Paralegal Specialist, at (202) 272-3023, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicant's Representations

1. Prior to its dissolution under state law, Applicant was a Maryland corporation, registered as an open-end non-diversified management investment company under the Act. Applicant filed a notification of registration pursuant to section 8(a) of the Act on May 8, 1987 and a registration statement pursuant to the Securities Act of 1933 on August 6, 1987. The registration statement was never declared effective, and Applicant never commenced a public offering of its shares. Applicant's shares were privately placed with one institutional shareholder.

2. On February 15, 1991, Applicant's shareholder received an extraordinary dividend of net taxes in the amount of $384,059.67. On February 20, 1991, the shareholder redeemed all of its 1,906,214.110 shares and received a final distribution of $18,097,155.97. Such amount represented Applicant's net asset value at that time, less a redemption fee of $45,384.79 and cash in the amount of $11,374.24 which was held in escrow to pay liquidation expenses. Expenses of the liquidation were subsequently paid and the balance of the escrow account was distributed to Applicant's shareholder.

3. At the time of filing of this application, Applicant had no outstanding debts or liabilities.

4. Applicant has filed Articles of Dissolution in Maryland. Applicant is not a party to any litigation or administrative proceeding. Applicant has no remaining shareholders and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-20692 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 35-25611]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 21, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 14, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### Consolidated Natural Gas Co. (70-7909)

Consolidated Natural Gas Co. ("Consolidated"), a registered holding company, and its wholly-owned, nonutility subsidiary, CNG Energy Company ("CNG Energy"), both at the CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222-3199, and Lakewood Cogeneration, L.P. ("Partnership"), 100 Clinton Square, Syracuse, New York 13202-1049, (collectively, "Applicants") have filed a post-effective amendment to their application-declaration under sections 6(a), 6(b), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder. An original notice of the application-declaration was issued by the Commission on August 7, 1992 (HCAR No. 25602).

By supplemental order dated December 3, 1986 (HCAR No. 24253) ("1986 Order"), CNG Energy was authorized to invest up to $100 million in qualifying cogeneration facilities ("QFs") under the Public Utility Regulatory Policies Act of 1978 and the rules promulgated thereunder by the Federal Energy Regulatory Commission. By supplemental order dated June 13, 1989 (HCAR No. 24902) ("1989 Order"), CNG Energy was authorized to invest in a QF project in Lakewood, New Jersey ("Lakewood Project"). Pursuant to the 1986 Order and the 1989 Order, CNG Energy entered into the Partnership with two nonaffiliates (collectively, "Partners"), which took over the development, financing, construction, ownership and operation of the Lakewood Project. The authority under both supplemental orders expired on December 31, 1991.

The Applicants now propose to fund up to $50 million, through December 31, 1996, to the Lakewood Project. The Applicants propose to channel such funding from Consolidated to CNG Energy, from CNG Energy to CNG Lakewood, Inc. ("CNG Lakewood") (to be formed as a wholly-owned, special-purpose subsidiary of CNG Energy), from CNG Lakewood to the Partnership, and from the Partnership to the Project, as described below. (Alternatively, CNG Energy may bypass CNG Lakewood and invest directly in the Partnership.) The funds will be passed from entity to entity through any one or a combination of (i) common stock acquisitions, (ii) open account advances ("Advances"), or (iii) long-term loans ("Long-Term Loans"), also as described below. The amount of financings and other obligations, as described below, will not exceed $50 million at any one level. In order to facilitate such financing methods, it is also requested that Consolidated, CNG Energy and CNG Lakewood be authorized to make guarantees, obtain letters of credit and deliver accommodation letters (requiring the parent to provide its subsidiary with sufficient capital to fulfill its obligations) ("Keep Well Letter") (collectively, "Support Arrangements") with respect to the obligations of CNG Energy and/or CNG Lakewood and the Partnership, as

the case may be, as necessary to support debt service obligations (through the maintenance of the debt reserve requirements of the Partnership), equity contribution commitments and other Lakewood Project obligations. The Support Arrangements would be up to an amount that, when combined with equity contributions and investments in subordinated long-term notes (to be issued by the Partnership as part of a third-party financing facility, described below), will not exceed $50 million. It is estimated that a fee in an amount not exceeding one percent per annum would be paid with respect to the letters of credit, and the letters of credit may require recourse to Consolidated, CNG Energy or CNG Lakewood, as the case may be.

Each and every Advance and Long-Term Loan made pursuant to this application-declaration will have these same effective terms and interest rates ("Financing Terms"):

(1) Advances may be made to provide working capital and to finance the activities authorized by the Commission. Advances will be made under letter agreement and will be repaid on or before a date not more than one year from the date of the first Advance with interest at the same effective rate of interest as Consolidated's weighted average effective rate for commercial paper and/or revolving credit borrowings. If no such borrowings are outstanding, the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York.

(2) Long-Term Loans shall be evidenced by long-term non-negotiable notes (documented by book entry only) maturing over a period of time (not in excess of 30 years) to be determined by the officers of the lender (Consolidated, CNG Energy or CNG Lakewood, as the case may be), with the interest predicated on and equal to the effective cost of money to Consolidated obtained through the most recent of its long-term debt financings. In the event Consolidated does not issue long-term debt during the period June 1, 1992 through December 31, 1996, the proceeds of which are allocable to CNG Energy, long-term borrowing rates will be tied to the Salomon Brothers indicative rate for comparable debt issuances published in Salomon Brothers Inc. Bond Market Roundup or similar publication on the date nearest to the time of takedown. Such rate will be adjusted to match Consolidated's cost of borrowing if Consolidated subsequently issues long-term debt within one year of the date of takedown. Should Consolidated not issue long-term debt during the subsequent twelve-month period the proceeds of which are allocable to the borrower (CNG Energy, CNG Lakewood or the Partnership, as the case may be), the indicative rate at the time of takedown will be used for the life of the note.

It is proposed that: (i) CNG Energy obtain funds, through December 31, 1996, for the Lakewood Project and the Partnership through any one or a combination of (a) selling shares of CNG Energy common stock, $1,000 par value per share, to Consolidated, (b) taking out Advances from Consolidated, or (c) taking out Long-Term Loans from Consolidated; and (ii) Consolidated make Support Arrangements ("Consolidated Support Arrangements").

CNG Energy proposes to make, from time to time through December 31, 1996: (i) Capital contributions to the Partnership; (ii) Long-Term Loans to the Partnership and/or (iii) Support Arrangements (collectively, "CNG Energy Commitments").

CNG Energy also proposes to create and capitalize CNG Lakewood which may, in turn, make all or a part of the investments in the Lakewood Project. It is proposed that, from time to time through December 31, 1996, CNG Lakewood obtain funds through: (i) The sale of up to 5,000 shares of CNG Lakewood common stock, $10,000 par value per share, to CNG Energy; (ii) Advances from CNG Energy; and/or (iii) Long-Term Loans from CNG Energy.

It is also proposed that CNG Lakewood make, from time to time through December 31, 1996: (i) Capital contributions to the Partnership; (ii) Long-Term Loans to the Partnership and/or (iii) Support Arrangements (collectively, "CNG Lakewood Commitments").

It is stated that CNG Energy expects that its return on its equity investment in the Lakewood Project will not be lower than 12%.

It is also proposed that the Partnership enter into financing with third parties for the construction and development of the Lakewood Project. The construction and development of the Lakewood Project during the construction phase will be financed by up to $262 million in construction financing ("Construction Financing") through non-recourse construction loans made to the Partnership pursuant to a credit facility ("Facility") with a group of banks and an institutional lender. The Facility will provide for Construction Financing during a construction phase of up to 28 months. Of the total $262 million in Construction Financing, $187 million will be provided by the bank lenders and $75 million by the institutional lender. A portion of the proceeds from the Construction Financing will be used to reimburse the Partners for previously made expenditures with respect to the Lakewood Project.

At the inception of the permanent phase under the Facility, (i) $136 million of the bank portion of the Construction Financing and the entire $75 million of the institutional lender portion of the Construction Financing will be converted into non-recourse long-term loans having a term not exceeding 19 years ("Permanent Financing"), (ii) the Partnership will obtain from the Facility banks as $2 million revolving credit facility ("Working Capital Financing"), for an initial term of five years, for working capital, and (iii) the Partners will make their respective capital contributions to the Partnership (estimated to be an aggregate of $51 million or approximately $17.85 million in the case of CNG Energy or CNG Lakewood, as the case may be). Any difference between the final cost of the Lakewood Project and the sum of the Permanent Financing loans and the Partner equity contributions may be covered by long-term loans from the Partners, for which the Partnership will issue subordinated long-term notes having a maturity not exceeding 30 years and bearing an interest rate not in excess of 15% per annum. To the extent that CNG Energy and/or Lakewood provide any such loans, the amount of such loans would not, when aggregated with the other investments in and obligations to the Partnership, exceed the $50 million authorization requested herein.

The interest rate on the bank borrowings will fluctuate at a set percentage spread over LIBOR (London Interbank Offered Rate), certificate of deposit or prime rates. The interest rate on institutional lender borrowings will be a fixed rate set at a percentage over the rate of U.S. Treasury securities having a maturity not in excess of 2 years in the case of Construction Financing, and a term not in excess of 15 years in the case of Permanent Financing, with the spread over the base rate in both case not exceeding 3.25%. Additionally, the Partnership's power agreement contains a provision allowing for adjustment in the capital charge based upon 15 year U.S. Treasury bond rates at the date of conversion from Construction Financing to Permanent Financing. The interest rate on the Working Capital Financing will fluctuate

at a set percentage over prime rate. In on event will be set percentage over the base rate exceed 3.25% for the Construction Financing, Permanent Financing and Working Capital Financing.

As a condition to the conversion of the bank Construction Financing to Permanent Financing, the Partnership must hedge the interest rate in at least 75% of the $136 million of the bank long-term debt. The applicants propose that the Partnership entering into variable to fixed interest rate swap agreements ("Swaps") from time to time through December 31, 1996, in notational amounts that in the aggregate will not exceed $102 million (75% of $136 million). Under a Swap, the Partnership would agree to make payments to a counter-party, payable periodically in arrears, at a fixed rate of interest calculated on the notional amount. The counter-party would agree to make payments to the Partnership at a variable rate of interest calculated on the notional amount. The Swaps will be for terms that will not exceed 20 years. The Swaps will have a fixed maximum interest rate of 13% per annum and generally would provide that the Partnership could terminate the agreement with the consent of the counter-party, with respect to which the Partnership may incur early termination payments which could be substantial under certain market conditions. The Partnership could be required to pay various fees and other expenses in connection with the Swaps and, in the event that an intermediary between the Partnership and the counter-party is required for the guarantee of payment obligations, the intermediary would require a fee, which would, however, not exceed 1% per annum on the notional amount. The Partnership believes it will be able to acquire the most favorable terms for the Swaps through negotiation with the counter-parties. It is consequently requested that the Swaps be exempt from the competitive bidding requirements of Rule 50 under the exception set forth in subsection (a)(5) thereof.

The Applicants request that the Construction Financing, Permanent Financing, Working Capital Financing and Swap transactions by the Partnership be exempt from Section 6(a) of the Act pursuant to the provisions of Section 6(b), with such exemption for the Working Capital Financing to terminate on the fifth anniversary of the date of the initial take-down of such financing.

The Applicants also propose, through December 31, 1992, that CNG Energy and/or CNG Lakewood acquire ("Acquisition") up to a 1% general partnership interest in the Partnership and up to an additional 33% limited partnership interest in the Partnership, in such amounts that the combined total partnership interests held by CNG Energy and/or CNG Lakewood will exceed neither 1% of total general partnership interests nor 34% total limited partnership interests. CNG Energy currently has a 1% limited partnership interest in the Partnership. Thus, following the Acquisition, CNG Energy's and/or CNG Lakewood's total partnership interests will not exceed 35% of the aggregate partnership interests (including general and limited partnership interests) ("Interests") in the Partnership. On July 10, 1991, CNG Energy, pursuant to the Partnership agreement of August 31, 1990, exercised an option ("Option") and incurred a legally binding obligation to acquire the Interests. The Acquisition will be effected without any additional payment of consideration. CNG Energy will assume the increased obligations to (and will receive the additional potential benefits from) the Partnership that accompanies the Acquisition. The current Partnership agreement will be restated to reflect the changed ownership composition prior to the closing date on the Lakewood Project financing. It is stated that the Acquisition will close on or before December 31, 1992. The Interests will be acquired from HYDRA-CO, a wholly owned subsidiary of Niagara Mohawk Power Corporation, a public-utility holding company exempt from the Act pursuant to section 3(a)(2) and Rule 2 thereunder.

**The Southern Company (70-8045)**

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a declaration under section 12(b) of the Act and Rule 45 thereunder.

Southern proposes to act as a guarantor of the obligations of its subsidiary company, Southern Company Services, Inc. ("SCSI"), in regard to its lease agreement ("Lease") with Metropolitan Life Insurance Company ("Lessor") for the lease of three existing office buildings ("Buildings") in Birmingham, Alabama, on a site already leased and wholly occupied by SCSI. As a condition to entering into the transaction, Lessor is requiring the guaranty by Southern of the obligations of SCSI. The Buildings have approximately 450,000 leased square feet in the aggregate. Lessor is not affiliated with Southern or any of its subsidiaries.

The Lease runs for a term of fifteen years commencing on April 1, 1992 and terminating on March 31, 2007, with SCSI having the right to extend the term for two five-year extension periods to run from April 1, 2007 through March 31, 2012 and from April 1, 2012 through March 31, 2017. The rent payable by SCSI under the terms of the Lease commenced on April 1, 1992, and is composed of a base annual rental component and an additional rental component. The base annual rental initially is $6.65 per leased square foot per annum (approximately $2,975,163.45 per annum, assuming 450,000 square feet). The additional rental component of the Lease consists of: (i) An escalation to the base rental rate of $0.25 per leased square foot per annum beginning April 1, 1993; and (ii) a charge for taxes and operating and maintenance expenses, which in the first year of the Lease is set at $3.41 per leased square foot per annum and which is subject to escalation each year during the term of the Lease in accordance with an audited operating statement, which SCSI has the right to audit and protest on an annual basis.

It is stated that the Lease entered into by SCSI is at a below market rate for a 15 year term, because it is to be supported by the guaranty of Southern and that the Lessor would not have given the low rate or the long lease term without the credit enhancement of Southern. SCSI is also entitled to use up to $3.5 million of Lessor's funds, and repay such funds over the entire lease term, on an interest-free basis, for the purpose of generally improving the leased premises or otherwise paying for bills with respect to the leased premises, upon the issuance and delivery of the guaranty of Southern.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-20685 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-18904; 812-7892]**

## Van Eck Funds, et al.; Application

August 21, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Van Eck Funds, Van Eck Trust, Van Eck Associates Corporation (the "Adviser"), and Van Eck Securities Corporation (the "Distributor").

**RELEVANT ACT SECTIONS:** Conditional order requested under section 6(c) of the Act for an exemption from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order that would permit certain series of the Van Eck Funds and the Van Eck Trust (a) to issue two classes of shares representing interests in the same portfolio of securities, one of which would convert into the other class after a specified period permitting investors to benefit from lower rule 12b–1 distribution fees, and (b) to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares of one of the classes and to waive the CDSC under certain circumstances. The order would apply only to those series that invest substantially all of their assets in another registered investment company .

**FILING DATE:** The application was filed on March 24, 1992, and amended on July 24, 1992 and August 21, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 15, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 122 East 42d Street, New York, New York 10168.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Robertson, Staff Attorney, at (202) 504–2283, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

## Applicants' Representations

### *A. The Dual Distribution System*

1. Van Eck Trust and Van Eck Funds are open-end management investment companies registered under the Act, and each is organized as a Massachusetts business trust in series form. Van Eck Trust consists of one series: The Short-Term World Income Fund. Van Eck Funds consists of seven separate investment series, including the International Growth Fund. Each of the Short-Term World Income Fund and the International Growth Fund (collectively, the "Funds") invests substantially all of its assets in another investment company registered under the Act. This structure is referred to as a "hub & spoke" arrangement.[1] Each Fund is the spoke fund and the investment company in which it invests is the hub fund. The hub fund for the Short-Term World Income Fund is the Worldwide Short-Term Trust, and the hub fund for the International Growth Fund is the International Growth Trust. Each of these hub funds is advised by the Adviser.

2. Applicants request that any relief granted in accordance with this application also apply to any open-end management investment company that (a) hereafter becomes part of the same "group of investment companies" as that term is defined in rule 11a–3 under the Act, (b) invests substantially all of its assets in another registered investment company, and (c) issues and sells two classes of shares with characteristics that are identical to the Class A and Class B shares described in the application.[2]

3. Under the hub & spoke arrangements, all portfolio management services are provided, and related costs are incurred, at the hub fund level. These services and associated costs include portfolio management, custody, portfolio transaction, and accounting—the hub fund does not incur distribution or shareholder servicing expenses. Distribution and shareholder services and related costs are lodged at the spoke fund level. These spoke level services and expenses include those incurred for transfer agency services, and under a rule 12b–1 plan for shareholder servicing and distribution expenses. Each Fund has entered into or will enter into an administrative agreement with the Adviser under which the Adviser provides administrative services, and each hub fund has entered into or will enter into an investment advisory agreement with the Adviser for portfolio management services. The Distributor acts as principal underwriter of the Funds' shares.

4. Shares of the International Growth Fund currently are offered to investors at net asset value plus a front-end sales load and are charged a rule 12b–1 distribution fee. These shares are proposed to be designated as "Class A" shares, as described below. Shares of Van Eck Trust currently are not offered to the public.[3]

5. Applicants propose to establish a dual distribution arrangement (the "Dual Distribution System") to enable the Funds to offer investors the option of purchasing two classes of shares, designated respectively as "Class A" shares and "Class B" shares. Class A shares will be subject to a conventional front-end sales load and a rule 12b–1 distribution fee at an expected annual rate of up to .30% of the average daily net asset value of the Class A shares. Class B shares will be subject to a CDSC and a rule 12b–1 distribution fee at an annual rate of up to 1.00% of the average daily net asset value of the Class B shares.

6. Each class of shares will represent interests in the same portfolio of investments of a Fund and will differ only in the following respects: (a) the fees charged to the Class A shares and Class B shares under the rule 12b–1 plan applicable to each such class will be applied only against each such class; (b) a higher transfer agency fee may be imposed on the Class B shares than on the Class A shares; (c) shareholders of each of the Class A and Class B shares will have exclusive voting rights with respect to the rule 12b–1 plan applicable to their respective class of shares; (d) only the Class B shares will have a conversion feature providing for the automatic conversion to Class A shares within a specified period of years from issuance, which will be at least two years but will not exceed eight years; (e) the designation of each class of shares of a Fund; and (f) each class will have different exchange privileges.

7. The Fund's rule 12b–1 plan will provide that payments will be made only to reimburse the distributor for expenses incurred in providing distribution-related services. Each Fund

[1] Hub and Spoke ® is a registered service mark of Signature Financial Group, Inc.

[2] An application for exemptive relief that is similar to the relief sought in the present application has been filed on behalf of the other investment portfolios of the Van Eck Funds. These investment portfolios are not organized in a hub & spoke arrangement, *i.e.*, they do not invest all of their assets in other registered investment companies.

[3] The Van Eck Trust registration statement has been filed with the SEC; however, it is not yet effective.

will accrue expenses and pay the distribution fee at a rate fixed by the Fund's Board of Trustees (but not in excess of the applicable maximum percentage rate). Such rate is intended to result in payments that will not exceed the amounts actually expended for distribution by the Distributor on behalf of a Fund. If, for any fiscal year of a Fund, the amount paid to the distributor would exceed the amount of distribution expenses incurred by the Distributor during the past fiscal year (plus, in the case of Class B shares, prior unreimbursed commission-related expenses), then the amount of the distribution fee paid to the Distributor will be reduced accordingly.

8. The Distributor will furnish the Trustees of the Funds with quarterly and annual statements of distribution revenues and expenditures for each respective class of shares in accordance with the requirements of paragraph (b)(3)(ii) of rule 12b–1. These statements are intended to enable the Trustees to make the findings required by paragraphs (d) and (e) of the rule. Only distribution expenditures properly attributable to the sale of a particular class will be used to justify the distribution fee charged to that class.

9. Class B shares, including shares attributable thereto that were purchased through the reinvestment of dividends and distributions, will automatically convert to Class A shares at net asset value in a specified number of years (not less than two nor more than eight) after the end of the calendar month in which the shares were purchased. The conversion of Class B shares to Class A shares is subject to the continuing availability of an opinion of counsel or a ruling of the Internal Revenue Service that payment of different dividends on Class A and Class B shares does not result in the Funds' dividends and distributions constituting "preferential dividends" under the Internal Revenue Code of 1986, as amended (the "IRC"), and that the conversion of shares does not constitute a taxable event under then current federal income tax law. The conversion of Class B shares to Class A shares may be suspended if such an opinion or ruling is no longer available. In the event that the conversion of Class B shares does not occur, Class B shares would continue to be subject to the higher distribution fee and any higher transfer agent costs associated with the Class B shares.

10. Class A shares and Class B shares will have different exchange privileges. A holder of shares of any Fund sponsored by the Adviser that is sold subject to a front-end sales load (including Class A shares) may exchange his or her shares for Class A shares of another Fund without the payment of any sales or service charge. It is contemplated that Class B shares of one Fund only will be exchangeable for Class B shares of other Funds. The exchange privileges applicable to both classes will be made in reliance on rule 11a–3.

11. Under the Dual Distribution System, the net asset value will be calculated separately for each class of shares because the classes will have different expenses—Class B shares will be subject to a higher rule 12b–1 fee and possibly higher transfer agency fees than that of Class A shares. Income and expenses (except for class specific expenses) will be allocated on a daily basis among the classes based on the ratio of relative net asset values of each class to the total net assets of both classes combined. Class specific expenses will be allocated to the class to which they are attributable. Realized and unrealized gains and losses will be allocated on a daily basis among the classes based upon relative net assets. Based on this allocation of income, expenses, and realized and unrealized gains and losses between the two classes of shares, the Fund will compute the daily net asset value of Class A shares and Class B shares, respectively.

*B. The CDSC*

1. Applicants also propose that the Funds be permitted to assess a CDSC on redemptions of Class B shares and waive the CDSC under certain circumstances. The amount of the CDSC to be imposed will depend on the number of years since the investor purchased the shares being redeemed. Each Fund's particular CDSC schedule may vary, but the CDSC will comply with the National Association of Securities Dealers' sales load limitations and the provisions of proposed rule 6c–10 under the Act.

2. The CDSC will not be imposed on redemptions of Class B shares purchased a specified period of time prior to the redemptions (the "CDSC Period") or on Class B shares derived from reinvestment of distributions. The CDSC Period will not exceed six years. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares derived from reinvestment of dividends and capital gain distributions, and finally of other shares held by the shareholder for the longest period of time.

3. Applicants also seek the ability to waive the CDSC (a) on redemptions following the death or disability, as defined in section 72(m)(7) of the IRC, of a shareholder if redemption is made within one year of death or disability; (b) in connection with certain distributions from an Individual Retirement Account, or other qualified retirement plan as described in the application; and (c) in connection with redemptions of shares purchased by active or retired officers, directors or trustees and employees of the Fund, Adviser, Distributor or affiliated companies, by members of the immediate families of such persons and by dealers having a sales agreement with the Distributor. If a Fund waives or reduces the CDSC, such waiver or reduction will be uniformly applied to all offerees in the class specified.

**Applicants' Legal Analysis**

*A. The Dual Distribution System*

1. Applicants are requesting an exemptive order under section 6(c) to the extent that the proposed issuance and sale of Class A and Class B shares representing interests in the Funds might be deemed: (a) to result in the issuance of a "senior security" within the meaning of section 18(g) and thus be prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i). Section 18(f)(1) provides in relevant part that "it shall be unlawful for any registered open-end company to issue any class of senior security or to sell any senior security of which it is the issuer," and section 18(g) defines a "senior security" as any "stock of a class having priority over any other class as to distribution of assets or payment of dividends." Section 18(i) provides in relevant part that every share of stock issued by a registered management company shall be "a voting stock and have equal voting rights with every other outstanding voting stock."

2. The creation of Class A and Class B shares may result in shares of a class having priority over another class as to payment of dividends because under the proposed arrangement the holders of Class B shares would pay a higher distribution fee than the holders of Class A shares, and Class B shareholders may pay a higher transfer agency fee than the holders of Class A shares. In addition, the creation of the two classes may result in the shares of a class having unequal voting rights because the

Class A shares and the Class B shares would be entitled to exclusive voting rights with respect to the matters concerning their respective rule 12b–1 plans.

3. Section 6(c) provides in part that, upon application, the SEC may conditionally exempt any class of transactions from the provisions of the Act to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested exemption from section 18 meets the standards of section 6(c).

4. Applicants assert that the Dual Distribution System does not raise any of the legislative concerns that section 18 was designed to ameliorate. The proposal does not involve borrowing and does not affect a Fund's existing assets or reserves. The proposed arrangement also will not increase the speculative character of the shares of a Fund since all such shares will participate *pro rata* in a Fund's appreciation, income, and expenses with the exception of the differing distribution fees and any different transfer agency costs payable by each class. In this way, mutuality of risk will be preserved with respect to each class of shares of a Fund.

5. No class of shares will have any preference or priority over any other class in a particular Fund in the usual sense (that is, no class will have distribution or liquidation preferences with respect to particular assets and no class will be protected by any reserve or other account). Moreover, the proposed allocation of expenses and voting rights relating to the rule 12b–1 plans is equitable and would not discriminate against any group of shareholders.

6. In addition, unlike the "multi-class" funds where each class is available to or targeted at a limited group, the Dual Distribution System will offer the same group of investors the choice of two classes with relatively simple fee structures. Applicants believe that the Dual Distribution System will both facilitate the distribution of shares by the Funds and provide investors with a broader choice as to the method of purchasing shares in a Fund. Applicants also believe owners of each class of shares may be relieved of a portion of the fixed costs normally associated with investing in mutual funds since such costs would, potentially, be spread over a greater number of shares than would otherwise be the case. Finally, the conversion feature will benefit long-term Class B shareholders by relieving them of most of the burden of distribution expenses after a period of time sufficient for the Distributor to be compensated for the expenses incurred in connection with the distribution of shares.

7. Applicants recognize that the Dual Distribution System could be implemented under the hub and spoke structure without exemptive relief from section 18—one spoke could offer shares subject to a front-end sales charge and a different spoke could offer shares subject to a CDSC. Applicants believe, however, that the structure as proposed in the application offers several distinct benefits to the investors. Under the Dual Distribution System, the conversion of Class B shares to Class A shares would not be a taxable event under the IRC. A conversion from one spoke fund to another spoke fund would be a taxable event, however, thereby causing shareholders who have not changed the nature of their investment to incur a tax liability in order to benefit from the lower 12b–1 fee and possibly lower transfer agency fees.

*B. The CDSC*

1. Applicants also are requesting an exemptive order under section 6(c) from the provisions of section 2(a)(32), 2(a)(35), 22(c), and 22(d) and rule 22c–1 thereunder to the extent necessary to permit the Funds to assess a CDSC on certain redemptions of Class B shares and to waiver the CDSC with respect to certain types of redemptions.

2. Section 2(a)(32) defines a "redeemable security" as "any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer * * * is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof." In addition, section 5(a)(1) defines an "open-end company," in relevant part, as a management company that offers for sale any redeemable security of which it is the issuer. Applicants contend that the CDSC will in no way restrict a shareholder from receiving his or her proportionate share of the current net assets of any Fund, but merely will defer the deduction of a sales charge and make it contingent upon an event that may never occur. However, to avoid any question regarding whether the CDSC would cause shares of any Fund not to be "redeemable securities;" thereby jeopardizing the Fund's status as an open-end management company, applicants seek relief from section 2(a)(32) to the extent necessary to impose the CDSC.

3. Section 2(a)(35) defines the term "sales load" as the difference between the price of a security to the public and that portion of the proceeds from the sale of the security that is received and invested or held for investment by the issuer. Applicants believe that the CDSC is consistent with the intent of the section 2(a)(35) definition to describe charges used to pay for sales of an investment company's shares. Nevertheless, in view of the possibility that the section might be construed to apply only to sales load charged at the time of purchase, applicants seek an exemption from the provisions of section 2(a)(35) to the extent necessary to implement the CDSC.

4. Section 22(c) and rule 22c–1 thereunder require a registered investment company issuing redeemable securities to redeem those securities at a price based on the current net asset value of the securities that is next computed after receipt of the tender of the securities for redemption. When a redemption of Fund shares subject to the CDSC is effected, the price of the shares on redemption will be based on their current net asset value. The CDSC merely will be deducted from the redemption proceeds in arriving at the shareholder's net proceeds payable on redemption. However, to avoid any possible questions about whether such a redemption would be at a price based on current net asset value, applicants seek relief from section 22(c) and rule 22c–1 to the extent necessary to permit the implementation of the CDSC.

5. Section 22(d) prohibits an investment company registered under the Act from selling its redeemable securities other than at a current public offering price described in the company's prospectus. Rule 22d–1 exempts a registered investment company from the provisions of section 22(d) to the extent necessary to permit the sale of those securities to particular classes of investors or in various kinds of transactions at prices that reflect scheduled variations in, or elimination of, the sales load. The requested exemptive relief would be consistent with the policies underlying rule 22d–1 because the Funds will disclose fully the CDSC and associated waivers in their prospectus. Applicants seek an exemption from section 22(d) to the extent necessary to implement the CDSC and waivers thereof as described above.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

*A. Conditions Relating to the Dual Distribution System*

1. The Class A and Class B shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences between the two classes of shares of the same Fund will relate solely to: (a) The impact of the respective Rule 12b–1 plan payments made by each of the Class A shares and Class B shares of a Fund, any higher incremental transfer agency costs attributable solely to the Class B shares of a Fund, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to Rule 12b–1 plans, (c) the different exchange privileges of the two classes of shares as described in the prospectuses (and as more fully described in the statements of additional information) of the Funds, (d) the conversion feature applicable only to the Class B shares, and (e) the designation of each class of shares of a Fund.

2. The Trustees of each Fund, including a majority of the Independent Trustees, shall have approved the Dual Distribution System prior to the implementation of the Dual Distribution System by a particular Fund. The minutes of the meetings of the Trustees of each Fund regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Dual Distribution System will reflect in detail the reasons for determining that the proposed Dual Distribution System is in the best interests of both the Funds and their respective shareholders and such minutes will be available for inspection by the Commission staff.

3. On an ongoing basis, the Trustees of the Funds, pursuant to their fiduciary responsibilities under the Investment Company Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the two classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. Any Rule 12b–1 plan adopted or amended to permit the assessment of a Rule 12b–1 fee on any class of shares which has not had its Rule 12b–1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting will be held within sixteen months of the date that the registration statement relating to such class first becomes effective, or if applicable, the date that the amendment to the registration statement necessary to offer such class of shares first becomes effective.

5. The Trustees of the Funds will receive quarterly and annual Statements complying with paragraph (b)(3)(ii) of Rule 12b–1, as it may be amended from time to time. In the Statements, only distribution expenditures properly attributable to the sale of one class of shares will be used to support the reimbursement of such expenditures through the Rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not related to the sale of a specific class of shares will not be presented to the Trustees to support the reimbursement of such expenditures through Rule 12b–1 fees charged to shareholders of such class of shares. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties under Rule 12b–1.

6. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that fee payments made under the Rule 12b–1 plans relating to the Class A and Class B shares, respectively, will be borne exclusively by each such class and except that any higher incremental transfer agency costs attributable solely to Class B or Class A shares will be borne exclusively by such class.

7. The methodology and procedures for calculating the net asset value and dividend/distributions of the two classes and the proper allocation of income and expenses between the two classes has been reviewed by an expert (the "Expert"). The Expert has rendered a report to the Applicants, which has been included as Exhibit E to the application, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in that report. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1). The work papers of the Expert with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the Commission staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate or Assistant Administrator. The initial report of the Expert is a "Special Purpose" report on the "Design of a System," and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions between the two classes and proper allocation of expenses between such classes and this representation has been concurred with by the Expert in the initial report referred to in condition (7) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

9. The prospectus of the Funds will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Fund shares may receive different levels of compensation for selling one particular class of shares over another in a Fund.

10. The Distributor will adopt compliance standards as to when Class A and Class B shares may appropriately be sold to particular investors.

Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds with respect to the Dual Distribution System will be set forth in guidelines which will be furnished to the Trustees as part of the materials setting forth and duties and responsibilities of the Trustees.

12. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares offered through the prospectus. Class A and Class B shares will be offered and sold through a single prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. The Fund's per share data, however, will be prepared on a per class basis with respect to the two classes of shares of the Funds. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class A or B shares, it will disclose the expenses and/or performance data applicable to both classes. The information provided by Applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present Class A and Class B shares.

13. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to Rule 12b-1 plans in reliance on the exemptive order.

14. Class B shares will convert to Class A shares on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee or other charge.

*B. Condition Relating to the CDSC*

Applicants will comply with the provisions of proposed Rule 6c-10 under the Investment Company Act, IC-16619 (November 2, 1988), as such Rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-20691 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Exposure Map Notice, Receipt of Noise Compatibility Program and Request for Review; Dane County Regional Airport, Madison, WI

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Dane County for Dane County Regional Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Dane County Regional Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before January 25, 1993.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is July 29, 1992. The public comment period ends September 28, 1992.

**FOR FURTHER INFORMATION CONTACT:** William J. Flanagan, Federal Aviation Administration, Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450, (612) 725-4463. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Dane County Regional Airport are in compliance with applicable requirements of part 150, effective July 29, 1992. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 25, 1993. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Dane County submitted to the FAA on August 8, 1991 noise exposure maps, descriptions and other documentation which were produced during the F.A.R. part 150 Noise Compatibility Study from September 1989 to August 1991. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Dane County. The specific maps under consideration are the 1989 existing Noise Exposure Map and the 1995 future Noise Exposure Map. The FAA has determined that these maps for Dane County Regional Airport are in compliance with applicable requirements. This determination is effective on July 29, 1992. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours

depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Dane County Regional Airport, also effective on July 29, 1992. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 25, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Minneapolis Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450.

Dane County Regional Airport, Airport Administration, 4000 International Lane, Madison, Wisconsin 53704.

Dane County Building, County Clerks Office, room 112, 210 Martin Luther King Boulevard, Madison, Wisconsin 53709.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Minneapolis, Minnesota, July 29, 1992

**Franklin D. Benson,**

*Manager, Minneapolis Airports District Office, FAA Great Lakes Region.*

[FR Doc. 92-20719 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-13-M

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## Termination of Review of Noise Compatibility Program, Space Center Executive Airport; Titusville, FL

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces it has terminated its review of the noise compatibility program, at the request of the Titusville-Cocoa Airport Authority, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150.

**EFFECTIVE DATE:** The effective date of the FAA's termination of its review of the Space Center Executive Airport noise compatibility program is August 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827-5397, (407) 648-6583.

**SUPPLEMENTARY INFORMATION:** On November 28, 1992, the FAA determined that the noise exposure maps submitted by the Titusville-Cocoa Airport Authority were in compliance with applicable requirements and began its review of the noise compatibility program. On August 17, 1992, the Titusville-Cocoa Airport Authority requested that FAA suspend its review and processing of the noise compatibility program for immediate project closure.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, August 19, 1992.

**John W. Reynolds,**

*Assistant Manager, Orlando Airports District Office.*

[FR Doc. 92-20720 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-13-M

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## Intent To Prepare an Environmental Impact Statement and To Hold Environmental Scoping Meetings; New Runway, Pittsburgh International Airport, Pittsburgh, PA

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of Public Environmental Scoping Meetings.

**SUMMARY:** The Federal Aviation Administration (FAA) is issuing notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposal by the County of Allegheny, Pennsylvania to construct a new, parallel, air carrier runway at Pittsburgh International Airport. To ensure that all significant issues related to the proposed action are identified, a public scoping meeting will be held.

**FOR FURTHER INFORMATION CONTACT:** Frank Squeglia, Environmental Specialist, Federal Aviation Administration, Eastern Region, Airports Division, Fitzgerald Federal Building, JFK International Airport, Jamaica, New York, (718) 553-0902.

**SUPPLEMENTARY INFORMATION:** In June 1990, Allegheny County began preparation of a Master Plan Update for Pittsburgh International Airport. A new air carrier runway was identified as needed in the short term (5 year). Allegheny County prepared an environmental assessment to assess the impacts of the new runway. The assessment concluded that the potential exists for significant adverse environmental effects, particularly in the areas of noise, wetlands, water quality, biotic communities, construction and visual impacts. Consequently, the FAA determined the need to prepare an EIS. Comments and suggestions are invited from Federal, state, and local agencies, and other interested parties, in order to ensure that a full range of issues related to the proposed project is identified and addressed in the scope of work for the project. Copies of the EA may be obtained by contacting FAA at the above address or telephone number. Comments and suggestions may be mailed to the same address.

**PUBLIC SCOPING MEETINGS:** In order to provide public input, a scoping meeting for Federal, state and local agencies will

be held on Thursday, October 8, 1992 at 9:30 a.m., at the Conference Room in the FAA Air Traffic Control Tower at Pittsburgh International Airport, Pittsburgh, Pennsylvania.

An additional meeting to receive citizen input will be held on Thursday, October 8, 1992 at 7 p.m. at the Conference Room in the FAA Air Traffic Control Tower at Pittsburgh International Airport, Pittsburgh, Pennsylvania. Federal, state and local agency representatives are encouraged to attend. Information about these meetings may be obtained by contacting Richard Belotti at Pittsburgh International Airport, Terminal Building, Pittsburgh, PA (412) 778-2585.

Issued in Jamaica, New York, on August 17, 1992.

**Louis P. DeRose,**

*Eastern Region.*

[FR Doc. 92-20721 Filed 8-27-92; 8:45 am]

BILLING CODE 3910-13-M

## Aviation Rulemaking Advisory Committee; Aircraft Certification Procedures Subcommittee

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of establishment of Aircraft Certification Procedures Subcommittee.

**SUMMARY:** Notice is given of the establishment of an Aircraft Certification Procedures Subcommittee under the FAA Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Aviation Rulemaking Advisory Committee.

**FOR FURTHER INFORMATION CONTACT:** Mr. William J. (Joe) Sullivan, Executive Director, Aircraft Certification Procedures Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-9554; FAX: (202) 267-5364.

**SUPPLEMENTARY INFORMATION:** On January 14, 1991, the Federal Aviation Administration (FAA) announced the establishment of the Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991). The committee charter became effective on February 5, 1991, when notices of establishment were sent to the appropriate Congressional Committees. The advisory committee provides advice and recommendations to the FAA concerning the full range of the FAA's rulemaking activity with respect to safety-related issues, including aircraft certification. The committee held its first meeting at Baltimore, MD, on May 23, 1991 (56 FR 20492, May 3, 1991). At that meeting, the committee formed several subcommittees and charged them with developing advisory recommendations in different safety-related areas. The subcommittee Chairs and Executive Directors were named, and the member organizations identified. Finally, several specific tasks were assigned to the various subcommittees. At this first meeting, the committee also adopted procedures concerning the operation of the committee, its subcommittees, and their working groups.

Under the procedures adopted by the full committee, each subcommittee meeting is open to the public, except as authorized in section 10(d) of the Federal Advisory Committee Act. Also, notice is given beforehand of the subcommittee meeting agenda. A subcommittee may form working groups made up of experts from those having an interest in an issue to do tasks assigned to the subcommittee. Working group meetings need not be open to the public. This is because working groups must bring their work product back to the subcommittee for full, open, and substantive discussion, and may not provide advice directly to the FAA. The subcommittee may: (1) Accept a working group work product and send it directly to the FAA; (2) Modify the work product and send it directly to the FAA; or (3) Return the work product to the working group with instructions for further activity. Thus, while the functions of a subcommittee are solely advisory, they create a framework within which interested parties may negotiate proposed or final rules and present their consensus to the FAA for action. The more complete these products, the more likely they are to be accepted by the FAA without change and formally published as proposed or final rules. The activities of the Aviation Rulemaking Advisory Committee, and its subcommittees, are consistent with the Negotiated Rulemaking Act of 1990 (Pub. L. 101-648).

The Aircraft Certification Procedures Subcommittee is a new subcommittee. It will provide advice and recommendations to the Director, Aircraft Certification Service, FAA, on regulatory standards and procedures for aircraft certification found in parts 21, 39, and 183 of the Federal Aviation Regulations (14 CFR parts 21, 39, and 183), and Special Federal Aviation Regulation No. 36. The membership of the Aircraft Certification Procedures Subcommittee consists solely of the members organizations of the Aviation Rulemaking Advisory Committee. The following members are being invited to join the Certification Procedures.

**Subcommittee**

- Aeronautical Repair Station Association
- Aerospace Industries Association of America, Inc.
- Air Line Pilots Association
- Air Transport Association of America
- Airbus Industrie
- Aircraft Electronics Association
- Association of European Airlines
- Association Europenne Constructeurs de Material

**Aerospatiale**

- Aviation Consumer Action Project
- Boeing Commercial Airplane Company
- Experimental Aircraft Association
- General Aviation Manufacturers Association
- Helicopter Association International
- International Airline Passengers Association
- International Air Transport Association
- International Association of Machinists and Aerospace

**Workers**

- Joint Aviation Authorities
- McDonnell Douglas Corporation
- National Air Transportation Association, Inc.
- National Business Aircraft Association, Inc.
- Professional Aviation Maintenance Association
- Public Citizen
- Regional Airline Association
- Transport Canada
- United States Ultralight Association, Inc.

The first Aircraft Certification Procedures Subcommittee working groups will be established in the near future. They will deal with international certification procedures, replacement and modification parts approval, production certification modernization, and aircraft certification delegation systems. The establishment of these committees will be announced in the **Federal Register**. The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law.

Issued in Washington, DC, on August 21, 1992.

**William J. Sullivan,**

*Executive Director, Aircraft Certification Procedures Subcommittee, Aviation Rulemaking Advisory Committee.*

[FR Doc. 92-20718 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-13-M

## Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Delta County Airport, Escanaba, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Delta County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before September 28, 1992.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harvey Setter, Airport Manager, of the County of Escanaba, Michigan, at the following address: Delta County Airport, 3300 Airport Road, Escanaba Michigan 49829

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the County of Escanaba under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter A. Serini, Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487-7300. The application may be reviewed in person at the same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Delta County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 13, 1992, the FAA determined that the application to impose a PFC submitted by County of Delta, Michigan was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 19, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: January 1, 1993

Proposed charge expiration date: July 10, 1996

Total estimated PFC revenue: $158,325

Brief description of proposed project(s): Land

Acquisition; Rehabilitate, extend, widen, and apply surface treatment on runway 18/36 with associated taxiways and lighting

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxis and charters

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Escanaba, Michigan.

Issued in Des Plaines, Illinois on August 18, 1992.

**W. Robert Billingsley,**

*Manager, Airports Division, Great Lakes Region.*

[FR Doc. 92-20722 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-13-M

# UNITED STATES INFORMATION AGENCY

## University Development Program in Business Management for Selected Regions in Eastern and Central Europe

**AGENCY:** United States Information Agency.

**ACTION:** Notice—Request for Proposals.

**SUMMARY:** Subject to the availability of funds, the United States Information Agency (USIA) invites applications from accredited U.S. educational institutions to conduct exchange programs with selected post-secondary educational institutions in Albania, Bulgaria, Croatia, the Czech and Slovak Federal Republic, Hungary, Macedonia, Poland, Romania and Slovenia to develop curricula and teaching methodologies for foreign faculties in the field of business management.

**DATES:** Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, October 23, 1992. Faxed documents will not be accepted, nor will documents postmarked on October 23, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants may not begin prior to January 15, 1993, and must be completed by November 1, 1993. Priority will be given to programs with an early start date.

**ADDRESSES:** The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to:

U.S. Information Agency, Ref.: University Development in Business Management for Eastern and Central Europe.

Office of Grants Management, E/XE, Room 357, 301 4th Street, SW., Washington, DC 20547.

**FOR FURTHER INFORMATION CONTACT:** Interested U.S. organizations and institutions should contact Ms. Mara Moldwin at the U.S. Information Agency, 301 4th Street, SW., European Branch, Academic Exchanges Division, E/AEE Room 208, Washington, DC 20547; telephone (202) 619-5341 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information. Other proposal requirements are stipulated and described in the application guidelines for this program.

**SUPPLEMENTARY INFORMATION:** Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs

authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

**Overview**

The dramatic changes in Eastern and Central Europe provide an historic opportunity to contribute to the region's successful transition to a free market economy. Under the auspices of the U.S. assistance program for Eastern Europe, USIA is offering this program to help foster greater expertise in business management in selected regions of Eastern and Central Europe.

**Guidelines**

The purpose of this program is to assist Central and Eastern European countries in their transformation to free market economies through the development of business management training capabilities in select Central and Eastern European academic institutions. In an effort to make the program more responsive to the needs of the countries, programs will be focused on key institutions [identified by U.S. Information Service (USIS) posts] which have had limited contact with the U.S. and wish to develop linkages with U.S. institutions.

Note: A list of foreign partner institutions to which priority will be given is available with the application package and guidelines.

Grant activities must include placement of American faculty at Central and Eastern institutions for in-country training of faculty and to develop sustainable programs for educating future foreign business management teachers. Targeted programs activities may include: faculty development and enrichment; curriculum design; administrative organization; and direct teaching. Seminar, workshop and semester long course formats will be acceptable. One goal of the program is to create a linkage between the designated foreign institutions and U.S. universities. Preference will be given to programs of at least three months duration.

Components for the development of university to private sector linkages and the development of appropriate materials are encouraged. Courses developed may include, but are not limited to, marketing, production management, economics, industrial relations, finance, accounting, and international business. Proposals should provide for a two-way exchange. Preference will be given to programs where the majority of the time is spent at the foreign institution. Short term familiarization visits, feasibility planning trips, and study visits by foreign participants should not be included in the proposal. Applicants should not assume funding for such visits. Regional programs (e.g. programs spanning more than one country) will be considered technically ineligible. Proposals that are extensions or enhancements of past or current relationships with a partner institution will be acceptable.

A proposal will be deemed technically ineligible if:

1. It does not fully adhere to the guidelines established herein and in the application packet [E/AEE–92–03], including budgetary requirements.
2. The applicant is not an accredited U.S. college or university;
3. The project does not constitute a direct partnership with a post-secondary business management program in Albania, Bulgaria, Croatia, the Czech and Slovak Federal Republic, Hungary, Macedonia, Poland, Romania or Slovenia;
4. The project involves partnerships in more than one country;
5. The project does not seek to address the faculty, curriculum, and administrative aspects entailed in developing the business management program identified;
6. The project does not provide for in-country presence of American faculty; or
7. The project includes profit or fee.

**Institutional Commitment**

Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign institutions' presidents, chancellors, or directors, or in the form of a signed agreement by the same persons. The Letters of Endorsement must describe each institution's commitment and activities in support of an on-going partner linkage and make specific reference to the proposed program and each institution's activities in support of that program. Applicants may submit this documentation from the foreign institution by 5 p.m. Washington, DC time on November 11, 1992 to Mara Moldwin, E/AEE Room 208, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, if the documentation is not included with the proposal. Organizations not submitting foreign institutional commitment documentation with the proposal must describe in the proposal measures taken to secure the documentation. Applicant institutions are expected to make their own arrangements with the appropriate foreign institutions.

**Proposed Budget**

Project awards to the U.S. institutions will be made in a range of amounts but will not exceed $75,000. USIA anticipates awarding from six to nine grants in amounts ranging from $50,000 to $75,000. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

**Allowable Costs: Program Costs**

—International travel (via American flag carriers);
—Domestic travel;
—Maintenance (including lodging, meals and incidental expenses);
—Educational materials (including books, reference materials, computers, etc.);
—Honoraria or compensation for in-country work, which must not exceed $150 per day per person.
—Visa fees;

Medical insurance for the participants will be covered by the U.S. Information Agency.

*Administrative Costs—Not to exceed 20% of the requested Budget**

—Salaries and benefits;
—Communications (e.g. fax, telephone, postage);
—Office Supplies;
—Other Direct Costs; and
—Indirect Costs based on administrative and non-participant program expenses. [Please refer to the Application Package.]

Application should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including overseas partner contributions.

No grants funded under this program will include profit or fee.

**Please Note:* It is required that requested administrative funds not exceed 20 percent of the total amount requested, including administrative expenses for orientation and indirect costs applied to administrative and program costs; administrative expenses should be cost-shared.

**Review Process**

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

**Review Criteria**

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of program plan, including academic rigor, thorough conception of project, demonstration of meeting partner needs, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Feasibility of the program plan and the capacity of the organization to conduct the exchange. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track record—relevant Agency and outside assessments of the organization's experience with international exchanges; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier effect/impact—the impact of the exchange activity on the wider community and on the development of continuing ties, as well as the contribution of the proposed activity in promoting mutual understanding.

e. Value of U.S.-partner country relations—the assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner country.

f. Cost effectiveness—greatest return on each grant dollar; degree of cost-sharing exhibited.

g. Adherence of proposed activities to the criteria and conditions described above.

h. Institutional commitment as demonstrated by financial and other support to the program.

i. Follow-on Activities—proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events. There must be a clear demonstration by both institutions to a long-term commitment.

j. Evaluation plan—proposals should provide a plan for evaluation by the grantee institution.

**Options for Renewal**

Subject to the availability of funding for FY 1993 and the satisfactory performance of grant programs, USIA may invite grantees to submit proposals for renewals of awarded grants.

**Notice**

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

**Notification**

All applicants will be notified of the results of the review process on or about January 8, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 24, 1992.

**Barry Fulton,**

*Deputy Associate Director, Bureau of Educational and Cultural Affairs.*

[FR Doc. 92-20709 Filed 8-27-92; 8:45 am]

BILLING CODE 8230-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Defense Policy Advisory Committee; Meeting

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of Defense Policy Advisory Committee Meeting.

**SUMMARY:** The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

**DATE:** The meeting of the Defense Policy Advisory Committee is scheduled for September 3, 1992, from 11 a.m. to 1 p.m.

**ADDRESS:** The meeting will be held at the United States Trade Representative, 600 Seventeenth Street, NW., room 203, Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

**Carla A. Hills,**

*United States Trade Representative.*

[FR Doc. 92-20905 Filed 8-27-92; 8:45 am]

BILLING CODE 3190-01-M

### Industry Policy Advisory Committee; Meeting

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of Industry Policy Advisory Committee Meeting.

**SUMMARY:** The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

**DATE:** The meeting of the Industry Policy Advisory Committee is scheduled for September 4, 1992, from 2 p.m. to 4 p.m.

**ADDRESS:** The meeting will be held at the United States Trade Representative, 600 Seventeenth Street, NW., room 203, Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

**Carla A. Hills,**

*United States Trade Representative.*

[FR Doc. 92-20906 Filed 8-27-92; 8:45 am]

BILLING CODE 3190-01-M

### Investment Policy Advisory Committee; Meeting

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of Investment Policy Advisory Committee Meeting.

**SUMMARY:** The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

**DATE:** The meeting of the Investment Policy Advisory Committee is scheduled for September 1, 1992, from 10:30 a.m. to 12:30 p.m.

**ADDRESS:** The meeting will be held at the United States Trade Representative, 600 Seventeenth Street, NW., room 203, Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

**Carla A. Hills,**

*United States Trade Representative.*

[FR Doc. 92-20907 Filed 8-27-92; 8:45 am]

BILLING CODE 3190-01-M

## Services Policy Advisory Committee; Meeting

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Services Policy Advisory Committee Meeting.

**SUMMARY:** The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

**DATE:** The meeting of the Services Policy Advisory Committee is scheduled for August 27, 1992, from 10 a.m. to 12 p.m.

**ADDRESS:** The meeting will be held at the United States Trade Representative, 600 Seventeenth Street, NW., room 203, Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

**Carla A. Hills,**

*United States Trade Representative.*

[FR Doc. 92-20908 Filed 8-27-92; 3:56 pm]

BILLING CODE 3190-01-M

## Advisory Committee on Trade Policy and Negotiations; Meeting

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of Advisory Committee on Trade Policy and Negotiations Meeting.

**SUMMARY:** The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

**DATE:** The meeting of the Advisory Committee for Trade Policy and Negotiations is scheduled for September 4, 1992, from 10 a.m. to 12 p.m.

**ADDRESS:** The meeting will be held at the United States Trade Representative, 600 Seventeenth Street, NW., room 203, Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

**Carla A. Hills,**

*United States Trade Representative.*

[FR Doc. 92-20909 Filed 8-27-92; 8:45 am]

BILLING CODE 3190-01-M

## Trade Policy Staff Committee (TPSC); Notice of the Effective Date, With Respect to the Republic of Kyrgyzstan, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of the effective date, with respect to the Republic of Kyrgyzstan, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics.

**SUMMARY:** In Proclamation 6352 of October 9, 1991 (56 FR 51317), the President proclaimed that the "Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics" enters into force and nondiscriminatory treatment would be extended to products of the U.S.S.R. in accordance with the terms of the Agreement on the date of exchange of written notices of acceptance in accordance with article XVII of the Agreement. Subsequently, the U.S.S.R. was succeeded by twelve independent states, including the Republics of Kyrgyzstan. An exchange of diplomatic notes with the Republic of Kyrgyzstan in accordance with article XVII of the Agreement, as modified by technical adjustments and retitled "Agreement on Trade Relations Between the United States of America and the Republic of Kyrgyzstan," took place in Bishkek, Kyrgyzstan on August 21, 1992. Accordingly, the Agreement became effective on August 21, 1992, with respect to the Republic of Kyrgyzstan, and nondiscriminatory treatment is extended to products of the Republic of Kyrgyzstan as of August 21, 1992 in accordance with the Agreement and as provided for in Proclamation 6352 of October 9, 1991.

**Frederick L. Montgomery,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 92-20904 Filed 8-28-92; 4:06 pm]

BILLING CODE 3190-01-M

# DEPARTMENT OF VETERANS AFFAIRS

## Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department from number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before September 28, 1992.

Dated: August 19, 1992.

By direction of the Secretary.

**B. Michael Berger,**

*Director, Records Management Service.*

**Extension**

1. Supporting Statement Regarding Marriage, VA Form 21–4171.

2. The use of this form will allow the gathering of information necessary to determine if a marital relationship is established and whether VA benefits are payable based on the relationship.

3. Individuals or households.

4. 800 hours.

5. 20 minutes.

6. On occasion.

7. 2,400 respondents.

[FR Doc. 92–20684 Filed 8–27–92; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 168
Friday, August 28, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, September 1, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

*Summary Agenda*

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Application of Hawkeye Bank of Mount Ayr, Mount Ayr, Iowa, for the Corporation's consent to purchase the assets of and assume the liability to pay deposits made in First State Bank, Mount Ayr, Iowa, and for consent to establish the Diagonal, Iowa, office of First State Bank as a branch of Hawkeye Bank of Mount Ayr.

*Discussion Agenda*

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 25, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 92–20806 Filed 8–26–92; 9:31 am]

BILLING CODE 6714-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, September 1, 1992, to consider the following matters:

*Summary Agenda*

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Report of the Director, Office of Budget and Corporate Planning.

*Discussion Agenda*

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Savings Association Insurance Fund members.

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Bank Insurance Fund members.

Memorandum re: Bank Insurance Fund Recapitalization Schedule.

Memorandum and resolution re: Final regulation establishing a transitional risk-based assessment.

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations in the form of a new Part 363 regarding independent annual audits and reporting requirements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 25, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 92–20807 Filed 8–26–92; 9:31 am]

BILLING CODE 6714-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, August 25, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Resolution honoring the late William Taylor, Chairman of the Corporation.

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Applications for exemption from the cross-guaranty provisions of the Federal Deposit

Insurance Act and issuance of notices of assessment of liability pursuant to those provisions.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), and concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: August 25, 1992.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 92–20939 Filed 8–26–92; 3:47 pm]

BILLING CODE 6714–01–M

**FEDERAL MARITIME COMMISSION**

**TIME AND DATE:** 2:00 p.m., September 2, 1992.

**PLACE:** 1st Floor Hearing Room, Federal Maritime Commission, 800 North Capitol St., N.W., Washington, D.C. 20573–0001.

**STATUS:** Open.

**MATTER(S) TO BE CONSIDERED:**

1. Docket No. 92–37—Financial Responsibility for Non-Vessel-Operating Common Carriers—Consideration of comments.

2. Docket No. 92–25—Regulation of Military Rates Under the Shipping Act of 1984—Consideration of comments.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523–5725.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92–20927 Filed 8–26–92; 3:11 pm]

BILLING CODE 6730–01–M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 31, 1992.

Closed meetings will be held on Tuesday, September 1, 1992, at 2:30 p.m. and on Thursday, September 3, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 1, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

The subject matter of the closed meeting scheduled for Thursday, September 3, 1992, at 2:30 p.m., will be:

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brian Lane at (202) 272–2400.

Dated: August 25, 1992.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92–20897 Filed 8–26–92; 3:10 pm]

BILLING CODE 8010–01–M

# Corrections

Federal Register
Vol. 57, No. 168
Friday, August 28, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 148, 260, 261, 262, 264, 265, 268, 270, and 271

[FRL-4132-4]
RIN 2050-AD36

### Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris

*Correction*

In rule document 92-15997 beginning on page 37194 in the issue of Tuesday, August 18, 1992 in the first column under **EFFECTIVE DATES** in the seventh line, "November 16, 1992" should read "November 19, 1992".

BILLING CODE 1505-01-D

federal register

Friday
August 28, 1992

# Part II

# Department of Health and Human Services

## Health Care Financing Administration

42 CFR 431 etc.

**Medicare and Medicaid Programs; Survey, Certification and Enforcement of Skilled Nursing Facilities; Proposed Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Parts 431, 442, 488, and 489**

**[HSQ-156-P]**

**RIN 0938-AD94**

## Medicare and Medicaid Programs; Survey, Certification and Enforcement of Skilled Nursing Facilities and Nursing Facilities

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would specify in regulations the process for surveying skilled nursing facilities (SNFs) under Medicare and nursing facilities (NFs) under Medicaid and for certifying that these facilities meet the Federal requirements for participation in the Medicare and Medicaid programs. This rule also would provide for a number of alternative remedies to be imposed on facilities that fail to comply with the Federal participation requirements, in lieu of or in addition to termination, and specified remedies for State survey agencies that do not meet surveying requirements. This proposed rule would also require that States provide only post action hearings for NFs and intermediate care facilities for the mentally retarded.

These proposed regulations would implement provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). The OBRA '87 provisions, which were further amended by 1988, 1989 and 1990 legislation, provide the impetus for SNFs and NFs to provide more consistent quality care and maintain continued compliance with new Federal participation requirements.

**DATES:** Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 27, 1992.

**ADDRESSES:** Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-156-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code HSQ-156-P. Written comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

**FOR FURTHER INFORMATION CONTACT:** Irene Gibson, (410) 966-6768.

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**SUPPLEMENTARY INFORMATION:**

### I. Background

To participate in the Medicare and or Medicaid programs, long-term care facilities must be certified as meeting Federal participation requirements. Long-term care facilities include skilled nursing facilities (SNFs) for Medicare and nursing facilities (NFs) for Medicaid. (Beginning October 1, 1990, the term NF under Medicaid replaced the Medicaid terms SNF and intermediate care facility (ICF), except ICFs for the mentally retarded.) The Federal participation requirements for these facilities are specified in HCFA regulations at 42 CFR part 483, Subparts A through C.

Section 1864(a) of the Social Security Act (the Act) authorizes the Secretary to enter into agreements with State survey agencies to determine whether SNFs meet the Federal participation requirements for Medicare. Section 1902(a)(33)(B) of the Act provides for State survey agencies to perform the same survey tasks for facilities participating or seeking to participate in the Medicaid program. The results of Medicare and Medicaid related surveys are used by HCFA and the State Medicaid agency, respectively, as the basis for a decision to enter into, deny, nonrenew or terminate a provider agreement with the facility.

To assess compliance with Federal participation requirements, surveyors conduct onsite inspections (surveys) of facilities. The survey process uses resident outcomes as a primary means to establish the compliance status of facilities. Specifically, surveyors directly observe the actual provision of care and services to residents and the effect or possible effects of that care to assess whether the care provided meets the assessed needs of individual residents. Prior to the passage of the 1987 legislation which is discussed in detail below and was effective October 1, 1990, for Medicare, the State survey agency has conducted a survey of SNFs annually, to certify compliance or noncompliance with program requirements, subject to HCFA approval. HCFA has then made the final decision of compliance or noncompliance. This process was based on section 1864(a) of the Act, which describes compliance recommendations by the survey agency to HCFA. Specifically, section 1864(a) states that "* * * *to the extent that the Secretary finds it appropriate* [emphasis added] an institution or agency which such a State (or local) agency certifies as a * * * skilled nursing facility * * * (as * * * defined in section 1861) may be treated as such by the Secretary * * *" (Section 1861(j) states that the term "skilled nursing facility" has the meaning given such term at section 1819(a).) Under Medicaid, the State has made the binding certification of compliance or noncompliance. This certification has not been subject to Federal review, except in the case of complaint or "look behind" surveys. (A "look behind" survey was a Federal monitoring survey of a long-term care facility. Since the effective date of OBRA '87, the term "look behind survey" only applies to ICFs/MR, and has been replaced by the term "validation surveys" for NFs.)

SNFs that are approved for participation in the Medicare program also meet the participation requirements for the Medicaid program. However, the Medicaid State agency is not obligated to enter into a Medicaid provider agreement with a facility just because the Secretary has entered into a Medicare provider agreement with the facility. Additionally, if a State imposes

Medicaid requirements that exceed those of Medicare, section 1863 of the Act provides that the higher requirements must be met by the Medicare SNFs in that State if the higher requirements are submitted under a State plan approved by the Secretary.

Also, before the 1987 legislation, the only adverse actions available to HCFA and the States against facilities that were determined to be out of compliance with Federal participation requirements included termination, nonrenewal, or automatic cancellation of provider agreements; denial of participation for prospective facilities; and denial of payment for new admissions in lieu of termination when the facilities had deficiencies that did not pose an immediate and serious threat to the health and safety of residents. (The denial of payment action has been considered an "alternative" sanction because it is an alternative to termination.)

The Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100-203, enacted on December 22, 1987, amended the Social Security Act to incorporate specific provisions for nursing home reform. These provisions included specific revised requirements for the survey and certification process (section 4202 for Medicare and section 4212 for Medicaid) and for the enforcement process (sections 4203 and 4213). Sections 4202 and 4212 of OBRA '87 added new sections 1819(g) and 1919(g) to the Act to revise and expand Medicare and Medicaid provisions, respectively, on State and Federal responsibilities for survey and certification, types and requirements for surveys, survey team composition and responsibilities, requirements for validation surveys, procedures for investigating complaints and monitoring nursing compliance, disclosure of results of inspections and activities, and provisions for penalties imposed on the States for failure to comply with survey process requirements. Sections 4203 and 4213 of OBRA '87 added sections 1819(h) and 1919(h) to the Act to specify the Medicare and Medicaid enforcement process, respectively, and specified remedies for noncompliance to be used in lieu of or in addition to termination of facilities' participation in the programs. Section 411 of the Medicare Catastrophic Coverage Act of 1988 (MCCA), Public Law 100-360, enacted on July 1, 1988, also included a number of technical and correcting amendments affecting these OBRA '87 provisions. These changes will be discussed in detail later in this preamble.

Before OBRA '87 was enacted, we issued in the **Federal Register**, on November 18, 1987 (52 FR 44300), a notice of proposed rulemaking that would have implemented certain recommendations made by the National Academy of Sciences' Institute of Medicine (IoM) as a result of a contract HFCA had with the Institute to study the regulation of nursing homes. The focus of the study was on the chronic problem of nursing homes that fail to comply with Federal requirements and the manner in which "borderline" nursing homes were in and out of the Medicare and Medicaid programs for failure to meet one or more participation requirements. The IoM also found that many of these substandard facilities could easily avoid termination of participation if they came into compliance long enough to be recertified, but that these facilities had no commitment to sustained compliance. Therefore, the IoM study recommended that we implement a range of intermediate remedies to deter violations. OBRA '87 provided the statutory authority for these remedies.

Although OBRA '87 reflected many of the IoM recommendations which we included in the November 1987 NPRM, OBRA '87 also included new provisions beyond those we had included in that proposed rule. Consequently, we withdrew the November 1987 NPRM and are issuing a second proposed rule that reflects the recommendations of the IoM that were previously proposed in the November 1987 NPRM as well as additional provisions of OBRA '87 and subsequent legislation on the survey and certification process and the enforcement process for SNFs and NFs.

## II. General Focus of the Proposed Regulations

These proposed regulations would alter the requirements for surveying facilities and expand the choice of alternative remedies for HCFA and the Medicaid agency to apply in lieu of or in addition to termination of facilities that do not comply with participation requirements. This will promote facility compliance by ensuring that all deficient providers are appropriately sanctioned. Termination is still possible any time a facility is identified as having deficiencies, and if a facility continues to have deficiencies after a specified period of time, the law requires that Federal payments for services in that facility cease at that time.

We intend that the proposed regulations be indicative of more fundamental changes in the principles upon which the enforcement system is based. We are implementing Congress' mandate, as indicated in OBRA '87, to abandon our hierarchal requirement system and develop a system capable of detecting and responding to noncompliance with any requirement. The proposed system is built on the assumption that all requirements must be met and enforced and that requirements take on greater or lesser significance as a function of the circumstances and resident outcomes in a particular facility at the time of survey. The surveyors would determine the existence or nonexistence of immediate and serious threat to residents as well as the severity and scope of a deficiency to arrive at a conclusion as to the seriousness of that deficiency in that facility. The proposed regulations have incorporated scope and severity surveyor guides for determining the remedy or remedies to apply. We are also proposing that the selection of a particular remedy be based on the nature of the deficiencies and the remedy (or remedies) that either HCFA or the Medicaid agency believes is most likely to achieve correction of the deficiencies. We believe that remedies applied in the manner described within the proposed regulations will deter violations as well as encourage immediate response and sustained compliance.

The basic components of these proposed regulations are premised on assumptions which include, but are not limited to, the following:

- The purpose of applying remedies is to achieve and maintain compliance with Federal requirements.
- Remedies are tailored to fit the desired corrective action. Our intent is to motivate corrective action and sustained compliance.
- The enforcement system prior to OBRA '87 needed an organized way to determine when a problem became a deficiency. The proposed system to implement OBRA '87 would achieve that. Our new survey process would direct surveyors to gather specific information about facility performance relating to resident care practices and outcomes and facility practices related to resident rights. Problems identified will be analyzed by the survey team to determine whether the information gathered is sufficient to support specific deficiencies. After the team determines a deficiency exists, the survey team would be required to determine the scope and severity of the deficiency or deficiencies for the purposes of determining the remedy or remedies.
- The choice of a remedy would be based on the severity and scope of the deficiency as well as a consideration of

prior facility performance, desired corrective and long-term compliance action, and the interrelationship among all deficiencies.

The new system would also establish changes in the enforcement authority for dually participating (Medicare and Medicaid) facilities. Historically, enforcement actions taken by HCFA with regard to the Medicare agreement of a dually participating facility resulted in the same action with the same effective date being taken with regard to the Medicaid agreement for that facility. For example, if HCFA notified the Medicaid agency that it had denied, terminated, or nonrenewed a Medicare provider agreement with a SNF, the Medicaid agency denied, terminated, or nonrenewed its Medicaid provider agreement with that SNF, effective the same date as the Medicare agreement action. The same requirement applied to denial of payment for new admissions to a SNF. However, OBRA '87 provided the basis for decisions as to whether the State's or the Secretary's determination of compliance or noncompliance or choice of remedies is to be binding in the case of dually participating facilities. Moreover, the statute, as explained below, provided that whether certification decisions and enforcement actions, as applied to Medicaid, are those of the Secretary or the State, the same certification decision and enforcement actions will also apply to Medicare in a dually participating facility. In addition, the statute specifies whether the Secretary's or State's certification decision and enforcement remedies will prevail in the case of Federal validation surveys. The proposed regulations reflect these changes.

OBRA '87 set forth a survey and certification process for Medicare and Medicaid which, in some respects, is similar to the one in place prior to October 1, 1990. Under the new process, the State survey agency surveys all facilities: it certifies compliance or noncompliance for Medicare SNFs, subject to HCFA approval, and issues a binding certification of compliance or noncompliance for Medicaid NFs. OBRA '87, however, added to pre-existing policy by establishing a similar set of parameters for State operated facilities, whether SNFs, NFs, or dually participating SNF/NFs. The State will survey State-operated facilities, but will only recommend a certification of compliance or noncompliance to HCFA. HCFA will issue the final certification of compliance or noncompliance for these facilities. The proposed regulations reflect these provisions.

## III. Provisions of the Proposed Regulations

These proposed regulations would incorporate in the Medicare and Medicaid regulations the provisions of OBRA '87 as modified by subsequent legislation relating to survey and certification and enforcement and other policy clarifications or expansions that are dictated by the law or that we have determined necessary as a result of the recommendations of the IoM. The specific discussions and changes are as follows:

### *A. Authorities for Routine Process of Certification and Enforcement*

#### 1. State-Operated Facilities

Sections 1919(g)(1)(A) and 1919(h)(3)(A) of the Act give the Secretary complete authority to determine a State-operated facility's compliance with Federal Medicaid requirements, impose alternative remedies and terminate the facility's provider agreement. Section 1819(g)(1)(A) and 1819(h) give the Secretary analogous authority under the Medicare program. A State-operated facility can be a Medicare-only SNF, a Medicaid-only NF or a dually participating SNF/NF. "State operated" does not include SNFs or NFs operated by counties or other public entities other than State government. We are proposing at § 488.155 and § 488.180 that in all State-operated facilities, the State survey agency (SA) conduct the survey, recommend to HCFA a certification of compliance or noncompliance and recommend appropriate enforcement action(s). After the SA forwards its survey findings and recommended certification and enforcement action(s) to HCFA, HCFA in turn would certify facility compliance or noncompliance and impose any enforcement action(s).

#### 2. Non-State Operated Facilities

• *SNFs*—For non-State operated SNFs, we propose at § 488.155 and § 488.180 to continue to use the process in effect before October 1, 1990, whereby the SA would conduct the survey, certify compliance or noncompliance with Federal requirements subject to HCFA approval. This provision, providing for a HCFA review of the State certification, is based on section 1819(g)(1)(A) which states that "Pursuant to an agreement under section 1864, each State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of skilled nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d) * * *." As explained above, section 1864(a) provides for a relationship between State survey agencies and the Secretary in which the survey agency acts as the Secretary's agent in making recommended decisions on the certification of Medicare institutions, including skilled nursing facilities. We are also proposing that the SA could recommend appropriate remedies. After the SA forwards its survey findings, certification, and recommended enforcement action(s) to HCFA for review, HCFA would determine the compliance or noncompliance of the facility and impose any enforcement action(s).

• *NFs*—For non-State operated NFs, section 1919(g)(1)(A) provides that the State shall be responsible for certifying the compliance or noncompliance of NFs with Federal requirements. We are proposing, at § 488.155 and § 488.180, to continue to use the process in effect before October 1, 1990, whereby the SA would conduct the survey, certify compliance or noncompliance with Federal requirements, and recommend appropriate enforcement actions. The certification of compliance or noncompliance by the State will be final except in the case of a complaint or validation survey, or review of the State's findings by HCFA in which the Secretary substitutes his judgment for that of the State. We have fixed the responsibility of certification only to the "State," without further definition, in order to recognize the differences in the functions of and delegations of authorities to specific entities within States, i.e., survey agency, State Medicaid agency. The State will make all enforcement decisions and impose remedies, after consideration of the survey findings and recommended enforcement remedies. Regardless of which agency of the State exercises certification and enforcement authority, however, we will look to the State Medicaid agency to assure compliance with Federal requirements since it is that entity in which the statute rests specific authority for the administration of the Medicaid program.

• *Dually participating SNF/NFs*—We are proposing at § 488.155 and § 488.180 that for dually participating SNF/NFs, the SA would conduct the survey, certify compliance or noncompliance with Federal requirements, and recommend appropriate enforcement actions. The certification of compliance or noncompliance and recommended enforcement action(s) by the State would be sent to both HCFA and the State Medicaid Agency (SMA) for review.

Section 1919(h)(8) of the Act, as added by section 6901(d) of OBRA '89 (which is discussed in greater detail below) specifies that the provisions of section 1919(h) apply to nursing facilities notwithstanding the fact that the facility (or portion thereof) also is a SNF under title XVIII. With regard to compliance, we interpret this provision to mean that the compliance decision applicable to the Medicaid NF will also apply to the Medicare SNF in a dually participating facility.

If HCFA and the State disagree on the compliance of the dually participating facility in situations which do not immediately jeopardize the health and safety of residents, section 1919(h)(6) specifies the means to resolve the disagreement. Specifically, section 1919(h)(6)(B) specifies that when the Secretary finds a facility out of compliance and the State makes no such finding, then the Secretary's noncompliance decision and enforcement actions control. On the other hand, section 1919(h)(6)(A) specifies that when the State finds noncompliance and the Secretary makes no such finding, the State's noncompliance decision and enforcement actions control. These provisions specify the means to determine compliance or noncompliance for the Medicaid NF which will then, by virtue of section 1919(h)(8), become the compliance/noncompliance decision for the Medicare SNF.

If both the Secretary and the State agree that the facility is out of compliance in a manner that does not immediately jeopardize resident health and safety, but the State wishes to pursue enforcement action(s) different than those chosen by the Secretary, the rules set forth at section 1919(h)(7) apply. Specifically, the provisions of section 1919(h)(7) determine whether the Secretary's or the State's enforcement actions will be applied to the Medicaid NF and then, by the authority at section 1919(h)(8), to the Medicare SNF. The provisions of section 1919(h)(7) are as follows:

- When both the Secretary and the State find that a facility should be terminated, section 1919(h)(7)(A)(i) specifies that the State's timing of the termination shall control so long as the termination does not occur later than 6 months after the finding to terminate.
- If the Secretary, but not the State finds that a facility should be terminated, section 1919(h)(7)(A)(ii) states that the Secretary shall, pending termination by the Secretary, permit continuation of payments for up to 6 months in accordance with section 1919(h)(3)(D).
- If the State, but not the Secretary, finds that the facility should be terminated, section 1919(h)(7)(A)(iii) states that the State's decision to terminate and the timing of such termination shall control.
- If the Secretary or the State, but not both, establish one or more remedies which are additional or alternative to the remedy of terminating the facility, section 1919(h)(7)(B)(i) specifies that such additional or alternative remedies shall also apply.
- If both the Secretary and the State establish one or more remedies which are additional or alternative to terminating the facility, section 1919(h)(7)(B)(ii) specifies that only the additional or alternative remedies of the Secretary shall apply.

We are proposing to implement section 1919(h)(7) of the Act at § 488.234. We are also proposing at § 488.234 that regardless of whose decisions control, the compliance and enforcement decisions for the Medicaid agreement are binding on the Medicare agreement. We also propose that when the provisions of section 1919(h)(7)(B)(i) apply, the additional or alternative remedy would be included as part of the Secretary's enforcement action.

We base this finding that the Medicaid decisions are controlling for Medicare on section 1919(h)(8) of the Act as discussed above. This is further supported in the OBRA '89 Conference Report which provides that "the enforcement rules for facilities participating in Medicaid apply also to those facilities participating in both Medicaid and Medicare" (H.R. Rept. No. 101–386, 101st Congress, 1st Sess., p. 484 (1989)). This will result in a dually participating facility being subject to the same enforcement action with respect to its Medicare and Medicaid agreements. We believe that Congress intended to give equivalency to the decision affecting both the Medicaid and Medicare agreements, since the requirements for each are virtually identical, and to allow for a consistent enforcement approach with respect to both agreements. In light of the virtual sameness of the requirements for both programs, we believe it is highly unlikely that Congress would have designed an enforcement system that would have a dually participating facility always subject to two entirely different sets of remedies, one by the Secretary and one by the State.

*B. Authorities for Validation Surveys and HCFA Oversight Authority*

Sections 1819(g)(3)(A) and 1919(g)(3)(A) direct the Secretary to conduct onsite surveys of a representative sample of nursing homes within 2 months of the last day of survey. Validation surveys are conducted on all types of facilities. If the State has determined that the facility is in compliance but the Secretary finds that the facility is out of compliance, the Secretary's determination as to the facility's noncompliance is binding and supersedes that resulting from the State survey as specified at § 488.234 of this proposed rule. If both the State and the Secretary find that a NF has not met all Federal requirements but disagree on the type or timing of remedies, the provisions at section 1919(h)(7), as explained above, apply.

While most situations posed by section 1919(h)(7) of the Act contemplate that one enforcement decision, either that of the State or the Secretary, will prevail, this may not always be the case. Specifically, section 1919(h)(7)(B) may create situations in which both the Secretary's and the State's enforcement choices will be given effect. This provision, for example, would require that when a State chooses to terminate a provider agreement, but the Secretary believes the imposition of a civil money penalty to be appropriate, both remedies must be applied.

Ideally, a provider would have the opportunity to contest the determinations of noncompliance at one hearing, but we believe the mechanics of the program may make this impossible if the two sets of remedies were based on 2 surveys, one of which being a validation survey. Validation surveys may be done at a different time than that of the State survey, and will be done by HCFA, not State personnel. Thus, whether the remedies selected by the State and the Secretary ought to be upheld may not turn on the same factual or legal bases, but rather on two separate sets of findings.

As a result, we foresee that providers may be entitled to two different hearings if they choose to contest the determination of noncompliance, one in accordance with Part 431 and the other in accordance with Part 498. (We have explained all hearing authorities in the following section.) We recognize that this administrative scheme may create some additional burdens for providers, but while it is not our intention to purposely create such burdens, we believe this result may be unavoidable. Certainly, we will consider comments on how this aspect of the program may be done differently.

In addition to the validation authority given the Secretary at section 1919(g)(3), the Act gives the Secretary general enforcement authority at section

1919(h)(3)(B) to impose remedies or to terminate a facility that the Secretary has found does not meet Federal requirements. Therefore, the Secretary can find noncompliance on the basis of State survey findings or his own validation surveys as he sees appropriate.

*C. Authorities for Hearings and Appeals*

A facility can request a hearing on denial of participation, termination of provider agreement, and a certification of noncompliance which leads to the imposition of remedies in accordance with proposed section 488.180(e). Because this proposed rule would eliminate time limited agreements for NFs and SNFs, as we explain later in section E entitled "Conforming Changes," ICFs/MR will be the only type of facility still subject to nonrenewals, and, therefore able to request a hearing on such a nonrenewal. We are proposing at § 488.180(e) to apply appeal procedures of part 498 or part 431, for the actions indicated below, based on whose authority initiates the certification and/or enforcement remedy.

*Part 431*

• The State's denial of participation, termination of provider agreement, or certification of noncompliance leading to an alternative remedy against a non-State Medicaid NF.

*Part 498*

• The Secretary's denial of participation, termination of provider agreement, or the Secretary's certification of noncompliance leading to an enforcement remedy against all State-operated facilities, as a result of a HCFA validation survey or HCFA's review of the State's survey findings as discussed earlier in the section entitled "Authorities for Validation Surveys and HCFA Oversight" in the preamble, and for non-State operated SNFs and dually participating SNF/NFs. The State would be required to take identical enforcement action, which would also be subject to these appeal procedures.

In attempting to find a way that would impose the least burden on providers, States, and HCFA, we believe that it would be the most efficient course to provide for a hearing under part 498 in all cases where a hearing is required for dually participating facilities. Section 1866(h) already entitles a Medicare provider to a hearing where the Secretary has found that it no longer meets the statutory definition of a provider. On the other hand, the Medicaid statute specifies no particular kind of hearing to which a Medicaid provider might be entitled in the case of adverse actions under that program.

We concluded that it would not be a sensible solution to require that a State and HCFA each provide its own hearing to dually participating facilities in adverse actions based on findings that would endanger the provider status of the facility under both programs. Such procedures would be costly, overly time consuming for the provider, and would potentially create confusion were there two different hearing results arising out of the same set of facts. Moreover, as explained above, we view section 1919(h)(8) as calling for the application of the decision made for Medicaid NFs to Medicare SNFs where a facility is dually participating. Thus, even where it is the State which dictates a certification of noncompliance under Medicaid, that decision would become one of the Secretary's under Medicare with respect to the facility's Medicare provider agreement.

Accordingly, these proposed rules would provide for only one hearing in such cases (which would reflect the current practice under both programs) to be provided under the procedures set forth in part 498 regardless of whether the decision to initiate the adverse action is the State's or HCFA's. The hearing decision would be binding on both the Secretary for Medicare and the State for Medicaid.

*D. Prospective Providers*

We propose in § 488.180(f) that prospective providers applying to participate in the Medicare or Medicaid (or both) programs meet all participation requirements as a precondition of their participation. We base this proposed rule on various provisions of the Act and the legislative history and on the overall structure of the Act which differs significantly from the one previously in effect. Specifically, we note that the Act, at sections 1819(a) and 1919(a), defines a skilled nursing facility and nursing facility, respectively, as one which "* * * meets the requirements * * * described in subsections (b), (c), and (d) of this section." Similarly, the enforcement sections of the Act, at sections 1819(h) and 1919(h), speak clearly to the need for remedial action if a facility fails to meet "a" requirement or "any" requirement set forth in the Act.

We realize that this approach would be a marked contrast from the current system in which facilities may be approved for program participation with level B deficiencies as long as all level A requirements are met. Congress, however, has removed this flexibility from the survey and certification system by admonishing the Secretary for having used a hierarchy of Federal requirements (as are represented by condition, standard, and element levels) and by removing the concept of "substantiality" from determinations of compliance. What will be in place under sections 1819 and 1919 is a "horizontal" system of requirements which obliges nursing home providers to comply with all such requirements, not just a portion of them.

We are fully cognizant that this approach to provider certification is a stringent one, but one that we believe reflects the plain language of the Act that Congress expects us to execute. We especially invite comment on this issue.

Under the proposed regulations, if a State-operated SNF is newly eligible as a provider under Medicare, HCFA would execute a provider agreement in accordance with 42 CFR 489.11. However, if a State-operated NF is newly eligible as a provider under Medicaid, HCFA would notify the Medicaid agency so that a provider agreement may be executed between the State and the facility if the State-operated NF meets all other requirements imposed by the Medicaid agency in addition to the Federal participation requirements.

If a non-State operated SNF is newly eligible as a provider, HCFA would execute a Medicare provider agreement in accordance with 42 CFR 489.11. If a non-State operated NF is newly eligible as a provider, the Medicaid agency may execute a Medicaid provider agreement in accordance with 42 CFR 431.107 if the NF meets all of the requirements imposed by the Medicaid agency in addition to the Federal participation requirements.

*E. Substandard Care*

The term "substandard care" is used in sections 1819(g)(2)(B) and 1919(g)(2)(B) of the Act in reference to extended surveys; sections 1819(g)(5)(C) and 1919(g)(5)(C) in reference to notice requirements to physicians and State nursing home facility administrator boards; and lastly in sections 1819(h)(2)(E) and 1919(h)(2)(D) in reference to specific remedies for repeated noncompliance when the Secretary or the State finds substandard care.

We propose to define substandard care in § 488.151 as care characterized by one or more deficiencies that meet a severity level of 3 or 4, regardless of scope; or level 2 in severity with a level 3 or 4 in scope in quality of care requirements, as defined in the regulations at 42 CFR 483.25. (The levels

for severity and scope are described in detail under the section of this preamble on "Enforcement Options.")

Our proposed definition of substandard care links certain levels of care for the purpose of extended surveys, notice requirements and imposing specific remedies as stated in the Act. Also, as pointed out in the IoM study, a more efficient survey process would permit surveyors to spend more time in poor performing facilities and less time in good facilities. Our definition of substandard care would help sort out the facilities that are performing at a particularly poor level from those whose performance may pose less of a threat to resident health and safety.

As explained below, if we were to use the term "substandard care" to generally mean noncompliance with any participation requirement it would result in a burdensome and labor intensive requirement for both the Secretary and the State. Although we do not propose to define substandard care as noncompliance with any participation requirement, we want to stress that any non-compliance with Federal requirements is unacceptable and may result in either termination or curtailment of Federal funding or the imposition of other alternative remedies.

In the case of extended surveys, the Act requires that the State or the Secretary conduct an extended survey in any facility that has provided substandard care. Our proposed definition of substandard care will aid surveyors in focusing on pervasive and significant problems identified in a facility. Additionally, sections 1819(g)(2)(B)(i) and 1919(g)(2)(B)(i) of the Act provide that the State or Secretary has the discretion to conduct an extended survey in any facility, and our definition in no way limits the surveyor from expanding his or her review.

Secondly, our proposed definition of substandard care would result in less of an administrative and financial burden to States in notifying each resident's attending physician and the State Nursing Facility Administrator Licensing Board. If a more general definition of substandard care were applied, it would result in a notification of attending physicians and State licensing boards for nursing home administrators for even the most minor deficiency. We believe the broader definition would defeat the purpose of the provision since attending physicians and State boards may ignore the large volume of notifications for some seemingly minor infractions of participation requirements. Conversely, notifying physicians and State boards of more significant deficiencies should prove more effective in facilitating an appropriate response.

Thirdly, our proposed definition of substandard care would highlight repeated cases of noncompliance which should be closely monitored. Because our definition of substandard care is focused on immediate and serious threat deficiencies and deficiencies found in the quality of care requirements, closer monitoring is appropriate. Again, a broader definition would result in a close monitoring of a much larger number of facilities. Although this may be ideal, there are limited resources available for this type of large scale monitoring. We believe that our proposed rule will monitor the most recalcitrant facilities.

*F. Surveys*

Sections 1819(g) (2) and (3) and 1919(g) (2) and (3) of the Act, as added by sections 4202 and 4212 of OBRA '87, specify the requirements for types and periodicity of surveys that are to be conducted for each facility; including standard, special, partial extended, extended, and validation surveys. These provisions include specific contents and procedures, frequency, consistency, and team composition. These regulatory provisions are an integral part of the long term care survey and enforcement system, and along with the requirements for long term care facilities published in a final rule on September 26, 1991 (56 FR 48826), and the interpretive guidelines and survey procedures issued in September 1989, and revised in April 1992, complete the execution of the long term care survey and certification process mandated under OBRA '87. This fully integrated system provides the comprehensive framework to ensure uniform surveyor interpretation of substandard care, and to guide recommendations with respect to the determination of appropriate remedies. The interpretive guidelines and survey procedures direct the State agency surveyors to gather information on facility performance relating to the delivery of care and services to the residents in the facility. These surveyor instructions structure the information gathering process and assist the surveyors in identifying situations that are indicative of a facility's compliance with the regulations. Moreover, the surveyor guidelines provide the surveyors with a consistent structure to evaluate the situation and the framework to analyze the information prior to making a compliance decision. For example, the survey guidelines related to the participation requirement concerning pressure sores list situations where pressure sores may be unavoidable. When surveyors observe a resident who acquired a pressure sore during the course of the stay in the facility, the surveyors must determine whether the resident's pressure sore was avoidable or unavoidable before they make a compliance decision. This type of guidance is provided for many of the resident centered requirements.

At the conclusion of the information gathering process, the survey team conducts the decision making process with respect to the facility's compliance with the participation requirements. The team evaluates its observations, including any information provided by the facility, in the context of what the regulations require and to determine whether the facility meets each particular requirement.

The survey guidelines provide the surveyors with structured information gathering procedures and interpretations related to the requirements that permit the surveyors to make consistent deficiency determinations. However, we do recognize that in many instances the decision with respect to whether a deficiency exists is ultimately a decision of professional judgment related to the particular situation observed and the context of the regulations. Therefore, to assure consistency, we promote team decision making and provide comprehensive training on the regulations and documentation techniques. We are also developing a surveyor competency test related to survey and certification techniques to enhance surveyors consistency.

This proposed rule also includes a scope and severity scale that reflects the relative seriousness of noncompliance with requirements for long term care facilities, and enhances the survey team's ability to classify identified deficiencies on an objective basis. The scope and severity scale provides a matrix to assist the survey team in assessing risks to the residents. The scale also serves to guide the survey team to ensure that remedy recommendations are uniform as well as appropriate to the seriousness of deficiencies.

Before arriving at the scope and severity scale which is reflected in the proposed regulation, we sponsored a workgroup comprised of representatives from the nursing home industry, consumer advocacy groups, State survey agencies, State Medicaid agencies and other interested parties. The workgroup met on three occasions in late 1988 and early 1989. The purpose of the workgroup was to assist HCFA in the development of an enforcement strategy

under the terms and concepts of nursing home reform as set forth in OBRA '87. The workgroup reviewed a number of concepts and ongoing projects concerned with enforcement of long term care requirements. While the workgroup posed several suggestions, no consensus was sought and no group recommendations were made.

Among the information considered was material related to the New York Quality Assurance System (NYQAS). NYQAS, which entailed a waiver of sections 1819(g) and 1864(a) of the Act, was a demonstration of an alternative long term care survey and certification methodology. One of the concepts of NYQAS was that the relative seriousness of deficiencies was not based on the relative value of requirements but rather upon the relative impact of a particular deficit in care on the residents. Based on this concept, NYQAS used an index incorporating the scope and severity of a deficit in care to determine its impact. The scope and severity of the deficit helped suggest whether a violation of program requirements had occurred. NYQAS's index was comprised of two components. One component was the "resident outcome scale" by which surveyors considered the seriousness of instances of potential or actual physical harm in order to assign a level from the scale. The second component was the "reaction scale,'" which purported to measure the seriousness of psychological harm to a resident by measuring the extent to which a resident reacted to a facility's violation of a requirement. Because many residents in nursing homes are bereft of reason and cannot react to a given situation, the scale incorporated the legal concept of the "reasonable man" to measure how a reasonable person would react in the same situation.

The "reasonable man" approach was rejected by most of the workgroup. The workgroup concluded, and we agree, that this approach would be unacceptable because, if used, it would result in inconsistent surveyor findings. Workgroup experience showed that there was a wide disparity in conclusions as to how the "reasonable man" would react in any given situation. This disparity would undermine the very consistency which the statute directs the Secretary and the States to pursue. On the contrary, the use of professional, adequately trained surveyors, with a thorough knowledge of professional standards of care and corresponding Federal regulations, helps ensure a consistent application of requirements. In fact, a representative of one of the nursing home industry associations participating in the workgroup specifically stated that the use of a reaction scale and reasonable person approach would serve no purpose and would only insert confusion and subjectivity into the enforcement process.

While the severity scale as reflected in the proposed regulation has been constructed without the "reasonable man" concept, and, indeed, without any reaction scale type of mechanism, it adds to the NYQAS model by incorporating the notion that the severity of a deficiency should include not only physical harm and resident rights violations, but also failures on the part of the facility to help the resident to achieve his other highest practicable physical, mental, or psychosocial well-being. This provision is based on the statutory language at sections 1819(b)(2) and 1919(b)(2) of the Act, enacted as part of the OBRA '87 legislation.

As described above, the proposed regulation also incorporates a scope scale. While the NYQAS approach required surveyors to consider frequency of occurrence and percentage of residents affected in determining the seriousness of outcomes, the scale reflected in this proposed rule would go beyond the NYQAS model. It is based on a plan developed by one of the organizations representing the nursing home industry. While the proposed scope scale began as one composed of five levels ranging from isolated to widespread occurrences, during the evolution of the draft regulation, the number of levels has been condensed to four. However, the system of graduated degrees of prevalence of a deficiency, as included in the organization's proposal, is reflected in the proposed rule. The one major difference between what the industry representative sought and what has been adopted in this proposed rule is the manner in which the scope and severity scales would be applied. One industry association favored the use of the scale for the purpose of determining whether to cite deficiencies. It suggested this approach in order to prevent the citation of deficiencies in situations in which the severity of actual or potential outcomes is so mild, and the incidence of the observation is so limited, that the negative impact on residents is negligible, at most. On the other hand, the proposed regulation would provide for the use of the scope and severity scales only for the purpose of determining the appropriate enforcement remedy.

The workgroup did discuss the use of scope and severity scales for both purposes: i.e. for determining whether a deficiency should be cited, and, if so, what remedy should be imposed. Thus, the workgroup considered the possibility of applying scope and severity scales twice: once when the survey team conducts its survey and again when the State survey agency makes its enforcement recommendations.

The Department would like to use scope and severity scales for determining deficiencies as well as sanctions. However, we have been unable to develop a viable regulatory approach for doing so. Therefore, we have limited the use of scope and severity scales in the proposed regulation to determining enforcement actions. At the same time, we are inviting comment and recommendations for a regulatory design that could accommodate the use of scope and severity scales for determining deficiencies.

This rule also includes a provision at § 488.162 that requires the Secretary and each State to implement programs to identify potential areas of inconsistency with respect to survey results, and develop programs to reduce any inconsistencies that may be identified. As described in detail elsewhere in this rule, HCFA has implemented an exhaustive surveyor training and testing program that will ensure that surveyors are adequately trained and competent at performing surveys. This program provides surveyors with the skills to identify both actual adverse outcomes experienced by residents of long term facilities and potential hazards in the long term care environment. Surveyors are trained to consider the possible consequences of deficiencies in evaluating the seriousness of the hazard, and the likelihood of their occurrence in evaluating the relative risk to the resident population.

This proposed rule will also provide uniformity of remedy recommendations and enforcement actions by implementing the specified remedies stipulated in the statute. Under this rule, the States are required to apply only the specified remedies unless they obtain prior approval to enforce alternative sanctions or alternate remedies under an amendment to their State plans. The Secretary will exercise his approval authority with respect to State plans to ensure that alternative remedies are appropriate and just as effective as those specified in the Act.

To further ensure consistent application of remedies imposed in response to noncompliance with requirements for long term care facilities, we will hold the facilities fully

responsible for satisfying all requirements for the protection of the health, safety and rights of their residents. We believe that a facility is responsible for the management of its operations and for meeting the provisions of care, resident rights and facility administration requirements to which it commits itself. The statute clearly establishes that long term care facilities must meet specific requirements, and that the survey and enforcement process must verify that facilities comply with all requirements or ensure that facilities with deficiencies take prompt action to achieve full compliance with all requirements. However, we do expect surveyors to exercise reason in determining a facility's responsibility for certain situations. For example, it may be unreasonable for a surveyor to cite a facility with noncompliance when a resident, who requires assistance for all daily living activities, is found to be wet when the interview is conducted. The surveyor should consider the recency of the urination and the attentiveness of staff in assessing the occurrence. We train surveyors to exercise consistency and accuracy in determining a facility's responsibility for such situations. We believe that the nursing home requirements are reasonable and the survey protocols and survey process provide the structure to guide a survey team's consistent application of those requirements. When a survey team uses these protocols and processes, it can evaluate the extent to which a particular nursing home meets Federal requirements. The survey team documents what it finds in terms of scope and severity. A large number of similar findings (high scope) or only one egregious deficiency related to resident health and safety may be indicators of a nursing home that has a systemic problem adequately caring for its residents. On the other hand, a low scope of a minor problem may not be indicative of a problem in the delivery of care. In the case of the resident who is wet at the time of the interview, the surveyor may not be able to ascertain the recency of urination. However, nursing homes do care for incontinent individuals, and if this one case was an isolated instance of such a surveyor observation, the team could conclude that staff is sufficiently attentive, and examines residents frequently enough to preclude any subsequent problems. Moreover, surveyor training courses stress ways to arrive at consistent and accurate conclusions as to facility responsibility in cases such as these.

Therefore, to ensure program consistency, we would specify that to the extent a facility fails to meet requirements for long term care facilities, the facility is held fully responsible and will be expected to correct all deficiencies promptly or be subject to the remedies provided for in this rule. However, whenever there appears to be a conflict between a resident's right and the resident's health or safety, we would expect the surveyor to determine if the facility attempted to accommodate both the exercise of the resident's rights and the resident's health, including exploration of care alternatives through a thorough care planning process in which the resident may participate. We expect facilities to meet the standard of treating residents in such a manner as to attain or maintain the highest practicable physical, mental and psychosocial well-being, but to keep in mind that a resident has the right to participate in his or her care planning and to refuse treatment. In summary, we believe the scope and severity scales to assess risks to residents and classify identified deficiencies on an objective basis along with an intensive surveyor training program, as proposed, provide the Secretary and the States with the procedures to achieve the necessary prompt compliance by facilities. We request any comments and recommendations on the strategy or any other methods or techniques for enhancing surveyor consistency in the identification of deficiencies.

These proposed survey and enforcement procedures are intended to protect residents' rights, health and safety and not unduly burden the facilities or the survey agencies. We believe that these proposals will effectively implement the intent and substance of the survey, certification, and enforcement aspects of the long term care aspects of the statute. Due to the extreme importance of these regulations in realizing the entire nursing home reform initiative of OBRA'87, we are specifically requesting comments on the aforementioned provisions geared toward the realization of consistency in the survey and enforcement processes and the adequacy of surveyor training.

• Standard Survey—Content and Frequency.

Sections 1819(g)(2)(A)(ii) and 1919(g)(2)(A)(ii) of the Act require that each SNF or NF that seeks to participate in Medicare and Medicaid must be subject to a standard survey. Each standard survey must include, for a case-mix stratified sample of residents, a survey of quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities, and social participation; sanitation, infection control, and the physical environment; an audit of written plans of care and of residents' assessments to determine the accuracy of these assessments and the adequacy of the plans of care; and a review of compliance with residents' rights. The State survey agency's failure to follow the procedures set forth in this section will not invalidate otherwise legitimate determinations that a facility's deficiencies exist. We propose to incorporate these provisions under § 488.155.

Sections 1819 (g)(2)(A)(iii) and 1919(g)(2)(A)(iii) of the Act require that each SNF and NF be subject to a standard survey not later than 15 months after the last day of the previous standard survey and that the statewide average intervals between standard surveys must not exceed 12 months. We propose to incorporate this provision under § 488.158 and to specify when and how the average intervals would be computed. We propose to require that the survey agency compute the statewide average intervals annually at the end of each Federal fiscal year, beginning at the end of fiscal year 1992 (i.e., September 30, 1992). It would calculate the average by comparing the date of the most recent full standard survey for each currently participating facility in the State to the date of its preceding standard survey. Special purpose abbreviated surveys, which are not standard surveys, would not be considered in the statewide average computation. HCFA would assess State performance and apply an appropriate sanction specified at proposed § 488.170 and described in the preamble section entitled "substandard survey performance" to ensure that State survey agencies meet the 12-month average interval requirement.

• Special Surveys.

Sections 1819 (g)(2)(A)(iii) and 1919(g)(2)(A)(iii) of the Act, as added by OBRA '87, specify that a standard survey or an abbreviated standard survey may be conducted within 2 months of any change of ownership, administration, management of a facility, or director of nursing to determine whether the change has resulted in any decline in the quality of care furnished by the facility. A survey conducted for the purpose of investigating a complaint against a facility is also considered a special survey. An abbreviated standard survey is a partial survey that focuses on a

specific participation requirement or requirements. We are proposing that the decision of whether to conduct a standard or an abbreviated standard survey under these circumstances be at a State survey agency's or the Secretary's discretion, based on the individuals and facilities involved and the State's concern that the quality of care may have declined (§ 488.158(e)).

• Extended and Partial Extended Surveys.

Sections 1819 (g)(2)(B) and 1919(g)(2)(B) of the Act, as added by sections 4202 and 4212 of OBRA '87, require States and HCFA to conduct an extended survey if, at the completion of the standard survey, the facility is found to have furnished substandard quality of care. The State survey agency of HCFA would have the discretion to conduct an extended survey or partial extended survey at any time for any reason. However, the State agency or HCFA must conduct an extended survey when substandard quality of care deficiencies are found during the standard survey.

The Act requires that the extended survey be conducted immediately after the standard survey or, if that is not practicable, within 2 weeks after completion of the standard survey.

In accordance with the Act, we would require that, during an extended survey, the survey team must review and identify the policies and procedures for those provisions of the regulations that produced the substandard quality of care and must determine whether a facility complies with all requirements of participation. The extended survey must also include an expansion of the size of the sample of residents' assessments reviewed, a review of the staffing levels and staff inservice training, and, if appropriate, an examination of contracts with consultants.

These provisions would be incorporated in proposed § 488.160.

• Consistency of Surveys.

Sections 1819 (g)(2)(D) and 1919(g)(2)(D) of the Act, as added by sections 4202 and 4212 of OBRA '87, require each State to implement programs to measure and reduce inconsistency in the application of survey results among surveyors. We interpret this provision to include both inconsistencies in survey findings and inconsistencies in the application of enforcement remedies. Therefore, the proposed regulations at § 488.162 would specify that the State must conduct ongoing studies and analyses, and/or implement new programs to measure and reduce inconsistencies in survey results, such as validation of surveyor findings, and the application of enforcement remedies. The proposed regulations also would specify that HCFA will perform the same tasks.

• Composition of Survey Teams.

Sections 1819 (g)(2)(E) and 1919(g)(2)(E) require that surveys be conducted by a multidisciplinary team of professionals. This team must include a registered nurse. The team must not include (1) any individual who is serving, or has served within the previous 2 years, as a member of the staff of, or as a consultant to, the facility surveyed; or (2) any individual who has a personal or familial financial interest in the facility surveyed. We are proposing to interpret financial interest to mean having any direct or indirect ownership or controlling interest in the facility (§ 488.164(a)(2)(ii)).

The Act requires us to provide comprehensive training to all surveyors in conducting standard and extended surveys, including the auditing of resident assessments and plans of care. The Act also provides that no individual may serve as a member of the survey team unless the individual has successfully completed a training and testing program in survey and certification that we have approved. We are proposing (§ 488.164(b)) to specify that the training, at a minimum, would consist of: application and interpretation of regulations for SNF and NFs; techniques and survey procedures for conducting standard and extended surveys; and techniques and survey procedures for auditing resident assessments and plans of care.

We require that each State survey agency provide an orientation developed by HCFA for new surveyors. Following the orientation program, each surveyor is required to attend a HCFA basic surveyor training course. The basic course provides instruction on regulatory requirements, proper use of surveyor guidelines, techniques of surveying facilities, documentation skills, and communications skills.

HCFA has developed a test pursuant to sections 1819(g)(2)(E)(iii) and 1919(g)(2)(E)(iii) of the Act. This testing component has been developed with the assistance of survey directors (or their representatives) as well as with experienced long term care surveyors who identified critical knowledge, skills and abilities to conduct a long term care survey. Once the testing program is administered to all surveyors employed prior to the implementation of sections 1819(g)(2)(E)(iii) and 1919(g)(2)(E)(iii), it will be given on an ongoing basis to prospective surveyors, i.e., those who have not yet been authorized to participate on the survey team as more than an observer. The test will be given as part of the training and testing program mandated in the Act and incorporated in § 488.164(c) of the proposed rule. We will continue to consult with licensure and survey agencies to ensure the training and testing program is meeting its intended objectives.

HCFA will continue to provide, on an ongoing basis, updated, periodic in-service training and specialty courses designed to meet surveyor training needs. This training can be provided through interactive video disks and written materials, and provides continuing education units (CEUs) for the surveyor. In the future, we expect to develop a satellite network to facilitate ongoing training. During the time prior to the completion of training, we would permit these individuals to observe onsite survey activities under the supervision of a surveyor who has successfully completed the required program. Again, we would not allow any individual to serve as a member of the survey team unless the individual successfully completed the training and testing program.

• Unannounced Surveys.

Sections 1819(g)(2)(A)(i) and 1919(g)(2)(A)(i) of the Act, as added by sections 4202 and 4212 of OBRA '87, require the State or local survey agency to conduct the standard survey of facilities without providing any prior notice to the facilities. While the Act specifically requires unannounced standard surveys, we propose to require that all surveys, whether abbreviated, extended, follow up, validation or otherwise, be unannounced and have incorporated this provision in the proposed regulations (§ 488.157(a)).

These sections of the Act also provide for imposition of a civil money penalty on any individual who notifies or causes a SNF or NF to be notified, of the time or date on which a standard survey is scheduled to be conducted. The civil money penalty may not exceed $2,000, and will be determined and administered by the DHHS Office of the Inspector General (OIG) in accordance with the requirements under section 1128A(a) of the Act governing such penalties under Medicare and Medicaid. The proposed regulations (§ 488.157(c)) would specify that HCFA will refer to the OIG cases in which there is evidence to suggest that individuals have given prior notification of surveys to SNFs and NFs.

As further assurances that there are unannounced surveys, the Act requires HCFA to review each State's procedures for scheduling and conducting standard surveys to assure that the State has

taken all reasonable steps to avoid giving notice of the survey. We are proposing in § 488.157(b) to review States' procedures on at least an annual basis and specifically to include an examination of all long-term care survey scheduling for a selected period. We would use our discretion in assessing the conduct of survey practices. Sections 1819(g)(2)(A) and 1919(g)(2)(A) of the Act require the State survey agency to take all reasonable steps in scheduling surveys to avoid disclosure of survey dates and requires us to monitor State operations more closely. We will use a revised State agency evaluation program to ensure that States are in compliance with the new requirement. When a survey agency is found to have notified a SNF or NF through its scheduling or procedural policies, we are authorized to apply appropriate sanctions for inadequate survey performance specified at proposed § 488.170 and described in the preamble section entitled "substandard or inadequate survey performance."

• Substandard or Inadequate Survey Performance.

Section 1819(g)(3)(C) of the Act requires the Secretary to provide an appropriate remedy (which may include training) when the State has failed to perform surveys required under the Act or when the Secretary has decided survey performance is not otherwise adequate. We are proposing the following remedies to be applied as appropriate: (1) Corrective action plan; (2) technical assistance on scheduling and procedural policies; (3) HCFA-directed scheduling; and (4) inservice training.

Section 1919(g)(3)(C) of the Act requires the Secretary to reduce administrative costs to the State at a rate described in section 1919(g)(3)(C) each time the State fails to perform surveys required under the Act or the Secretary decides the State survey and certification performance is otherwise inadequate. Further, section 1919(g)(3)(C) gives the Secretary the option of using training as an additional remedy.

The respective remedies would be applied whenever the Secretary finds that the State has failed to: (a) Perform surveys required by sections 1819(g)(2) and 1919(g)(2) of the Act and implemented in HCFA regulations; (b) abide by Federal standards and use the forms, methods, and procedures prescribed by HCFA in manual instructions; (c) identify a situation that is an immediate threat to resident health and safety, substandard care, or other deficient provider problems; or (d) determine proper provider eligibility and certification.

In addition, the agreement between the Secretary and the State survey agency under section 1864 of the Act provides that if the Secretary determines that the State is not able or willing to carry out any part of the survey and certification functions specified under the agreement, then the Secretary may terminate the agreement in whole or in part. Termination in part would include the exclusion of specific classes of providers or suppliers from the State agency's survey and certification function or could otherwise limit or decrease the scope of the agreement, and we have included this possible remedy for inadequate survey performance in this rule. While this remedy already applies to all provider and supplier categories specified in the agreement under section 1864, we are specifically including this provision in the regulation to highlight the importance of the survey and certification process to the nursing home reform initiative and to underscore our commitment to achieving the goals of that initiative.

• Validation Surveys.

Sections 1819(g)(3) and 1919(g)(3) of the Act, as added by sections 4202 and 4212 of OBRA '87, require the Secretary to conduct validation surveys of a representative sample of SNFs and NFs in each State that have been surveyed by the State survey agency. Prior to the effective date of OBRA '87, HCFA, acting for the Secretary, monitored State performance in conducting Federal monitoring surveys. OBRA '87 formalizes this process.

The validation surveys must be conducted within 2 months of the date of the State's surveys and must be of sufficient number to allow inferences about the adequacy of the State's surveys. In addition, the Act requires us to conduct validation surveys in at least 5 percent of the SNFs and NFs surveyed by each State during the year but in no case less than 5 facilities in each State. The same protocol used for the standard or extended survey must be used for the validation survey. We propose to incorporate these requirements in § 488.166(a).

The Act also provides that, if the Secretary questions the compliance of a facility, he or she may conduct a validation survey and, on that basis, make an independent determination concerning the facility's compliance.

If we find, as a result of the validation surveys, that the State has failed to perform the standard and extended surveys properly or that the State's performance is otherwise inadequate, we are authorized to apply an appropriate sanction for inadequate survey performance (§ 488.170) as described earlier under the heading "Substandard or inadequate performance."

*G. Investigations of Allegations of Resident Neglect and Abuse and Misappropriation of Resident Property*

Sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act, as added by OBRA '87 and amended by section 411(a)(5)(C) of Public Law 100–360 (MCCA), require the State, through the agency responsible for surveys and certification of nursing facilities, to develop a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a facility or by another individual used by the facility in providing services to residents. These sections also provide, after notification of the allegations, for the State to provide the opportunity for a hearing to the individual against whom an allegation has been made; and if the allegations are confirmed, for the State to notify the individual, the nurse aide registry, and the appropriate licensure authorities if applicable. Sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act, as amended by sections 4008(h)(2)(L) and 4801(e)(13), respectively, of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Pub. L. 101–508, enacted November 5, 1990, clarify that a State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

Under the proposed regulations (§ 488.151), "abuse" would be defined as physical, psychological, or verbal interaction with a facility resident, including, but not limited to, ill-treatment, physical violation, and/or other disregard of an individual which could cause or result in mild to severe, temporary or permanent mental or physical injury, harm, or, ultimately, death. "Neglect" would mean a failure, through inattentiveness, carelessness, or omission, of an individual, to provide timely, consistent and safe services, treatment, and care to a facility resident. "Misappropriation of resident property" would mean the deliberate misplacement, exploitation, or wrongful, temporary, or permanent taking or use of a facility resident's belongings or money, or both without the resident's consent.

We would require the State to investigate allegations and if there is reason to believe, either through oral or written evidence, that the abuse, neglect, or misappropriation of resident property occurred, to notify the individual implicated in the investigation by mail (§ 488.185). This notification must include the nature of the allegation; the time and date of the alleged occurrence; the individual's right to a hearing; and the State's intent to report substantiated findings to the nurse aide registry for all nurse aides; and to the State licensure authority for those licensed individuals employed by the facility for such action as the licensure body deems necessary. The notice would also indicate that the individual's failure to request a hearing in writing within a specified timeframe would result in the State reporting the substantiated findings to the nurse aide registry.

While HCFA is authorized to promulgate investigation and hearing procedures for nurse aides accused of resident abuse, neglect or misappropriation of resident property, we believe that such an approach is inconsistent with our view that States should have the flexibility to rely on State entities other than the survey agency to investigate and adjudicate these matters. States will likely be using an array of different licensing or investigative bodies to meet their obligations in this area, and each of them may well have its own hearing procedures (including its own burden of proof standard). While States will be provided flexibility to design their hearing process, we are proposing that States must provide for a hearing within 120 days from the day it receives the request for a hearing. We believe that a prompt response, i.e., within 120 days, is reasonable and assures that the nurse aide's livelihood is not unduly jeopardized.

The proposed regulations (§ 488.185(d)) would require the State to conduct the hearing and complete the hearing record within 120 calendar days from the receipt of the request for a hearing. The State would be required to hold the hearing in a place and at a time that is reasonable and convenient for the individual to attend.

If the hearing officer determines that the allegations are not affirmed, the individual would be notified of the findings. All hearing records and investigative reports, regardless of results, and all employee statements of waiver of hearing rights would be maintained in accordance with State recordkeeping procedures and requirements.

If the individual waives the right to a hearing, or is found in a hearing to have neglected or abused a resident or misappropriated resident property, the State would be required to report the findings to the individual, and the administrator of the facility that employs the individual within 30 calendar days from the date of the hearing decision. The State survey agency must report the finding to the State nurse aide registry and, for licensed individuals, to the appropriate State licensure authority within 10 working days of the finding.

We propose to allow only the State survey agency to place the adverse findings on the registry, and only after notice to the individual. The State survey agency would be required to include in the report to the registry documentation of the State's investigation, including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid; the date of the hearing, if the individual chose to have one, and its outcome; and a statement by the individual disputing the allegation, if he or she chooses to make one. We would also note that while State survey agencies are free to delegate to other State agencies the investigative and adjudicatory functions described in sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act, we fully expect State survey agencies to retain ultimate responsibility for compliance with these statutory requirements.

*H. Investigation of Complaints of Violations of Federal Participation Requirements and Monitoring Compliance*

Sections 1819(g)(4) and 1919(g)(4) of the Act, as added by OBRA '87, require each State to maintain procedures and adequate staff to investigate complaints of violations of Federal participation requirements. (Prior to OBRA '87, this was an administrative procedure implemented through manual instructions.) In addition, these sections of the Act required each State to conduct onsite monitoring of a facility on a regular, as needed basis to determine compliance with Federal participation requirements in the following circumstances:

- A facility has been found to be noncompliant with the requirements and is in the process of correcting deficiencies to achieve compliance.
- A facility was previously found to be noncompliant with the requirements, has corrected deficiencies to achieve compliance, and verification of continued compliance is needed.
- The State has reason to question the compliance of the facility with the requirements.

The proposed regulations (§ 488.182) would require the State survey agency to conduct surveys as frequently as necessary to ascertain compliance with the Federal requirements of participation or to confirm the correction of deficiencies under the cited circumstances. The proposed regulations would also incorporate the provisions of sections 1819(g)(4) and 1919(g)(4) of the Act that a State may maintain and use a specialized team to identify, survey, gather, and preserve evidence and to administer appropriate enforcement remedies against substandard facilities. The specialized team may include, but is not limited to, an attorney, an auditor, and appropriate health professionals.

*I. Disclosure of Survey Information*

Sections 1819(g)(5) and 1919(g)(5), as added by OBRA '87, provide for the disclosure of information regarding inspections and other activities of SNFs and NFs. These provisions make the Medicare and Medicaid disclosure requirements equivalent for SNFs and NFs and expand disclosure to include notice of noncompliance to the State long-term care ombudsman, attending physicians of residents, and the State licensing board for SNF and NF administrators. OBRA '90 added the requirement that the State ombudsman also be notified of any adverse actions imposed on a facility. Specifically, these sections of the Act require States and HCFA to make available to the public SNF and NF survey and certification information, including statements of deficiencies and plans of correction; Medicare and Medicaid cost reports; statements of ownership, and the names of individuals with direct or indirect ownership interest in a SNF or NF and the names of individuals with direct or indirect ownership interest in a SNF or NF who have been convicted of a criminal offense in violation of Medicare or Medicaid law. We are proposing in § 488.175 to accept oral as well as written requests for information and to charge the public for the cost of retrieval, reproduction, and mailing information in accordance with regulations under the Freedom of Information/Privacy Act. The disclosing entity (HCFA, the survey agency, or the Medicaid agency) would respond within 10 days with the requested information, if releasable and already available, or with an interim response explaining whether the information is releasable

and when it will be available for release.

OBRA '90 specifies which information is releasable and when it is available for release. Sections 4008(h)(2)(M) and 4801(e)(14) of OBRA '90 provide that each State, and the Secretary, shall make available to the public information concerning all surveys and certifications of NFs and SNFs, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction. We would propose to implement this provision at section 488.175(d)(3).

Sections 4008(h)(2)(N) and 4801(e)(15) of OBRA '90 require State survey agencies to notify the State's long-term care ombudsman of any adverse actions imposed against a facility. We would propose at section 488.175(e) that the State survey agency be required to provide the State's long-term care ombudsman with the report of noncompliance of a facility, report of any adverse actions imposed, any written response by the SNF or NF, and the results of any appeals.

As a result of sections 4008(h)(2)(E) and 4801(e)(5)(D) of OBRA '90, sections 1819(b)(4)(C)(ii)(IV) and 1919(b)(4)(C)(ii)(IV) of the Act require the Secretary and the State, respectively, to provide notice to the State long-term care ombudsman and the State protection and advocacy system for the mentally ill and mentally retarded of SNF and NF waivers. Sections 1819(b)(4)(C)(ii)(V) and 1919(b)(4)(C)(ii)(V), as added by OBRA '90, require the facility receiving such nursing waivers to notify the residents of the facility (or, when appropriate, the guardians or legal representatives of such residents) and a resident's immediate family of the waiver. We are proposing, at section 488.175 (f) and (g), that facilities make such notice within 10 days from the date the SNF or NF is granted the waiver.

Under OBRA '87, the State is required to notify each attending physician and the State board responsible for licensing nursing home administrators when a facility has provided substandard quality of care. We would require each SNF or NF to provide either HCFA or the State, no later than 10 days after receiving a notice of substandard care, with a list of each Medicare and Medicaid resident in the facility and the name and address of his or her attending physician. We would require the State to notify the attending physicians and the State licensing board within 30 days of the date the SNF or NF is notified of a finding of substandard care. We recognize that this and the notification requirement related to nurse waivers are the only provisions in our proposed regulation which set forth requirements for nursing homes. All other provisions in this rule set forth requirements for the Secretary and the State in the enforcement of nursing homes. We are including these facility requirements in this proposed rule because they directly or indirectly pertain to the enforcement process.

The same sections of the Act also required the State survey agency to provide access to any information incidental to a facility's participation in Medicare or Medicaid upon request by the State Medical fraud control unit established under 42 CFR Part 1002, Subpart C. We propose to incorporate this provision under section 488.175(j).

*J. Enforcement Options*

1. Overview

As stated earlier, before the passage of OBRA '87, the only adverse actions available to HCFA and the States for imposition against long term care facilities that were out of compliance with Federal requirements were termination of participation, nonrenewal and automatic cancellation, and denial of participation for prospective providers. In addition, HCFA and the States had authority, in cases of long-term care facilities, to deny payment for new admissions to facilities rather than to terminate the provider agreements when deficiencies did not present an immediate and serious threat to the health and safety of residents of the facilities. The denial of payment provision was considered both an alternative to the more severe measures, as well as an intermediate step that HCFA or the State could take prior to and possibly in lieu of termination from the Medicare and Medicaid programs. The sanction afforded HCFA and the States the opportunity to defer the decision to terminate. Thus, the terms "alternative sanction" and "intermediate sanction" came into use to designate denial of payment for new admissions to facilities for a period of up to 11 months after the month in which the sanction was imposed. Former sections 1866(f) and 1902(i) of the Act were the authority for the alternative sanction under Medicare and Medicaid respectively. The Family Support Act of 1988, Pub. L. 100-345, repealed the Medicare provision and MCCA made the Medicaid provision applicable only to ICFs/MR.

OBRA '87 included revised and expanded authority for enforcement of the Federal participation requirements for long-term care facilities. Specifically, sections 4203 and 4213 of OBRA '87 added new sections 1819(h) and 1919(h) to the Act. Under the Medicare provisions, if a State survey agency finds, on the basis of a standard, extended, or partial extended survey that a SNF no longer meets a Federal participation requirement and further finds that the facility's deficiencies immediately jeopardize the health or safety of residents, then the State survey agency recommends that HCFA take immediate action to remove the jeopardy and correct the deficiencies through temporary management or terminate the facility's participation. HCFA may, in addition, provide for one or more other specified remedies, including civil money penalties, denial of payment for new admissions, or require a directed plan of correction.

Under Medicaid, the State Medicaid agency must take the immediate action to remove the jeopardy and correct the deficiencies that are found to pose an immediate threat to health and safety of residents through temporary management or termination of the facility's participation. The State may also impose one or more other remedies, including denial of payment, imposition of civil money penalties, emergency closure of the facility and transfer of residents, or other additional or alternative State remedies (approved by HCFA), other than termination.

The Act, at section 1819(h)(2)(A)(ii), provides that when deficiencies are found that do not immediately jeopardize the health or safety of residents, HCFA may impose one or more remedies for Medicare SNFs. Section 1919(h)(3)(A) provides that when deficiencies are found at State operated facilities that do not immediately jeopardize the health and safety of residents, the Secretary may terminate the facility's participation, provide for one or more other remedies, or both. For non State-operated Medicaid facilities, the State Medicaid agency may terminate the facility's participation or impose one or more of the remedies, or both, in accordance with section 1919(h)(1)(B) of the Act. Moreover, we believe that Congress expects the Secretary to have the authority to terminate Medicaid provider agreements or impose one or more remedies in non-immediate jeopardy cases in both State operated and non-State operated facilities. Section 1919(h)(7) specifically speaks to the Secretary's authority to terminate Medicaid provider agreements, and section 1919(h)(3) clearly provides that nothing in that subparagraph of the statute "* * * shall be construed as

restricting the remedies available to the Secretary to remedy a nursing facility's deficiencies."

We certainly expect that wherever it is appropriate, we will use sanctions as reflected in the report of the House of Representatives Committee on the Budget (H.R. Rep. No. 391, 100th Cong., 1st Sess. 472 (1987)). That committee report states, "The Committee expects that these sanctions will be invoked by both the Secretary and the States *whenever necessary* to promote compliance with the requirements of participation and assure high quality care for nursing facility residents" (emphasis added). The use of the term "whenever necessary" definitely implies that sanctions will not be appropriate in all cases.

However, while sections 1819(h)(2)(A) and 1919(h)(1)(B) of the Act provide for termination of the provider agreement as an enforcement option in non-immediate and serious threat situations, we are interested in providing incentives for facilities to achieve and maintain full compliance with health and safety standards before termination becomes necessary. Accordingly, we are proposing to select an enforcement remedy based on the seriousness of the noncompliance and the enforcement action most likely to elicit a prompt response from the facility to achieve and maintain compliance. The seriousness of the noncompliance would be determined through an evaluation system discussed in this rule at § 488.208, Choices of Remedies. Generally, the more pervasive or severe the facility's shortcomings, the more severe the penalty. Therefore, we see provider agreement terminations generally to be the enforcement response to the most serious deficiencies, or when facilities are unwilling or unable to achieve compliance or are otherwise ineligible for other enforcement remedies. Accordingly, our proposed regulations at section 488.212 reflect that enforcement scheme.

In a dually participating facility, if the Secretary and the State agree that the facility is out of compliance and the deficiencies do not immediately jeopardize the health and safety of residents, the Secretary's choice of remedies will apply to both the Medicare SNF and the Medicaid NF unless the State does not agree with the Secretary's proposed enforcement action(s). In such a case, the rules at § 488.234 would apply. In the case of immediate and serious threat deficiencies, in accordance with sections 1819(h)(4) and 1919(h)(5), if either the State or the Secretary finds such deficiencies, the State or the Secretary, respectively shall notify the other, and shall take immediate steps to remove the jeopardy through temporary management or terminate the Medicaid agreement. The Medicare agreement would also be terminated, and residents would be transferred, as specified at § 488.210.

2. Determination of Deficiencies

Effective October 1, 1990, providers of nursing services participating in the Medicare or Medicaid programs are subject to the requirements of participation that were published on February 2, 1989 (54 FR 5316). These requirements, which create a new Part 483, Subpart B, are the outgrowth of the IoM study and the statutory revisions enacted primarily through OBRA '87 that are set forth at subsections (b), (c), and (d) of sections 1819 and 1919 of the Act. As has been explained in that rulemaking, the new authorities focus more sharply on the resident care practices and outcomes, and facility practices with respect to resident rights.

While the process of determining whether a provider is determined to have violated program requirements will be one that is revised to reflect the new Act and regulations, the collective exercise of surveyor judgments, which has always been the vehicle for the identification of deficiencies, will remain unchanged. For this reason, there is no more reason to have specific regulations governing this process than there has been in the past. Thus, as is true now, surveyors will gather information based upon direct observations, record review, and interviews with residents, staff, and family members. Based on their collection of information, they will collectively compile and analyze it, and match the data to the legal standards facilities are obliged to meet to determine if deficiencies exist. As is true now, these conclusions may be based upon single observations or groups of observations, either one of which may sustain a finding that a requirement has not been met. Once the survey team has made its judgments about whether the facts support a conclusion that deficiencies exist, it would be their responsibility to assess the scope and severity of those deficiencies (in the manner described later in this preamble) in order to recommend one or more remedies to either HCFA or the SMA for the enforcement of the requirements.

3. Remedies To Be Imposed as Alternative or Intermediate Sanctions

Sections 1819(h) and 1919(h) of the Act provide that the State or HCFA may impose one or more of the following remedies in addition to, or instead of, termination when the State survey agency or HCFA finds that a facility has deficiencies: temporary management; denial of payment for new admissions; civil money penalties; and, for participating Medicaid-only facilities, closure of the facility and transfer of residents, or additional or alternative State remedies approved by HCFA. These sections also provide that HCFA may impose denial of all payments with respect to care furnished by a facility to Medicare patients, and withhold FFP for medical assistance furnished by a facility to all Medicaid patients. In addition, sections 1819(h)(2)(B) and 1919(h)(2)(A) permit the Secretary and the States to provide for other specified remedies, such as directed plans of correction.

Consistent with these provisions, we propose to add the following additional remedies:

- Denial of payment for new admissions of persons in certain diagnostic categories or requiring specialized care;
- Directed plans of correction; and
- State monitors.

The law, as added by OBRA '87, also specifies that the State or HCFA must specify criteria as to when and how each of these remedies is to be applied, the amounts of any fines, and the severity of each of the remedies to be used in the imposition of the remedies. The criteria must be designed so as to minimize the time between the identification of violations and final imposition of the remedies and must provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

The application of remedies would have a dual purpose: (a) To protect residents against inadequate care; and (b) to motivate providers to comply with the requirements of participation so that they may continue to provide quality services to residents. HCFA's or the State's decision to impose one or more remedies would be based on deficiencies found during surveys performed by the State survey agency and reported to HCFA or the State with recommendations for corrective action. The decision would sometimes be based on deficiencies found during HCFA's own validation survey.

In order to determine which remedy or remedies to apply, we propose at § 488.208 that the State or HCFA (depending on the authorities specified at § 488.180) would consider:

• The existence or nonexistence of immediate and serious threat to resident health and safety;

• The severity and scope of the deficiency or deficiencies;

• The relationship of one deficiency or group of deficiencies to other deficiencies;

• The facility's prior compliance history in general and specifically with reference to the cited deficiencies; and

• Whether the deficiencies are directly related to resident care.

The selection of a particular remedy would also be based on the nature of the deficiencies. Every facility that is out of compliance with a program requirement would be required to have in addition to a remedy, a traditional plan of correction approved by HCFA or the State agency, except as noted otherwise in the "Application of Remedies."

4. Temporary Management as a Remedy

When alternative remedies are imposed instead of termination to bring a facility into compliance with program requirements in an immediate and serious threat situation, temporary management would always be imposed immediately to remove the threat to residents in accordance with sections 1819(h)(2)(A)(i), 1919(h)(1)(A), and 1919(h)(3)(B)(i) of the Act. Temporary management may also be used in addition to termination in an immediate and serious threat situation while there is an orderly termination or closure of the facility. In situations where deficiencies do not constitute immediate and serious threat, HCFA or the State also may appoint a temporary manager to substitute as a manager or administrator. (Other remedies in addition to temporary management may also be imposed in the case of immediate and serious threat situations.)

The temporary manager would have the authority to hire, terminate and reassign staff, obligate facility funds, alter facility procedures as appropriate, or otherwise manage the facility as necessary to correct deficiencies identified in the facility's operation. The temporary manager would be required to be a licensed nursing home administrator within the State or have a reciprocal agreement with the State in which he or she is to serve; demonstrate prior competence as a nursing home administrator; and have had no disciplinary action taken against him or her by any licensing board of any State or by any professional society in the past 5 years. Neither the temporary manager nor his or her immediate family may have a financial or ownership interest in the facility. The temporary manager's salary would be paid by the facility. We propose that the salary for the temporary manager may not exceed an amount equivalent to the prevailing salary paid by providers in the geographic area for positions of this type, additional costs that would have reasonably been incurred by the provider if such person had been in an employment relationship, and any other costs incurred by such a person in furnishing services under such an arrangement (i.e., travel allowance) or as otherwise set by the State.

Termination would be imposed if the facility does not agree to this remedy or refuses to relinquish authority to the temporary manager. In addition, if, despite the appointment of a temporary manager, the immediate and serious threat is not removed within 23 days of the appointment of the temporary manager or if non-immediate and serious threat deficiencies are not corrected within 6 months from the last day of survey, the facility's participation would be terminated.

We propose to incorporate this provision in § § 488.206, 488.210, and 488.215.

5. Denial of Payment for New Admissions as a Remedy

• For all new admissions.

HCFA or the State could deny payment for any new Medicare and/or Medicaid admission in a participating facility on or after the effective date of the imposition of the remedy. In accordance with sections 1819(h)(2) (D) and (E) and their Medicaid counterparts, we would require that regardless of other remedies imposed, denial of payment for new admissions be imposed whenever a provider has not corrected the deficiencies within 90 calendar days after the last day of a survey identifying the deficiencies or a provider has been found to have provided substandard care on the last 3 consecutive standard surveys. At the discretion of HCFA or the State, the denial of payment remedy could be imposed, either singly or with other remedies. However, the statute requires the imposition of this remedy in cases governed by sections 1819(h)(2) (D) and (E) and 1919(h)(2) (C) and (D). If compliance is achieved and the denial of payment for all new admissions remedy is ended, payment would resume prospectively rather than retroactively.

We propose to incorporate this provision in § § 488.206 and 488.217.

• For New Admissions of Persons in Certain Diagnostic Categories or Requiring Specialized Care.

We are proposing a denial of payment for new Medicare or Medicaid admissions who have certain specified diagnoses or require certain specified special care needs as a remedy. This remedy would be used whenever HCFA or the State survey agency finds that the facility is not currently able to provide adequate care for these individuals or that caring for such individuals would adversely affect care provided to the other residents. If compliance is achieved and the remedy is ended, payment would resume prospectively rather than retroactively.

We propose to incorporate this provision in § § 488.206 and 488.217.

6. Directed Plan of Correction

Sections 1819(h)(2)(B) and 1919(h)(2)(A) permit the Secretary and the State, respectively, to provide for other specified remedies. We propose adding a directed plan of correction as a remedy in which a facility could be required to take action within specified timeframes according to the plan of correction developed by HCFA, the State agency, or the temporary manager (with HCFA or State agency approval).

The directed plans of correction would set forth the expected correction actions which the facility must take to achieve compliance and the dates by which the actions must be taken.

7. Use of State Monitoring as a Remedy

In proposed § § 488.206 and 488.222, if State monitoring is used as a remedy, we would require State monitors to be onsite as frequently as necessary to oversee the correction of specific deficiencies cited. This remedy differs from traditional revisits by the survey agency in that State monitors are onsite, as necessary, while corrections are being made, as opposed to a revisit which occurs after corrections are completed, and serve to confirm that the deficiency has been removed. State monitoring must be used as a remedy when a survey agency has cited a facility with substandard quality of care on the last 3 consecutive standard surveys.

Individuals serving as State monitors would be required to be employees or contractors of the State survey agency, and maintain professional qualifications needed to address the specific nature of the deficiencies. The State would be responsible for ensuring that the monitors are appropriate health care professionals. A State monitor could not function as a consultant to the facility nor could the State monitor be an employee of the facility. We believe that a monitor serving as a consultant to a facility would put the State in a potential situation of defending the

monitor's recommendations rather than making the facility responsible for correcting its deficiencies. Additionally, a monitor employed by a facility and working for the State would constitute a conflict of interest.

8. Civil Money Penalties

HCFA or the State, in accordance with the authorities at § 488.180, may impose a civil money penalty against and SNF, SNF/NF or NF that is determined by HCFA or the State survey agency to be out of compliance with one or more Medicare and Medicaid participation requirements. Under the proposed regulations under § 488.230, we would allow penalties to be imposed for noncompliance regardless of whether or not the deficiencies constitute immediate and serious threat to resident health and safety. We are proposing at section 488.230(b) that civil money penalties would not be imposed during the pendency of a hearing on the imposition of that remedy.

If HCFA proposes to impose a civil money penalty, it would deliver or send by certified mail, return receipt requested, to the provider, written notice of the intent to impose a penalty. The notice would include reference to the statutory basis for the penalty; the amount of the penalty per day of noncompliance; any circumstances that were considered when determining the amount per day of the proposed penalty; and instructions for responding to the notice, including a specific statement of the facility's right to a hearing and implications of waiving a hearing.

If the State proposes to impose a civil money penalty, the State would notify the facility in accordance with State procedures.

A penalty amount would be permitted to be imposed within the following ranges: for deficiencies constituting immediate and serious threat (i.e., severity level of 4, regardless of scope)—$3,050 to $10,000 per day; for deficiencies constituting non-immediate and non-serious threat above a scope or severity level of 1, $50 to $3,000 per day. For both levels, the amount of civil money penalty would be set at $50 increments within these ranges. The proposed amounts of these fines are based on a review of a variety of State civil money penalty systems available under State licensure laws. Moreover, we believe that the range of these fines will provide the economic motivation to achieve compliance and will decrease any monetary benefit of noncompliance. Removal of the immediate and serious threat, but not the deficiencies, would justify the shift to the range of penalties that are imposed for non-immediate and non-serious threat above a scope or severity level of 1. A penalty would be imposed at the immediate and serious level for the number of days the immediate and serious threat is present. We propose that a provider may, in lieu of contesting the deficiency which led to the imposition of the civil money penalty, waive the right to a hearing within the specified timeframes and procedures in the regulations under § 498.40 for Medicare and § 431.221 for Medicaid. If the facility waives the right to a hearing within 60 days from the date of notice, HCFA or the State must reduce the civil money penalty by 35 percent. If the facility waives the right to a hearing after the 60th day, HCFA's or the State's settlement is discretionary. The reduction in the civil money penalty reflects the savings to both the government and the provider of costs that would otherwise be incurred to formally adjudicate the dispute. The provider would be free to reject the option to waive the right to a hearing. The daily fine amount of a facility may be increased if the facility alleges compliance, but on a revisit by HCFA or the State survey agency, the facility is still found to be noncompliant with the same requirements. The purpose of giving HCFA or the State discretion to increase the daily fine, we believe, is to deter unfounded allegations of compliance. The amount of increase, if any, would be effective the day following the resurvey.

In determining the amount of the penalty, section 1128A(d) requires the Secretary to consider specific matters and also provides authority to take into account any other items relevant to the penalty determination. We are proposing that the Secretary's non-discretionary and discretionary requirements be applicable to the State as well to make the Medicare and Medicaid requirements equivalent for SNFs and NFs. We do not believe that Congress intended to have two separate assessment methodologies in place between both enforcement authorities when a civil money penalty from each could potentially be imposed on a single facility. Our proposal includes two additional factors so that the noncompliance itself is considered when determining the penalty amount.

In determining the amount of the penalty, we are proposing at § 488.230(g) that HCFA or the State must take into account the following factors—

- The facility's degree of culpability;
- The facility's history of prior offenses, including repeat deficiencies;
- The facility's financial condition;
- The nature, scope, severity and duration of the noncompliance; and
- The category of requirement with which the facility is out of compliance (e.g., resident rights, life safety code, etc.)

The effective date for a civil money penalty would be the 10th day after the last day of the survey in the case of immediate and serious threat deficiencies; or the 20th day after the last day of survey in the case of non-immediate and non-serious threat deficiencies. These timeframes permit time to notify the facility of the intent to impose a civil money penalty 5 days after the last day of survey.

When HCFA's or the State's imposition of a civil money penalty is upheld on appeal or the facility waives its right to a hearing, the civil money penalty would be for the number of days between the effective date of the penalty and the date of correction of deficiencies, or, if applicable, the date of termination. Penalties would be computed after compliance is verified or the facility has been sent notice of termination and the effective date. In the case of the facility achieving compliance, HCFA or the State would send a separate notice to the facility containing the amount of penalty per day, the number of days involved, the due date of the penalty, and the total amount due. In the case of a facility to be terminated, HCFA or the State would send this penalty information in the termination notice.

The daily accrual of civil money penalties would be imposed for no longer than 6 months for non-immediate and non-serious threat deficiencies after which HCFA would terminate a SNF provider agreement, or stop Federal funding for a NF, and the State may terminate the provider agreement if deficiencies remain. In the case of immediate and serious threat deficiencies, the daily accrual of civil money penalties would continue until HCFA or the State terminates the provider agreement or the deficiencies are eliminated. If the facility can supply documentation acceptable to HCFA or the State survey agency that compliance with participation requirements was attained on a date preceding that of the revisit, fines would only accrue until that date.

Payments for civil money penalties would be due: (a) 15 days after compliance is verified, if a hearing decision upholding the imposition of the penalty had been rendered before compliance had been verified, or the 60-day period for requesting a hearing has expired and the facility has not

requested a hearing or has waived its right to a hearing; (b) 15 days after a hearing decision upholding the imposition of the penalty if compliance was achieved before the hearing decision; or (c) 15 days after the effective date of termination if compliance has not been achieved by that time. Currently, § 431.153 does not specify the number of days a facility has to request a hearing. We propose amending § 431.153 to add a new paragraph (b) which specifies that a NF or ICF/MR must file a request for hearing within 60 days of receipt of the notice of denial, termination, nonrenewal, or imposition of a civil money penalty or other remedies.

Consistent with the way other civil money penalties are recovered, as provided in section 1128A(f) of the Act, we propose that the amount of any penalty, when determined, may be deducted from any sum then or later owing by HCFA or the State to the facility against whom the penalty has been assessed. Interest would be assessed on the unpaid balance of the penalty beginning on the due date. We propose that the rate of interest to be assessed on the unpaid balance would be negotiable and for that reason might vary on a case by case basis. Funds collected by the HCFA or the State as a result of a civil money penalty would be returned to the Medicare Trust Fund or to the State, respectively. Civil money penalties collected from dually participating facilities would be returned to the Medicare Trust Fund and the State in proportion commensurate with the relative proportions of the number of Medicare and Medicaid beds actually in use at the facility at the time the facilities receive notice of the imposition of the civil money penalty. Under section 1919(h)(2)(A)(ii) of the Act, funds collected by a State Medicaid agency must be put into a common fund to be applied to the protection of the health or property of residents of any NF that the State or HCFA finds deficient, including payment for the cost of relocating residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost. Oversight of the collection and use of funds will be addressed through HCFA's State evaluation program now in place.

With respect to SNFs, State-operated facilities, or HCFA validation actions when HCFA's enforcement choice prevails, HCFA would have the exclusive authority to settle any case at any time prior to a final administrative law judge hearing decision. With respect to non-State-operated NFs or dually participating facilities or HCFA validation surveys when the State's enforcement prevails, the State would have the authority to settle any case at any time prior to the hearing decision.

9. Closure of a Medicaid Facility and Transfer of Residents as a Remedy

Section 1919(h)(2)(A)(iv) of the Act allows the State to close a Medicaid facility and transfer its residents as an available remedy in emergency situations (proposed § 488.226). Notice and appeal rights would be in accordance with State procedures.

10. Other Alternative or Additional State Remedies Other Than Termination—Medicaid only

Section 1919(h)(2)(A) allows the State to develop alternative or additional State remedies (other than denial of payment for new admissions and State monitoring). For Medicaid facilities, the State may establish and impose alternative remedies if the State demonstrates to HCFA's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as the remedies of temporary management, civil money penalties, and emergency closure of the facility and transfer of residents. Regardless of which alternative remedies the State establishes, it must include a denial of payment for new admissions and State monitoring of remedies. These remedies must be included because section 1919(h)(2)(D) of the Act requires that denial of payment for new admissions and State monitoring be imposed when a NF was found to have provided substandard quality of care on three consecutive standard surveys. We would require that these alternative or additional remedies be approved by HCFA and specified in the State plan (proposed § 488.228).

11. Selecting an Enforcement Remedy

Once a State or HCFA determines that violations of nursing home requirements have occurred, there is an obligation to assess what the most effective remedy ought to be to assure the protection of the well being of the resident population. Under the traditional approach to enforcement that has been in place for years, determinations of remedy (largely a decision to choose between a plan of correction or termination) have been dictated by whether deficiencies were identified as being at the condition or standard level. This hierarchy of requirements, however, which was criticized by the Congress, has been replaced by a system of requirements that are not segregated by weight. At the same time, while it is clear that a nursing home must meet all requirements, violations of some requirements may pose far greater threats to resident health and safety than violations of others. For example, violations of resident abuse prohibitions are obviously more likely to pose such threats than might a failure of a facility to timely report a change of ownership as required by the Act.

We believe that by enacting a broad array of remedies that vary as to form and severity, Congress explicitly recognized that there would be great variations in impact posed by violations of different requirements. As discussed above in the Overview, we believe the statutory scheme recognizes that it may not be appropriate to terminate a facility's provider agreement when compliance may be achieved rapidly through a directed plan of correction or the imposition of a denial of payment for new admissions. With very few exceptions, the Act vests complete discretion in the States and the Federal government to choose among the various statutory remedies subject only to the Congress' expectation that we and the States specify when and how each of the remedies would be applied.

Accordingly, we are proposing to institute a system that would guide surveyors, in the first instance, and then the State or HCFA, to make judgments as to which remedy would be best suited to a particular facility. We propose to do this through an evaluation of the scope and severity of the facility's deficiencies so that, generally, the more pervasive or severe the facility's shortcomings the more severe the penalty. The facility will not receive an aggregate non-compliance rating, but rather each deficiency will receive an individual scope and severity rating. As explained more fully below, scope and severity each would be gauged along four levels that would give a picture of the facility's degree of non-compliance with each requirement. Judgments of this kind would be made on the basis of violations of individual requirements or groupings (cluster) of requirements, at the surveyors' discretion.

We wish to emphasize that we do not view scope and severity determinations, or the scales upon which they are based, as representing mathematical standards or requiring precise or neatly quantifiable measurements. Assessing the breadth or depth of a facility's deficiencies is, by definition, an exercise in judgment. The experience in one facility cannot always be neatly applied,

as a mathematical equation, to another facility. The virtually endless spectrum of possible violations, and their impact on facility residents, assures that this task defies the application of rigid rules, and it is not our intention that the scope and severity scales be such. Rather, we see the scope and severity scales to be only a guide to focus surveyor judgments that, on a national basis, would yield a substantially consistent approach to the selection of enforcement remedies.

Thus, where we describe below a spectrum of scope determinations that range from a "very limited" number of cases (Level 1) to a "pervasive" pattern of non-compliance (Level 4), we do not intend that distinctions among the four levels would be characterized by a sharp line such as a fixed number of cases. Similarly, where we propose in the severity scale to have determinations range from "any deficiency with respect to requirements for long term care facilities not meeting the criteria for Levels 2, 3, or 4" (Level 1), to "Actual Physical Harm which has caused serious impairment or death" (Level 4), we are fully aware that distinctions among these levels would reflect surveyors' professional judgments, and may vary from facility to facility.

Because the Act vests almost complete discretion in the Secretary and the States in choosing an enforcement remedy (limiting only what remedy may be imposed in cases of immediate jeopardy or in cases of repeated noncompliance), we are proposing to exclude from review challenges to scope and severity conclusions, including the manner in which surveyors go about formulating their judgments. While we intend that the scales provide internal guidance only to survey agencies, we are including them in the regulations to provide the public, and particularly regulated facilities, facility residents, and States, with full disclosure as to how we expect to undertake the task of determining appropriate remedies for providers that have violated Federal program requirements. Whether determinations rest at one level or another, however, their impact has a bearing only on the choice of a remedy, not on whether a violation of a statutory or regulatory requirement has occurred. It is these latter determinations that a violation has occurred, to the extent that they have triggered an enforcement remedy, that providers clearly have the opportunity to contest since they address whether a facility meets the definition of a provider under either the Medicare or Medicaid program. Should our conclusions, or those of a State, that a facility does not meet requirements of participation be upheld, it is an entirely different matter to select a remedy. Clearly, the Act requires the States and us to make those determinations in a way that reflects whatever judgments we believe are appropriate to remedy non-compliance and thereby protect resident health and safety. These judgments are not appealable. In other words, the choice of remedy by either HCFA or the State, predicated on the determination of a scope and severity level, is not subject to review as part of the appeals process set forth in Parts 431 or 498.

*a. Scope scale.* We would propose to use a scope scale to assist surveyors in making their judgments as to how widespread a facility's deficiencies are. The ranges would encompass observations of the most isolated of events to those that, in the eyes of the surveyor, reflect the existence of a pervasive or systemic problem in the facility. As explained above, the selection of a certain scope level would not reflect a mathematical finding or a conclusion based upon statistical certainty. Rather, it would only serve to represent the applied judgment of the survey team based upon their expertise and knowledge of Federal requirements.

• Level 1—Isolated

The survey team might conclude that a deficiency is isolated if its perception is such that it believed the deficiency to exist only in a very limited number of cases.

• Level 2—Occasional

The survey team might conclude that a deficiency is occasional if, in its combined judgment, the deficiency is identified in a number of cases, but which in its view does not appear to reflect a pattern of facility behavior.

• Level 3—Pattern

The survey team might conclude that a pattern exists when, in its judgment, there are a sufficient number of repeated observations that it is likely that the deficiency might also exist in cases not reviewed by the team.

• Level 4—Widespread

The survey team might conclude that a deficiency exists in sufficient number that, in its judgment, the deficiency represents a systemic or pervasive practice of the facility.

These proposed surveyor guides would be incorporated in section 488.204.

*b. Severity scale.* This scale would be used to assess the severity of deficiencies in the facility. The scale would reflect two features of the Act. First, it recognizes Congressional intent that all requirements of the Act must be met. Second, however, it would recognize that violations of requirements take on greater or lesser significance depending upon the actual or potential harm that did or could occur, in the judgment of the survey team, as a result of the facility's deficiencies. We must emphasize that the scale is used to evaluate the seriousness of identified deficiencies. The scale cannot be used to determine if a deficiency exists. As is true for the scope scale, the severity would have four levels, only here the range of surveyor judgment would be from "Actual Physical Harm Which Has Caused Serious Impairment or Death" (Level 4) to potential physical harm that could cause serious impairment or death (Level 3), other harm (Level 2) to deficiencies not meeting the criteria for Levels 2, 3, or 4 (Level 1). Because this scale often would reflect certain qualitative determinations by surveyors, of necessity the lines separating the various levels would not be, and cannot be, marked by clear or precise boundaries. It is for this reason that we would expect surveyors to call upon their experience to guide the judgments that they would be asked to make. The four levels of guidelines would be:

• Level 1—Any deficiency with respect to requirements for long term care facilities not meeting the criteria for levels 2, 3, or 4.

• Level 2—Either a negative outcome or resident rights violation has occurred, or, in the judgment of the survey team, the ability of the individual to achieve the highest practicable physical, mental, or psychosocial well-being has been compromised, or both.

• Level 3—Potential physical harm which could cause serious impairment or death.

In the survey team's judgment, there is a recognizable health and safety hazard, which if left unabated, is likely to cause serious harm, impairment or death.

• Level 4—Actual physical harm, which has caused serious impairment or death. Life threatening harm, serious impairment or death has occurred.

As discussed previously, we believe the proposed severity levels will prove to be an invaluable tool in allowing the survey team to objectively determine the seriousness of identified deficiencies and in guiding recommendations for enforcement actions. The severity levels as presented will help focus surveyor judgment and the scale will enhance consistency of survey findings.

Level 4 deficiencies reflect the most serious consequences of noncompliance with the requirements for long term care facilities. In these instances, the deficiency has resulted in serious impairment or death. Level 3 deficiencies are nearly as serious, but have not yet resulted in serious harm, impairment or death. In these instances, however, the threat of such physical harm would require selection of the same remedy. Under the current enforcement system, an adverse action can be based upon conditions at a facility that may not be causing actual physical harm to residents at the time of the survey but which, if left unabated, will likely cause such harm. For example, faulty wiring that poses a fire hazard or the practice of allowing residents with dementia to wander outside of the building unsupervised would be grounds for termination even though no fire or loss of residents had yet occurred. Since the potential for serious harm or death constitutes an immediate and serious threat, the enforcement response should be the same as it would be if the severe harm or death had already occurred. In those cases where the threat to patient health and safety is apparent, but there is no actual harm, the purpose of the enforcement response would be to prevent the actual harm from occurring. In those cases where actual harm has occurred, the purpose of the enforcement action would be to prevent the negative outcome from recurring. In these cases, the deficiency also constitutes immediate and serious threat (in other words, repeated instances of harm). Therefore, deficiencies at either severity scale level 3 or severity scale level 4 constitute an immediate and serious threat to resident health and safety, and the law requires that these facilities be terminated from participation or placed under temporary management until the threat is removed.

Although deficiencies classified in severity scale level 3 or level 4 are both immediate and serious, the result or outcome of the deficiency would determine whether the deficiency falls into one level or the other. Level 3 acknowledges that potential severe physical risk to the resident exists but has not yet been realized, while level 4 is assigned only when at least one instance of actual severe physical harm or death has occurred.

Level 2 deficiencies include those that result in a negative resident outcome that is less severe than those under Level 4. They include deficiencies causing physical harm or those violating residents' rights or those that do both, but which do not pose immediate and serious threat to patient health and safety. The survey team categorizes all other deficiencies as severity level 1. In those instances, the survey team has identified noncompliance with the requirements for long-term care facilities and the deficiencies do not meet the criteria for severity levels 2, 3, or 4. We have presented examples of deficiencies for each of the severity levels below.

*Example:* A survey team has determined that during the administration of a penicillin injection, a resident of a facility suffered anaphylactic shock as a result of penicillin allergy. The staff member who administered the injection was not licensed or otherwise qualified, and was not trained to recognize the reaction or to provide emergency life support measures. An ambulance was summoned but the resident died enroute to the hospital. This deficiency would be classified as severity scale level 4.

*Example:* The survey team observes a resident who has several stage IV pressure sores that have become acutely inflamed and severely infected. The pressure sores have infiltrated muscle tissue and bone surfaces have become exposed. The resident is in severe distress, and in the survey team's judgment, the resident's condition requires immediate therapeutic intervention. The survey team subsequently finds, through a review of the records and interviews with the resident, that the pressure sores were not present when the resident was admitted to the facility 3 months prior to the survey. Further investigation reveals that the facility has failed to implement the plan of care and this has allowed the sores to develop and worsen, despite several requests for medical attention by the resident and the resident's family. This would be classified as a severity scale level 4 deficiency.

*Example:* A survey team observes that medications are being administered intravenously to residents of a facility by unlicensed, unqualified personnel. In this instance, no actual harm has resulted from this practice, but there is a clearly recognizable health and safety risk that could result in serious impairment or death. This deficiency would be classified at severity scale level 3.

*Example:* A facility is located in a three story wood frame building. The life safety code portion of the facility survey reveals that the water to the sprinkler system has been shut off, and the facility does not have a working fire alarm system. Because there has not been a fire, no physical harm has occurred, yet the threat to the residents is immediate and serious. These deficiencies would be classified at a severity scale level 3.

*Example:* A survey team observes a resident with 4 stage III pressure sores. These decubiti have penetrated into the subcutaneous tissue and some infection is apparent. The survey findings show that the sores have developed since the resident was admitted to the facility, and the resident has not received treatment as specified in the plan of care. In the survey team's judgment, unless the patient receives prompt medical attention and effective nursing care, the condition of the pressure sores will deteriorate and the resident will likely suffer serious impairment and require medical treatment that should have been preventable. This would be classified as a severity scale level 3 deficiency.

*Example:* A resident is admitted to a facility, and the comprehensive assessment reveals that the patient had no pressure sores on admission. The resident has only limited ability to turn in bed and the plan of care states that the resident is to be turned side to side every two hours. During a survey conducted 4 weeks after the resident's admission, the resident is found to have a stage II pressure sore. Upon investigation, including an interview with the resident, it is determined that the resident is being turned only once every 8 hours. This would be classified as a severity scale level 2 deficiency.

*Example:* A survey team observes a patient being fed by a facility staff member. A review of the resident's plan of care and interview with the resident discloses that the patient can feed himself with assistance from an aide. However, this procedure is time consuming and the staff have taken it upon themselves to feed the resident instead. While the resident is well nourished and has suffered no physical harm, the resident is losing the ability to feed himself, and his physical, mental and psychosocial well-being has been compromised. This would be classified as a severity scale level 2 deficiency.

*Example:* A resident is admitted to a facility, and the comprehensive assessment reveals that the patient had no pressure sores on admission. The resident has only limited ability to turn in bed and the plan of care states that the resident is to be turned side to side every two hours. The resident has not yet developed any pressure sores. During a 3-day survey, the team observes that the resident is turned very infrequently. Upon investigation, including an interview with the resident,

it is determined that the resident is being turned only once every 8 hours. This would be classified as a severity scale level 1 deficiency.

*Example:* The survey team determines that while a facility has complied with the requirements concerning the management of resident funds with respect to residents' written authorizations, deposits in appropriate accounts, and recordkeeping and notification requirements, the facility has failed to purchase a surety bond or provide other means of assurance to secure the funds on deposit. This would be a level 1 deficiency.

We are seeking general public comment about how the severity scale levels are described as well as assigned. We specifically would like comments on the proposed construction of the severity scale whereby deficiencies at a severity level of 3 or 4, regardless of the scope, can result in the same sanctions. This possibility is caused by both levels including immediate and serious threat deficiencies. In the case of level 3, the potential harm may be life-threatening but has not occurred yet, while at level 4, the harm has occurred and has resulted in critical consequences if not death. We also request comment about the desirability to include, as a criterion of one level on the severity scale, the need for intervention by a health care professional. This was a characteristic of the NYQAS resident outcome scale which attempted to measure severity. It was based on the assumption that harm to a resident requiring the intervention of a health care professional to reverse is more serious than that which does not require such intervention. While we did not construct the severity scale in the proposed rule with such a distinction between sequential severity levels, we are soliciting comments on the advisability of doing so.

12. Application of Remedies

If a determination has been made that a deficiency would present an immediate and serious threat to resident health or safety, HCFA or the State would take immediate action to appoint a temporary manager to remove the threat, impose other remedies as it determines necessary to bring the facility into full compliance, and/or terminate the facility's participation in the program within 23 calendar days of the last day of survey. We proposed to continue our use of a 23-day timeframe established through administrative procedures because it provides ample notice to facilities without adversely affecting resident health and safety. If the facility does not accept temporary management, HCFA or the State would immediately terminate the provider agreement within 23 calendar days of the last day of survey. If the facility accepts temporary management but does not remove the immediate and serious threat within 23 calendar days of the appointment of the temporary manager, HCFA or the State would terminate the provider agreement on the 23rd day from that appointment. The 5-calendar day period for providing notice to facilities of termination of a provider agreement as specified in § 489.53 of the regulations would be included within this 23-day period. These proposed rules are reflected at section 488.210.

If the facility is found, at the time of the survey, to have deficiencies that do not pose an immediate and serious threat to resident health and safety, HCFA or the State may impose any of the alternative remedies or terminate the facility's participation or both. If the facility, initially found to have immediate and serious threat deficiencies, accepts temporary management and the immediate and serious threat is removed but deficiencies remain, HCFA or the State may terminate the facility's provider agreement if, in their judgment, due to the nature of the deficiencies, alternative remedies are not likely to be effective. When termination is not the selected enforcement action, the decision not to terminate would be conditioned on all of the following: (a) whether HCFA or the State finds that it is more appropriate to impose alternative remedies than to terminate the provider agreement of the facility; (b) the State has submitted a plan of correction to HCFA and HCFA has approved the plan and timetable; and (c) if the facility (for Medicare) or the State (for Medicaid) has agreed to repay HCFA all Federal money paid to or on behalf of the facility during the correction period if corrections are not made according to the plan. We believe that the above conditions would meet the statutory requirements of sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act while ensuring that quality of care is provided to nursing home residents promptly after deficiencies are noted. To the extent that termination occurs less frequently, there would be less disruption to nursing home residents and ensured access to needed services.

If a facility does not correct deficiencies within 90 days from the last day of survey, HCFA or the State must impose a denial of payment for new admissions remedy until the deficiencies are corrected or the 6 month continuation of payment period has expired.

As specified at sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act, HCFA or the State agency would notify the facility at the time it authorizes continuation of payment for a correction period of up to 6 months (from the last day of survey) that failure to comply with all requirements by the end of this correction period would result in the termination of the provider agreement for Medicare SNFs and discontinuance of FFP and termination for NFs. Termination would be effective no later than the last day of the 6-month period. The 15-day period for providing notice of termination to the provider would be included within this 6-month period.

Not all combinations of severity and scope would be considered immediate and serious threat situations. HFCA or the State agency would decide which remedy or remedies, if any, in addition to temporary management, should be used in immediate and serious threat situations, and which remedy or remedies should be used for non-immediate and non-serious threat deficiencies. We would note that a severity of 3 or 4, regardless of scope, would always constitute an immediate and serious threat to resident health and safety. A severity of 1, regardless of scope, would never constitute an immediate and serious threat to resident health and safety. Sections 1819(h)(2) and 1919(h)(3) of the Act state that when facilities do not meet the participation requirements, and the facility's noncompliance does not pose an immediate and serious threat to resident health and safety, the Secretary may impose specified remedies.

Although a deficiency at a scope and severity of 1 constitutes an instance of not meeting participation requirements, the Secretary is not required to impose remedies, since the statute (at sections 1819(h)(2)(A)(ii) and (E) and 1919(h)(3)(B)(ii)) mandates the imposition of remedies only in cases of immediate jeopardy or cases of repeated noncompliance. For this reason, we propose that for deficiencies at the 1–1 level a remedy will not be imposed. We believe that this deficiency level will cause no harm nor likelihood of any harm and that these deficiencies occur once or a very limited number of times. We believe that Secretarial discretion to not impose a remedy should be exercised for such minor low level deficiencies. This policy would recognize that level 1–1 deficiencies are inconsequential and do not represent a significant problem to resident health and safety.

Facilities, however, must be aware that they are responsible for complying

with all requirements of participation. A facility would be furnished with a summary of the level 1–1 deficiencies and would be required to sign the summary to indicate receipt of the summary and agree to correct the deficiencies and maintain compliance. The requirement to summarize level 1–1 deficiencies and alert the facility to the presence of level 1–1 deficiencies acknowledges that a problem could potentially occur if the deficiency is permitted to go uncorrected and possibly increase in severity and scope. No formal plan of correction would be required for this low level of deficiency and no remedies would be applied, but correction is necessary nevertheless. If repeat deficiencies at a scope and severity level of 1 are identified at the next standard survey, one or more remedies specified at § 488.206 will be imposed due to the persistence of the deficiencies over time.

When deficiencies occur other than those at a scope level of 1 and severity level of 1, the State or HCFA would be required to apply a remedy or remedies that would correct the deficiency or deficiencies as rapidly as possible, including those remedies already described.

When deficiencies occur at a severity level of 1 and scope level of 2 or more, and the conditions at § 488.212(c)(1)(i) are met, HCFA or the State must direct the facility to develop a traditional plan of correction and may impose any other remedies. If the plan of correction is acceptable, HCFA or the Medicaid agency will use the facility's plan as a directed plan or correction and may impose one or more remedies specified at § 488.206. If the facility's plan is not acceptable, HCFA or the Medicaid agency will develop a directed plan of correction. If the conditions at § 488.212(b)(1) are not met, HCFA or the State will impose alternative remedies.

When deficiencies occur at a severity level of 2, regardless of scope, the State must (and HCFA does) impose one or more remedies specified at § 488.206 paired with a plan of correction. Additionally, if the scope level is 3 or 4 in quality of care, the State must notify the attending physician of each resident for which such a finding is made, and any State board responsible for the licensing of the facility administrator.

No remedy or combination of remedies could delay the termination of facility participation and discontinuation of FFP for more than 6 months from the last day of the survey if the facility fails to correct its deficiencies.

HCFA or the State may impose a separate remedy for each deficiency, or a single remedy for all deficiencies that are interrelated and subject to correction by a single remedy.

These proposed provisions would be incorporated in § 488.208 and are summarized in the following chart.

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| SEVERITY | SCOPE (1) | (2) | (3) | (4) |
|---|---|---|---|---|
| 1 | 1 (1) | 1 (2) | 1 (3) | 1 (4) |
| 2 | 2 (1) | 2 (2) | 2 (3) | 2 (4) |
| 3 | 3 (1) | 3 (2) | 3 (3) | 3 (4) |
| 4 | 4 (1) | 4 (2) | 4 (3) | 4 (4) |

1-1 Deficiency; No plan of correction; no remedy imposed; Recorded on Summary of 1-1 Deficiencies--not HCFA 2567. Written commitment by facility to correct. No appeal rights.

Deficiency with severity of 1 and scope of 2, 3 or 4. Requires facility-developed Plan of Correction.

Deficiency with severity of 2 regardless of scope. Must impose one or more remedies paired with a facility-developed plan of correction[1]; Appeal rights for all remedies except State monitoring.

Non-immediate & Serious Threat Substandard Care Deficiencies: Deficiencies at severity level of 2 and a scope level of 3 or 4 in quality of care[2] or severity of 3 or 4 and scope of any level for any deficiency. Must impose one or more remedies paired with a facility developed plan of correction[1]. Notification of attending physicians and licensure boards. Extended survey conducted. Appeal rights for all remedies except State monitoring.

Immediate and Serious Threat Substandard Care Deficiencies. Must impose temporary manager to remove threat or terminate, and can, in addition impose one or more other remedies paired with a plan of correction.[1] Notification of attending physician and licensure boards. Extended survey conducted. Appeal rights for all remedies except State monitoring.

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[1] Unless the remedy is a directed plan of correction developed by HCFA, the State or the temporary manager.

[2] Must impose Denial of Payment & State monitoring remedies in a facility that was found to provide substandard care on 3 consecutive surveys.

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13. Procedures for the Imposition of Remedies: Notice

HCFA or the State would give the facility notice of intent to impose a remedy. Further, we propose that HCFA or the State give the facility notice of the remedy at least 2 days but not more than 4 days before the effective date of the remedy in immediate jeopardy situations, and at least 15 days before the effective date of remedy when there is no immediate jeopardy. Therefore, in practice, in immediate jeopardy situations, the remedy could be imposed anytime after the minimum 2 day notification period, but not later than the 10th day after the last day of survey. This allows up to 5 days for HCFA or the State to send the notice and an additional 2 to 4 days before the remedy is imposed.

14. Hearings: Medicare and Medicaid Consistency

The nursing home reform provisions now set forth in titles XVIII and XIX, with one exception, are silent as to the specific procedures that the Secretary or the States would need to employ in order to impose the various remedies set forth in the Act. Specifically, there is very little in the way of direction as to the type of hearing, if any, that providers might expect to have in the event of adverse action. Only with respect to civil money penalties, does the Act specify that a provider would be entitled to an evidentiary hearing prior to that adverse action through the incorporation of section 1128A of the Act into sections 1819(h) and 1919(h). Apart from the nursing home reform provisions, only section 1866(h) offers Medicare providers a right to a hearing (and judicial review), a hearing right which the courts have almost uniformly over the years concluded as properly being available only after the effective date of the adverse action.

What is clear, however, from both the Medicare and Medicaid provisions (at sections 1819(h)(2)(B) and 1919(h)(2)(A)) is the mandate that both the Secretary and the States design their enforcement systems in such a way as to minimize the time between the identification of deficiencies and the imposition of remedies. We read this to provide the clearest signal that Congress expected enforcement decisions affecting nursing home reform to be effective before providers exercise whatever appeal rights they may have. The Congress is cognizant, as are we, that to have an appeals system that must run its course before remedies are made effective would cause those remedies to be delayed significantly especially in light of what is very often a protracted process at both the State and Federal levels.

Apart from the explicit direction in the Act that remedies be imposed in this fashion, this approach to enforcement reflects the long history of enforcement procedures under the Medicare program where termination hearings have always been provided after the effective date of the termination and where denial of payment for new admissions have been imposed in a similar fashion. Certainly, the courts have almost universally endorsed this approach whenever they have been asked to resolve the issue of whether providers have a constitutional right to pre-action hearings. We believe that Congress intended for this to continue to be the rule especially since it carved out a prior hearing requirement only with respect to civil money penalties. Since neither the Constitution nor the Act require a prior hearing when a facility faces the most severe of remedies (i.e., termination), we believe that the imposition of lesser sanctions that now appear in the Act ought not merit any greater degree of due process.

As a result, we are proposing a set of appeal procedures for both the Medicare and Medicaid programs that will provide the opportunity for formal relief only after adverse action has taken effect, except for the imposition of civil money penalties. We propose to provide the opportunity for formal hearings in the case of all enforcement actions. While we believe that neither the Act nor the Constitution mandates that such formal relief be granted, we are mindful of striking a balance between the need to act quickly to remedy noncompliance with the opportunity for providers to fully air their concerns at an adversarial proceeding. We are excepting State monitoring from this appeal scheme because of our belief that these remedies are extremely mild and, therefore, do not raise the level of concern that a termination or temporary management might. Additionally, in light of the pervasive use of these remedies, we believe it would be unwise to allow formal appeals in these cases and thereby risk the overloading of both State and Federal enforcement machinery. Facilities dissatisfied with having State monitoring would have only an informal opportunity to challenge such action.

While under the Medicare program, this enforcement scheme would pose very little variation from current practice, certain State Medicaid programs may be more obviously affected. We know that under current Medicaid regulations at 42 CFR 431.153, which offer States the option of providing hearings either before or after the effective date of adverse actions, a number of States have opted to provide pre-termination hearings. This option was given in this regulation at a time when the Act was not as clear as it is now with respect to Congressional intent on the timing of appeal procedures, and at a time when the case law was not as overwhelmingly clear, as it is now on the fact that post-termination hearings satisfy facility due process concerns. We are concerned, however, that in many States that have opted to provide prior hearings, the pace of enforcement has materially slowed down in a way that we believe is not in the best interest of protecting the well-being of nursing home residents.

We believe, therefore, that there are compelling reasons to provide for an appeals mechanism under Medicaid that is triggered only after an adverse action has gone into effect. As discussed above, we believe this scheme most accurately reflects legislative intent. Additionally, we believe that the Act gives us general rulemaking authority to achieve this objective and that, in particular, we have the authority to regulate the timing of State Medicaid hearings that may be provided in accordance with section 1919(h)(7). We also see no reason why the rules governing the Medicaid program in this area should be any different than those governing the Medicare program when the substantive requirements affecting providers are exactly the same and where the enforcement options are virtually identical. Lastly, the broad array of new alternative enforcement choices coupled with the clear Congressional intent that all statutory requirements be met (and enforced) mean that there will be far more adverse actions being taken, and appealed, than previously. Therefore, we believe that there will be far greater pressures on the appeals machinery at both the State and Federal level which previously has only had to manage a relatively small number of termination actions. If appeals procedures were to be provided prior to the taking of the adverse action, there is a great likelihood that the potential clogging of the appeals system would result in little actual enforcement of Federal requirements.

Thus, we are proposing to revise section 431.153 to provide that States must impose remedies, with the exception of civil money penalties, against providers of services at the time that they identify the existence of violations of Federal requirements, notwithstanding any other provision of

State law. We intend that under this provision sanctions available under the program would become effective immediately after the identification of program violations once the provider has had notice of the deficiencies and the impending sanction. While the impetus for this change is the nursing home reform legislation enacted in the past few years by the Congress, it is our belief that the principles of due process that are reflected in these provisions are equally applicable to any provider of services that participates in the Medicaid program. We see no reason why a hospital, ICF/MR, or any other provider of services should have one set of rules for the imposition of sanctions while nursing facilities have another. Certainly, the considerations of due process are the same for all and, as indicated above, the courts have consistently ruled that providers of medical services are not constitutionally entitled to pre-sanction hearing relief. It is a cardinal principle of both the Medicare and Medicaid programs that while providers are entitled to have opportunities to redress their grievances, their interests are secondary to the needs of the program beneficiaries that they serve. It is our belief that the needs of individual program beneficiaries are best served by the availability of prompt and effective remedial action that will motivate the fastest efforts by providers to comply with Federal program requirements.

It is for this reason, as well as our desire to make the Medicare and Medicaid enforcement schemes parallel, that we propose to delete 42 CFR 442.40. This section has enabled States to continue FFP, under certain circumstances, for facilities whose provider agreement has been terminated, for up to 120 days after the effective date of the termination if a required administrative hearing decision has not been reached. In light of our objective to be more aggressive in the enforcement of nursing home requirements by requiring that States provide only post-action hearings, just as is done under Medicare, we see section 442.40 as plainly inconsistent with this objective. Certainly, if a nursing facility or ICF/MR were to be able to fall back upon the knowledge that it would continue to be paid for services furnished to program beneficiaries for perhaps as long as 4 months after the effective date of a provider agreement termination, the incentive to fully and promptly comply with all program requirements would simply not be as strong as if the facility were facing the elimination of Federal funding under a more accelerated schedule.

Since this change would affect not only nursing facilities, but ICFs/MR, we are specifically interested in comments on this change to the regulations.

We would note that terminations of ICFs/MR by the Secretary under section 1910(b) of the Act do provide for prior hearings in non-immediate jeopardy situations and this would continue to be the case where HCFA initiates the termination action. When States initiate termination actions against ICFs/MR, these rules would require that any State hearing be given after the effective date of the termination.

This is not to say that Medicaid institutional providers facing termination would not have the funding or time to assure an orderly transfer of the facility's residents. The provisions of such funding at 42 CFR 441.11 would continue to be applicable.

15. Continuation of Payment Pending Remedies

Sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act provide for the continuation of Federal payments to a provider having deficiencies for up to six months if: (a) the State finds it is more appropriate to apply an alternative remedy to termination, (b) the State has submitted a plan of correction that is approved by the Secretary, and (c) the facility (under Medicare) or the State (under Medicaid) agrees to repay us the payments under this arrangement should the facility fail to take the corrective action set forth in its approved plan of correction.

We believe that if any of the three factors set forth in the Act are not present, then a deficient facility would not be entitled to any Federal payments from the time that deficiencies are identified. We reach this conclusion because it is the only way we see to give these provisions any meaning. It is theoretically possible, for example, to read these provisions to mean that if a facility does not agree to make the required repayments, then the facility would be entitled to a continuation of payments with no limitation subject only to the termination of the facility's provider agreement. To read the Act in this manner, however, would be to nullify this provision since all a facility would have to do to avoid the Act's Federal payment limitation would be to refuse to comply with it. Since no facility would have any incentive to voluntarily limit the time in which it might receive Federal payments, it makes far greater sense to construe the provision to require the cessation of all Federal payments upon identification of deficiencies unless the State and facility agree to the terms of these sections of the Act. This reading, we believe, not only gives meaning to the Act (which would be consistent with canons of statutory construction), but would be consistent with the overall tenor of the legislation and its history which focus on the need for rapid and effective means to bring providers into full compliance with Federal certification requirements. HCFA or the State may terminate the SNF or NF agreement before the end of the six month correction period if the requirements of section 1819(h)(2)(C) and 1919(h)(3)(D) and corresponding requirements proposed at § 488.232(a)(1) are not met.

Remedies under this provision would cease when the facility fully complies with Federal certification requirements, or the facility's provider agreement is terminated. Accordingly, we are proposing in § 488.212 that HCFA terminate the SNF and NF agreements and discontinue FFP to NFs when deficiencies are not corrected within the maximum six month correction period.

We believe this action is appropriate since the Act does not authorize Federal payment beyond six months. Stopping payment at that time under Medicare would be tantamount to a termination of the provider agreement. Moreover, Medicare beneficiaries residing in a facility facing this remedy would not be able to stay there and have the cost of their care covered by the Medicare program. In such a case, they would need to move to a certified facility where the cost of their care would be covered. From their perspective, then, the remedy would also have the same impact as if the facility's provider agreement had been terminated.

We believe that it is appropriate to have an appeals mechanism for providers adversely affected by this provision since its impact may be the same as a provider agreement termination. Under Medicare, since we propose to terminate providers that are still out of compliance at the end of the period they are given for correction, it would be the termination that would be appealed in accordance with the procedures set forth in 42 CFR part 498. Under Medicaid, we propose to grant providers the same remedy notwithstanding the fact that sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act operate as payment provisions rather than as provisions that govern provider agreement terminations. While as a narrow matter it would be the State that would be denied the FFP for the provider in question, the central issue in dispute would be whether the facility

had in fact successfully completed its obligations under the approved plan of correction. Accordingly, we believe it would be more logical to resolve such issues under the procedures normally used for them (Part 498) in which the provider would be the party, rather than the disallowance appeals mechanism heard through the Departmental Appeals Board (DAB) procedures at 45 CFR part 16 in which the State would be the party. However, we acknowledge the fact that despite facility compliance-related issues, the action taken by the Federal government would be against the State in the form of the withholding of FFP. FFP disputes are usually heard by the DAB and usually involve State performance matters. We therefore invite comments on whether our appeals mechanisms for such cases should offer DAB appeals to the States in addition to provider appeals under part 498.

16. Resolution of Differences in Findings and Recommended Remedies Between State and HCFA for Non-State operated Medicaid Facilities and Dually Participating Facilities

Sections 1919(h) (6) and (7) set forth special rules for when the State and Secretary do not agree on findings of noncompliance, timing of termination or where remedies overlap. If HCFA finds that a non State-operated NF or a dually participating facility has met all requirements, but the State survey agency finds that the facility has not met all requirements and the failure does not immediately jeopardize the health and safety of its residents, the State survey agency's finding will control (proposed § 488.234(a)(1)). In this instance the State's certification of noncompliance would control, but the facility would have its hearing rights met through the procedures set forth at part 498. If HCFA finds that a NF or a dually participating facility has not met all requirements and the failure does not immediately jeopardize the health or safety of its residents, but the State survey agency has not made such a finding, HCFA's finding will control. In this case, HCFA will impose the remedies and shall permit the State to continue payments to the facility during the correction period (proposed § 488.234(a)(2) and (3)). These provisions specify the means to determine compliance or noncompliance for the Medicaid NF which will then, by virtue of section 1919(h)(8) of the Act, become the compliance/noncompliance decision for the Medicare SNF.

If both HCFA and the State find that a facility has not met all requirements and neither find that the failure immediately jeopardizes the health or safety of its residents, the following procedures would apply:

- If both HCFA and the State find that a facility's participation should be terminated, the State's timing of any termination (as specified in proposed section 431.153(c)) would control so long as the termination date does not occur later than 6 months after the date of the finding to terminate (§ 488.234(b)).
- If HCFA, but not the State finds that a facility's participations should be terminated, HCFA's decision to terminate would prevail and HCFA would permit continuation of payment during the period prior to the effective date of termination, not to exceed 6 months from the last day of survey (§ 488.234(b)(1)).
- If the State, but not HCFA finds that a facility's participation should be terminated, the State's decision to terminate and the timing of the termination (as specified in proposed § 431.153(c)) would control (§ 488.234(b)(2)).
- If HCFA or the State, but not both, would impose one or more remedies that are additional or alternative to termination, the additional or alternative remedies would also be applied (§ 488.234(d)(1)).
- If both HCFA and the State would impose one or more remedies that are additional or alternative to termination, only the additional or alternative remedies of HCFA would apply (§ 488.234(d)(2)).

17. Termination of Provider Agreements and Discontinuation of FFP

Termination of the provider agreement and discontinuation of FFP would end continuation of payment and any remedy imposed, regardless of the proposed timeframes for the remedy or remedies originally specified. HCFA or the State would terminate the provider agreement and HCFA would discontinue FFP if (a) a facility fails to correct deficiencies within the timeframes specified; or (b) the facility fails to submit an acceptable plan of correction within the timeframes specified by HCFA; or (c) eligibility criteria for continuation of payment are not met. When HCFA or the State finds deficiencies which pose an immediate and serious threat and the facility refuses temporary management, HCFA or the State must terminate the provider agreement.

HCFA or the State would send to the facility and the public notice of termination of a provider agreement due to immediate and serious threat deficiencies at least 2 and not more than 4 calendar days before the effective date. The current termination notification requirement in 42 CFR 489.53(c)(1) requires HCFA to give notice to any provider at least 15 days before the actual effective date of a termination of a provider agreement, irrespective of whether the situation poses an immediate and serious threat, except in the case of Medicare SNFs. Section 489.53(c)(2) provides that SNFs with deficiencies that pose an immediate and serious threat are entitled to notice of the termination at least 2 days before the effective date of the termination of the provider agreement. Since the existing regulations do not discriminate between immediate and serious and non-immediate and serious threat situations except in the case of Medicare SNFs, we are proposing to amend § 489.53(c)(2) to require at least 2 and not more than 4 calendar days notice to all providers of a termination action involving an immediate and serious threat. This policy does not constitute an across-the-board increase in the number of days of prior notice. Rather, up to the 4 day notice in immediate and serious threat situations represents a decrease of notice for all providers except Medicare SNFs. The timeframe for notice to an SNF could be increased slightly from the current 2 days notice to the maximum 4 days notice because the 2 day deadline has proven to be administratively impracticable if a revisit is needed to verify that the jeopardy has been removed or corrections have been made. Notice of termination due to non-immediate and serious threat deficiencies would be sent at least 15 calendar days prior to the effective date (proposed § 488.238(c)). The procedures for termination of a provider agreement are those set forth in 42 CFR 489.53. These procedures form the basis for termination by HCFA and specify a provider's notice and appeal rights.

If HCFA or the State terminates the provider agreement, we would require the survey agency to arrange for the orderly transfer of all Medicare and Medicaid residents to another SNF or NF. If there is a closure of a Medicaid NF or dually participating facility by the State, the State would be required to arrange for an orderly transfer of all residents (§ 488.240). Current regulations and policy permit Federal funding for up to 30 days after termination if conditions at § 441.11(a) are met and we propose to continue this policy.

18. Conflict Resolution

With the publication of this notice of proposed rulemaking, we are seeking public comment about the desirability and feasibility of establishing a conflict

resolution system whereby facilities dissatisfied with a certification of noncompliance would be afforded a formal mechanism for disputing deficiencies prior to the administrative and judicial review processes. We are also requesting comments on the best way for such a system to be implemented. We wish to emphasize, however, that an informal conflict resolution system already exists. Providers have always had numerous opportunities to challenge survey findings throughout the survey process including during the survey, at the exit conference, while awaiting receipt of the official deficiency statement, upon receiving the deficiency statement, and through dialogue with the State and regional officials. Also, any further attempts by us to satisfy providers' perceived need for another codified dispute resolution system must be done in a way that satisfies the Congressional mandate that we minimize the time between the identification of deficiencies and the application of remedies.

*K. Incentives for High Quality Care*

Section 1919(h)(2)(F) of the Act, as added by section 4213 of OBRA '87, provides that, in addition to the remedies discussed, a State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to Medicaid. A State would incorporate such an incentive program in its State plan. We have incorporated this provision under proposed § 488.153(b).

*L. Educational Program*

Sections 1819(g)(1)(B) and 1919(g)(1)(B) of the Act provide that each State must conduct periodic educational programs for the staff and residents (and their representatives) of nursing homes in order to present current regulations, procedures, and policies on the survey and certification and enforcement processes. We propose to incorporate this provision under §§ 488.153(c) and 488.184.

*M. Conforming Changes*

In addition to changes already discussed in this preamble, we would make other conforming changes to regulations under Part 431, 442, and 489 as follows:

- In § 431.152, we would make a technical change to remove the reference to § 431.155, as § 431.155 no longer exists in the CFR.
- Section 431.221 has been changed to allow a request for a hearing to be made within 60 days from the date of notice rather than 90.
- Section 431.610 would be updated to remove the reference to § 405.1902 (now codified in part 483) and to add the change in responsibilities for surveying and certifying NFs.
- We propose to delete §§ 488.50, 489.15 and 489.16 for several reasons. Section 488.50 specifies the automatic cancellation clause for provider agreements under Medicare. Under the regulation, if a long-term care facility does not correct its deficiencies by the date specified in a plan of correction or make substantial effort and progress at correcting its deficiencies and submits an acceptable revised plan, its provider agreement would be automatically canceled not later than 60 days after the last day specified in the plan of correction. The cancellation of an agreement 60 days after the last date on a plan of correction is inconsistent with the timeframes established by OBRA '87 and the unannounced survey provisions. For example, the Act refers to continuation of payment to a facility with deficiencies for no longer than 6 months. Therefore, allowing 8 months of payments (6 months to attempt correction plus 60 days) while a deficiency persists would be a violation of the Act. However, allowing only 4 months as a target date on a plan of correction (with an automatic cancellation 60 days later, irrespective of any corrective action between the 4th and 6th months) impedes HCFA or the State's flexibility to continue a provider agreement for the maximum period of continuation of payment permitted by OBRA. The provisions for the automatic cancellation clause would be revised to delete SNFs and ICFs and retain ICFs/MR in §§ 442.109 and 442.110.

In addition, in order to maintain consistency with the OBRA provisions on unannounced surveys and a statutory change for Medicare which removed the 12-month time limit on Medicare agreements with SNFs, we are making the time limited agreements applicable only to ICFs/MR under Medicaid. Time limited agreements for SNFs and ICFs under Medicaid were required by regulations under Medicaid (to conform to the Medicare statutory requirement) in order to have uniform procedures for both the Medicare and Medicaid programs. Congress, through section 2153 of Pub. L. 97–35, removed the 12-month time limit on Medicare agreements with SNFs because experience indicated that the time limited agreements were not necessary to ensure compliance. However, the provision was never removed from the Medicaid regulations. We are, therefore, revising §§ 442.15 and 442.16 to make these sections applicable only to ICFs/MR and deleting §§ 488.50, 489.15 and 489.16.

The sections remaining in part 442, subparts A through C will deal with requirements for ICFs/MR only.

## IV. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and respond to them in the preamble of that rule.

## V. Regulatory Impact Statement

*A. Introduction*

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not considered small entities. However, all long-term care facilities are considered small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a metropolitan statistical area and has fewer than 50 beds.

Although we view the anticipated results as beneficial to the nursing home industry as well as to residents and

State and Federal Governments, we recognize that some of the proposed changes could be controversial and may be responded to unfavorably by some affected facilities.

We also recognize that not all of the potential effects of these proposals can be definitely anticipated, especially in view of their interaction with other Federal, State, and local activities regarding health and safety assurance. In particular, considering the effects of our simultaneous efforts to improve survey and certification activities, through both new survey procedures and instruments and the promulgation of regulations, it is impossible to quantify meaningfully the future effect of all of these proposals on facilities' compliance activities or costs. We also are unable to project the frequency with which deficiencies and termination proceedings may occur in light of the options available in addition to termination.

We do, however, expect adverse findings to be more consistent, better documented, and more effectively acted upon than under the current survey and certification procedures.

It is clear that a large number of small entities would be affected by adoption of these procedures, and a substantial number of those entities could be required to make changes in their operations in order to comply with these proposed health and safety standards.

For these reasons, we have determined that this is a major rule and prepared the following analysis. This analysis, in combination with the rest of the preamble, is consistent with the standards for analysis set forth by both E.O. 12291 and the RFA.

*B. Affected Entities*

As of March 1991, there are 713 SNFs certified for Medicare, 6,469 NFs certified for Medicaid, and 8,662 dually participating facilities certified for both Medicare and Medicaid. The majority (77 percent) of these facilities are proprietary. Approximately 21 percent are nonprofit and 2 percent are government operated.

The major rough indicator that we have available as a measure of facility compliance problems is the number of terminations. This includes both voluntary and involuntary terminations, since voluntary terminations are often precipitated by adverse survey findings. The number of voluntary terminations of SNFs for fiscal years 1987 through 1989 was 100, 96, and 101, respectively. Involuntary terminations for the same period were 60, 63, and 55, respectively. ICFs that voluntarily terminated for the same period were 62, 79, and 114, respectively. Involuntary terminations of ICFs for the same period were 13, 14, and 17, respectively. Current data show that there were still 92 active SNFs with repeat (two surveys) noncompliance for the same conditions of participation as of March 5, 1990. Fifty-eight terminated SNFs showed noncompliance with various conditions for 3 consecutive surveys. However, it should be noted that this proposed rule will not affect facility terminations until the effective date of this rule when it is published in final form.

We expect that the implementation of these proposed regulations as final rules will significantly influence those facilities that have been noncompliant in the past to come into full compliance with the Federal participation requirements. On the other hand, there will be a small percentage of facilities that may be unable to comply with these requirements because they are either poorly managed or have a poor financial structure.

We expect the proposed provisions on repeat deficiencies will increase the incentives for marginal facilities to maintain full ongoing compliance with health and safety standards. The use of irregularly timed unannounced surveys should also serve to reinforce those incentives. For the most part, terminations are avoidable by facilities that are willing and able to effectively allocate their resources to ensure compliance. Thus, these changes may not actually result in a greater number or percentage of terminations. To the extent that those marginal facilities that are most at risk from these provisions are able to come into full compliance, there may even be a reduction in the frequency of adverse actions. Of course, facilities would ordinarily incur some costs associated with compliance efforts. Those costs could be particularly burdensome if they necessitated substantial staffing increases or alterations to a physical plant. Our proposal to eliminate FFP after termination of the provider agreement, during the administrative hearing process provides an incentive for facilities to comply promptly with enforcement actions, but also would add to the burden on facilities.

**C. Effect on State Survey Agencies**

The impact that this proposed rule would have on State survey agencies must be viewed in the context of other ongoing activities related to survey and certification.

On October 1, 1986, HCFA implemented its new long-term care outcome oriented survey process (formerly called PaCS: Patient Care and Services Survey Process). This system reduced the number of standards from over 500 items to 357 items. On October 1, 1990 HCFA implemented a revised outcome oriented survey process that includes the OBRA provision of resident rights review. We expect the proposed 4-point severity and scope scale system to take the same amount of time to conduct a survey due to the addition of resident reviews and resident participation. Thus, we do not expect any significant economic changes.

HCFA employs a unit cost budget methodology that has established a 60-hour onsite survey time for SNFs. A total time of 148 hours for an average sized facility (100 beds) has been recommended based on several past studies conducted by central and regional office personnel. The supplemental hours include preparation, travel time, post-visit documentation, supervisory review, and clerical support. Based on OBRA '87 changes in survey and certification activities, we estimate that an average of 207 hours for a standard survey and 36 additional hours for an extended survey will be required for surveying activities.

Future survey or training courses will be designed to provide the new State agency surveyor with skills of observation as they relate to health facility surveys; and with the knowledge to apply Federal survey requirements in an accurate, consistent, and time efficient manner, thereby reducing costs.

We expect that these changes would not necessitate greater expenditures on the part of State survey agencies. However, they probably would result in a reallocation of resources, particularly geared to more intensive monitoring of marginal facilities. Further, these regulatory changes would contribute to a shift toward more enforcement-oriented roles for State survey agencies and surveyors.

Additionally, we expect some incremental costs to State agencies as a result of hearing appeals on termination and alternative remedies including civil money penalties as previously discussed. Negotiating civil money penalties alone will require additional and specialized staff (i.e, lawyer, accountant or auditor). However we believe that the range of these fines will provide the economic motivation to achieve compliance, thereby minimizing these potential costs.

**D. Effect on Residents**

The immediate benefits of compliance with these proposed regulations would be the increase in overall quality of health care provided in long-term care

facilities. Residents should also become more enthusiastic in light of their new participatory role in the survey process itself. This could result in better mental and/or physical condition.

Potential termination of SNFs and NFs could significantly impact beneficiaries, especially those living in rural areas.

**E. Conclusion**

We fully expect that the great majority of SNFs and NFs currently in marginal or noncompliance status relative to the repeat deficiencies provision will be able to comply with the new rules when they are finalized. However, we expect that facilities unable to comply, whether for financial or other reasons, would not be terminated as quickly under the proposed rules as under the existing regulations because of the additional options provided under these provisions. We believe the benefits of this proposed rule outweigh the problems that may be created for some borderline facilities.

**VI. Information Collection Requirements**

Section 4204(b) and 4214(d) of OBRA '87 provides a waiver of Office of Management and Budget review of information collection requirements for the purpose of implementing the nursing home reform amendments.

**List of Subjects**

*42 CFR Part 431*

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

*42 CFR Part 442*

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements; Safety.

*42 CFR Part 488*

Health facilities, Survey and certification, Forms and guidelines.

*42 CFR Part 489*

Health facilities, Medicare.

42 CFR Chapter IV would be amended as set forth below:

A. Part 431 is amended as follows:

## PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for Part 431 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 431.115 is amended by revising paragraph (c) to read as follows:

**§ 431.115 Disclosure of survey information and provider or contractor evaluation.**

* * * * *

(C) *State plan requirements.* A State plan must provide that the requirements of this section and § 433.175 of this chapter are met.

* * * * *

3. Section 431.151 is revised to read as follows:

**§ 431.151 Scope and applicability.**

This subpart specifies the appeal procedures the State must make available to a nursing facility (NF) or intermediate care facility for the mentally retarded (ICF/MR), for which the State denies or terminates a provider agreement for the Medicaid program or nonrenews an agreement in the case of an ICF/MR. This subpart also specifies the appeal procedures for NFs which disagree with certification of noncompliance which led to the imposition of a remedy. The choice of remedy, including the amount of civil money penalty per day, is not appealable.

4. Section 431.152 is revised to read as follows:

**§ 431.152 State plan requirements.**

The State plan must provide for appeals procedures that, as a minimum, satisfy the requirements of §§ 431.153 through 431.154.

5. Section 431.153 is revised to read as follows:

**§ 431.153 Evidentiary hearing.**

(a) For actions specified at § 431.151, the Medicaid agency must give a provider the opportunity for a full evidentiary hearing as specified under paragraphs (c) and (d) of this section. If the facility requests a hearing, the hearing need not be completed before the proposed effective date of the denial, termination, nonrenewal, or imposition of any remedy except a civil money penalty.

(b) The affected NF, ICF/MR, or dually participating facility, or its legal representative or other authorized official, must file the request for hearing in writing within 60 days from receipt of the notice of the proposed denial, termination, nonrenewal, or imposition of a civil money penalty or other remedies.

(c) Notwithstanding any provision of State law, the State must impose all remedies promptly on any provider of services participating in the Medicaid program—

(1) At the time the State identifies violations of Federal requirements;

(2) After promptly notifying the facility of the deficiencies and impending remedy; and

(3) Except for civil money penalties, during any pending hearing that may be requested by the provider of services.

(d) In the case of a NF, ICF/MR or dually participating facility upon which a civil money penalty or other remedies has been imposed, the State must give notice to the facility and an opportunity for a full evidentiary hearing on the issue of the imposition of a civil money penalty or other remedy as specified under paragraph (e) of this section. Except for civil money penalties, the State must impose all such remedies during any pending hearing.

(e) The hearing must, at a minimum, include—

(1) Timely written notice to the facility of the basis for the decision and disclosure of the statement of deficiencies on which the decision is taken;

(2) An opportunity for the facility to appear before an impartial decision maker to refute the certification of non-compliance upon which the termination, denial, renewal or imposition of other remedy is based.

(3) An opportunity for the facility to be represented by counsel or another representative;

(4) An opportunity for the facility to be represented by counsel or another representative;

(5) An opportunity for the facility or its representatives to be heard in person, to call witnesses, and to present documentary evidence;

(6) A written decision by the impartial decision maker, setting forth the reasons for the decision and the evidence upon which the decision is based.

(f) If an NF or prospective NF is also participating or seeking to participate in Medicare as an SNF, and the basis for the State's denial, termination or nonrenewal of participation in Medicaid is also a basis for denial, termination or nonrenewal of participation in Medicare, the State must advise the facility that—

(1) The appeal procedures specified in Medicare facilities in Part 498 of this chapter apply; and

(2) A final decision entered under the Medicare review procedures will be binding for the purposes of Medicaid participation and Medicare participation in a dually participating facility.

(g) If HCFA determines that an NF or ICF/MR is not in compliance with requirements, thereby resulting in HCFA's imposition of alternative remedies, or if HCFA denies, nonrenews or terminates the provider agreement(s)

of such a facility, and the findings and proposed remedies of HCFA prevail in accordance with § 488.234 of this chapter, the facility is entitled only to the review procedures specified in Part 498 of this chapter, in lieu of the procedures specified in this subpart.

6. Section 431.154 is amended by revising paragraph (a) and adding new paragraphs (c) and (d) to read as follows:

**§ 431.154 Informal reconsideration.**

(a) If the State decides to provide the opportunity for an evidentiary hearing required by § 431.153(a) only after the effective date of a denial, or, in the case of ICFs/MR, nonrenewal, the State must offer the facility an informal reconsideration, to be completed before the effective date.

* * * * *

(c) Determinations to impose civil money penalties or other alternative remedies in NFs, and SNFs in dually participating facilities do not require an informal reconsideration.

(d) Termination of the Medicare agreement of an SNF in a dually participating facility does not require an informal reconsideration.

7. Section 431.221 is amended by revising (d) to read as follows:

**§ 431.221 Request for hearing.**

* * * * *

(d) The agency must allow the applicant or recipient a reasonable time, not to exceed 60 days from the date that notice of action is mailed, to request a hearing.

8. Section 431.610 is amended by adding a new paragraph (a)(3), revising the introductory text in paragraph (g), and revising paragraphs (g) (2) and (3) to read as follows:

**§ 431.610 Relations with standard-setting and survey agencies.**

(a) * * *

(3) Section 1919(g)(1)(A) of the Act, concerning responsibilities of the State survey agency for certifying the compliance of non-State operated nursing facilities with Federal requirements for participation in the State's Medicaid program.

* * * * *

(g) *Responsibilities of survey agency.* The plan must provide that, in certifying NFs and ICFs/MR the survey agency designated under paragraph (e) of this section will—

* * * * *

(2) Take necessary action to achieve compliance or to withdraw certification in accordance with part 488 of this chapter, subparts D and E of this part; and

(3) Have qualified personnel perform on-site inspections periodically as appropriate based on the timeframes in the correction plan and—

(i) At least once during each certification period or more frequently if there is a compliance question; and

(ii) For non-State operated SNF and NFs, within the timeframes specified in § 488.158 of this chapter.

* * * * *

## PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

B. Part 441 is amended as follows:

1. The authority citation for Part 441 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.11 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 441.11 Continuation of FFP for institutional services.**

(a) *Basic conditions for continuation of FFP.* FFP may be continued for up to 30 days after the executive date of termination or expiration of a provider agreement, if the following conditions are met:

(1) The Medicaid payments are for recipients admitted to the facility before the effective date of termination or expiration.

(2) The Medicaid agency is making reasonable efforts to transfer those recipients to other facilities or to alternate care.

(b) *When the 30-day period begins.* The 30-day period begins on either of the following:

(1) The effective date of termination or nonrenewal of the facility's Medicare provider agreement by HCFA, or of its Medicaid provider agreement as instructed by HCFA.

(2) The effective date of termination or nonrenewal of the facility's Medicaid provider agreement by the Medicaid agency on its own volition.

* * * * *

## PART 442—STANDARDS FOR PAYMENT FOR NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

C. Part 442 is amended as follows:

1. The authority citation for part 442 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise indicated.

2. The heading for part 442 is revised as set forth above.

3. The headings for §§ 442.15, 442.16 and 442.110 are revised to read as follows:

**§ 442.15 Duration of agreement: ICFs/MR.**

**§ 442.16 Extension of agreement: ICFs/MR.**

* * * * *

**§ 442.110 Certification period for ICFs/MR with standard level deficiencies.**

* * * * *

4. Section 442.20 is removed and reserved.

5. Section 442.40 is removed and reserved.

6. Section 442.42 is amended by revising paragraph (a) to read as follows:

**§ 442.42 FFP under a retroactive provider agreement following appeal.**

(a) *Basic rule.* Except as specified in paragraph (b) of this section, if an NF or ICF/MR is upheld on appeal from termination or nonrenewal of a provider agreement, and the State issues a retroactive agreement, FFP is available beginning with the retroactive effective date, which must be determined in accordance with § 442.13.

* * * * *

7. The heading for section 442.109 is revised to read as follows:

**§ 442.109 Certification period for ICFs/MR: General provisions.**

8. The heading for section 442.110 and paragraph (a) are revised to read as follows:

**§ 442.110 Certification period for ICFs/MR with standard-level deficiencies.**

(a) Facilities with deficiencies may be certified under § 442.105 for the period specified in either paragraph (b) or (c) of this section. However, ICFs/MR with deficiencies that may require more than 12 months to correct may be certified under 442.112.

* * * * *

9. Section 44.111 is removed and reserved.

**Subchapter E—Standards and Certification**

## PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

D. Part 488 is amended as follows:

1. The heading for part 488 is revised as set forth above.

2. The authority citation for part 488 is revised to read as follows:

**Authority:** Secs. 1102, 1128, 1128A, 1814, 1819, 1861, 1863, 1864, 1865, 1866, 1871, 1880, 1881, 1883, 1902, and 1919 of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1320a–7a, 1395f, 1395i–3, 1395x, 1395z, 1395aa,

1395bb, 1395cc, 1395hh, 1395qq, 1395rr, 1395tt, 1396a, and 1396r).

**§ 488.50 [Removed and Reserved]**

3. In Subpart B, § 488.50 is removed and reserved.

4. A new subpart E is added to read as follows:

**Subpart E—Survey and Certification of Long-Term Care Facilities**

Sec.
488.150 Statutory basis.
488.151 Definitions.
488.153 State plan requirement.
488.155 Standard surveys.
488.157 Unannounced surveys.
488.158 Survey frequency.
488.160 Extended survey.
488.162 Consistency of survey results.
488.164 Survey teams.
488.166 Validation surveys.
488.168 Inadequate survey performance.
488.170 Sanctions for inadequate survey performance.
488.175 Disclosure of survey information.
488.180 Certification of compliance and noncompliance.
488.182 Investigation of complaints of violations: Investigation and monitoring.
488.184 Educational programs.
488.185 Action on complaints of neglect, abuse, and misappropriation of property.

## Subpart E—Survey and Certification of Long-Term Care

**§ 488.150 Statutory basis.**

Sections 1819 and 1919 of the Act establish requirements for surveying SNFs and NFs to determine whether they meet the requirements for participation in the Medicare and Medicaid programs.

**§ 488.151 Definitions.**

As used in this subpart—

*Abbreviated standard survey* means a partial survey that focuses on a specific participation requirement or requirements.

*Abuse* means physical, psychological, or verbal interaction with a SNF or NF resident, including but not limited to ill-treatment, physical violation, and/or otherwise disregard of an individual which could cause or result in mild to severe, temporary, or permanent mental or physical injury, harm, or, ultimately, death.

*Deficiency* means a SNF's or NF's noncompliance with or failure to meet a participation requirement specified in the Act or in Part 483, Subpart B of this chapter.

*Dually participating facility* means a facility that has a provider agreement in both the Medicare and Medicaid programs.

*Facility* means a SNF or NF, or a distinct part of a SNF or NF.

*Licensed health professional* means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

*Misappropriation of resident property* means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a facility resident's belongings or money, or both, without the resident's consent.

*Neglect* means a failure, through inattentiveness, carelessness, or omission of an individual to provide timely, consistent, and safe services, treatment and care to a facility resident.

*NF* means a Medicaid nursing facility.

*Nurse aide* means any individual who provides nursing or nursing related services to residents in a facility and who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide such services without pay.

*Substandard care* means care furnished in a facility that has one or more deficiencies in any area with a severity level of 3 or 4, regardless of scope; or a level 2 in severity with a level 3 or 4 in scope in the quality of care requirements for long term care facilities.

**§ 488.153 State plan requirement.**

(a) A State plan must provide that the requirements of this subpart and subpart F of this part are met, to the extent that those requirements apply to the Medicaid program.

(b) A State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to medical assistance under this title. For purposes of section 1903(a)(7) of the Social Security Act, proper expenses incurred by a State in carrying out such a program are considered to be expenses necessary for the proper and efficient administration of the State plan under this title.

(c) A State must conduct periodic educational programs for the staff and residents (and their representatives) of NFs in order to present current regulations, procedures, and policies under this subpart and subpart F of this part.

(d) A State—

(1) Must establish the remedies of denial of payment for new admissions, civil money penalty, appointment of temporary management and authority to close a facility or transfer residents in emergency situations and State monitoring in accordance with sections 1819(h)(2)(E)(ii) and 1919(h)(2)(D)(ii) of the Act; or

(2) May establish additional remedies or remedies alternative to the remedies specified at section 488.206 other than denial of payment for new admissions, State monitoring and termination for non-State operated Medicaid facilities

(3) Alternative remedies, in the Secretary's judgment, must be as effective in deterring noncompliance and correcting deficiencies as the remedies specified at section 488.206.

**§ 488.155 Standard surveys.**

(a) For each SNF and NF, the State survey agency must conduct standard surveys that include all of the following

(1) A case-mix stratified sample of residents;

(2) A survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment;

(3) An audit of written plans of care and residents' assessments to determine the accuracy of such assessments and the adequacy of such plans of care; and

(4) A review of compliance with residents' rights requirements set forth in Subpart B of Part 483 of this chapter.

(b) The State survey agency's failure to follow the procedures set forth in this section will not invalidate otherwise legitimate determinations that a facility's deficiencies exist.

**§ 488.157 Unannounced surveys.**

(a) *Basic rule.* All surveys must be unannounced.

(b) *Review of survey agency's scheduling and surveying procedures.*

(1) HCFA reviews on an annual basis each State survey agency's scheduling and surveying procedures and practices to ensure that survey agencies avoid giving notice of a survey through the scheduling procedures and the conduct of the surveys.

(2) HCFA takes corrective action in accordance with the nature and complexity of the problem when survey agencies are found to have notified a SNF or NF through their scheduling or procedural policies. Sanctions for inadequate survey performance are in accordance with § 488.170.

(c) *Civil money penalties.*

An individual who notifies a SNF or NF, or causes a SNF or NF to be notified, of the time or date on which a standard survey is scheduled to be conducted is subject to a Federal civil money penalty not to exceed $2,000.

**§ 488.158 Survey frequency.**

(a) *Basic period.*

The survey agency must conduct a standard survey of each SNF and NF not later than 15 months after the date of the previous standard survey.

(b) *Average interval.*

(1) The statewide average interval between standard surveys must be 12 months or less, computed in accordance with paragraph (d) of this section.

(2) HCFA takes corrective action in accordance with the nature and complexity of the State's failure to ensure that survey agencies meet the 12-month average interval requirement. If the provider is a Medicaid facility, HCFA reduces FFP in accordance with § 488.170. Corrective action may include one or both of the following:

(i) Technical assistance.

(ii) Inservice training.

(c) *Other surveys.*

The survey agency may conduct a survey as frequently as necessary to—

(1) Determine whether a facility complies with the participation requirements; and

(2) Confirm that the facility has corrected deficiencies previously cited.

(d) *Computation of average interval.*

The survey agency computes the average interval at the end of each Federal fiscal year by comparing the last day of the most recent standard survey for each participating facility to the last day of that facility's previous standard survey. (Special purpose surveys are included in the computation if they were standard surveys, but not if they were abbreviated surveys.)

(e) *Special surveys.*

(1) The survey agency may conduct a standard or an abbreviated standard survey to determine whether certain changes have caused a decline in the quality of care furnished by a SNF or an NF, within 60 days of a change in the following:

(i) Ownership;

(ii) Entity responsible for management of a facility (management firm);

(iii) Nursing home administrator; or

(iv) Director of nursing.

(2) The survey agency must conduct a standard or an abbreviated standard survey to investigate complaints of violations of requirements by SNFs and NFs.

**§ 488.160 Extended survey.**

(a) *Purpose of survey.*

The purpose of an extended survey is to identify the policies and procedures that caused the facility to furnish substandard care.

(b) *Scope of extended survey.*

An extended survey includes all of the following:

(1) Review of a larger sample of resident assessments than the sample used in a standard survey.

(2) Review of the staffing and in-service training.

(3) If appropriate, examination of the contracts with consultants.

(4) A review of the policies and procedures related to the requirements for which deficiencies exist.

(5) Investigation of any participation requirement at the discretion of the survey agency.

(c) *Timing and basis for survey.*

(1) The survey agency must conduct an extended survey not later than 2 weeks after completion of a standard survey which found that the facility had furnished substandard care.

(2) In accordance with sections 1819(g)(2)(B)(i) and 1919(g)(2)(B)(i) of the Act, the survey agency or HCFA has the discretion to conduct an extended survey or partial extended survey at any facility.

**§ 488.162 Consistency of survey results.**

The survey agency must (and HCFA will) conduct ongoing studies and analyses and implement new programs to measure and reduce inconsistencies in survey results such as validation of surveyor findings, and in the application of enforcement remedies.

**§ 488.164 Survey teams.**

(a) *Team composition.*

(1) Surveys must be conducted by a multidisciplinary team of professionals, which must include a registered nurse.

(2) Either of the following circumstances disqualifies a surveyor for surveying a particular facility:

(i) The surveyor currently serves or, within the past two years, served as a member of the staff of, or as a consultant to that facility.

(ii) The surveyor or a member of his or her immediate family has any financial interest or any direct or indirect ownership interest in that facility.

(b) *HCFA training.*

HCFA provides comprehensive training to surveyors, including at least the following:

(1) Application and interpretation of regulations for SNFs and NFs.

(2) Techniques and survey procedures for conducting standard and extended surveys.

(3) Techniques for auditing resident assessments and plans of care.

(c) *Required surveyor training.*

(1) The survey agency may not permit an individual to serve as a member of a survey team unless the individual has successfully completed a training and testing program on the conduct of a standard and extended survey including the auditing of resident assessments and plans of care, and in survey and certification procedures.

(2) The survey agency must have a mechanism to identify and respond to in-service training needs of the surveyors.

(d) The survey agency may permit an individual, prior to the completion of the training program, to observe onsite survey activities under the supervision of a surveyor who has successfully completed the required program.

**§ 488.166 Validation surveys.**

(a) *Sample validations.*

HCFA conducts validation surveys of a representative sample of State-surveyed SNFs and NFs each year to determine the adequacy of the State survey—

(1) In at least 5 percent of the SNFs and NFs surveyed by the State, but in not less than 5 facilities in each State;

(2) Separate but concurrent with, or immediately after the State survey, as scheduling permits, but in all cases within 60 days of the date of the State survey;

(3) Unannounced to the facility prior to the survey; and

(4) Using the HCFA protocol prescribed for use by the survey agency.

(b) *Focused review.*

HCFA may conduct a validation survey of a SNF or NF whenever it has reason to question a facility's compliance or noncompliance with any requirement or any time at HCFA's discretion.

(c) *Appeals.*

The appeals procedures applicable to certifications of noncompliance based on validation surveys are set forth at § 488.180(e).

**§ 488.168 Inadequate survey performance.**

HCFA considers survey performance to be inadequate if the State survey agency failed to—

(a) Conduct surveys in accordance with the requirements of this subpart;

(b) Use Federal standards, protocols, and the forms, methods and procedures specified by HCFA in manual instructions; or

(c) Identify an immediate or non-immediate jeopardy situation, substandard care, or other deficiencies.

Inadequate survey performance does not relieve a SNF or NF of its obligations to meet all requirements for program participation, nor does it invalidate adequately documented deficiencies.

**§ 488.170 Sanctions for inadequate survey performance.**

(a) HCFA will assess the performance of the State's survey and certification program annually.

(b) When a State's performance is inadequate, HCFA takes the following action:

(1) For Medicaid facilities HCFA will—

(i) Reduce FFP as specified in paragraph (c) of this section, and if appropriate,

(ii) Provide for training of survey teams.

(2) For Medicare facilities HCFA will—

(i) Specify the inadequacy to the survey agency;

(ii) Require a plan of correction;

(iii) Provide for training of survey teams;

(iv) Provide technical assistance on scheduling and procedural policies;

(v) Provide HCFA-directed scheduling; or

(vi) Initiate action to terminate the agreement between the Secretary and the State under section 1864 of the Act, either in whole or in part.

(c) *Reduction of FFP.*

In reducing FFP for inadequate survey performance, HCFA uses the formula specified in section 1919(g)(3)(C) of the Act, that is 33 percent multiplied by a fraction—

(1) The numerator of which is equal to the total number of residents in the NFs that HCFA found to be noncompliant during a validation survey for that quarter; and

(2) The denominator of which is equal to the total number of residents in the NFs on which HCFA conducted validation surveys during that quarter.

(d) *Appeal of FFP reduction.*

When a State is dissatisfied with HCFA's determination to reduce FFP, the State may appeal the determination to the Departmental Appeals Board, using the procedures specified in 45 CFR Part 16.

**§ 488.175 Disclosure of survey information.**

(a) As provided in sections 1819(g)(5) and 1919(g)(5) of the Act, the following information must be made available to the public by the State or HCFA for all surveys and certifications of skilled nursing facilities and nursing facilities:

(1) Statements of deficiencies and providers' comments;

(2) Approved plans of correction;

(3) Statements that the facility refused to submit an acceptable plan of correction or refused to comply with the conditions of imposed remedies,

(4) Final appeal results;

(5) Notice of termination of a facility;

(6) Medicare and Medicaid cost reports;

(7) Names of individuals with direct or indirect interest in a SNF or NF; and

(8) Names of individuals with direct or indirect interest in a SNF or NF who have been found guilty by a court of law of a criminal offense in violation of Medicare or Medicaid law.

(b) HCFA or the State will charge the public for the cost of retrieval, reproduction, and mailing information in accordance with the fees and charges in § 401.140 of this chapter.

(c) The public may request the information orally or in writing.

(d) The time periods for responding to requests for information are as follows:

(1) HCFA or the survey agency responds within 10 days with the requested information (including cost reports) if information is releasable and already available for release.

(2) If the requested information is not releasable or not yet available for release, the disclosing entity must provide an interim response within 10 working days of the request which explains the status of the information; and

(3) The disclosing agency must make available to the public information concerning all surveys and certifications of SNFs and NFs, including statements of deficiencies and approved plans of correction, within 14 calendar days after such information is made available to those facilities.

(e) The State must provide the State's long-term care ombudsman with—

(1) Any report of facility noncompliance;

(2) Any report of adverse actions specified at § 488.206 imposed on a facility;

(3) Any written response by the provider; and

(4) Results of appeals.

(f) HCFA or the State will provide notice of approved nurse waivers granted under sections 1819(b)(4)(C)(ii) and 1919(b)(4)(C)(ii) of the Act to the—

(1) State's long-term care ombudsman; and

(2) State's mentally ill and mentally retarded protection and advocacy system.

(g) Not later than 10 working days after HCFA or the State grants a nurse waiver to a facility in accordance with sections 1819(b)(4)(C)(ii) and 1919(b)(4)(C)(ii) of the Act, the SNF or NF must provide residents (or, where appropriate, a resident's guardian or legal representative) and a resident's immediate family notice that such a waiver has been granted.

(h) To provide for the notice to physicians required under sections 1819(g)(5)(c) and 1919(g)(5)(c), not later than 10 working days after receiving a notice of substandard quality of care, a SNF or NF must provide the State with a list of each Medicare and Medicaid resident in the facility and the name address of his or her attending physician. Failure to disclose the information timely will result in termination or alternative remedies being imposed.

(i) Not later than 30 calendar days after a SNF or NF receives the notice of the existence of substandard quality of care, the State must provide written notice of the noncompliance to—

(1) The attending physician of each Medicare and Medicaid resident in the facility; and

(2) The State board responsible for licensing the facility's administrator.

(j) The State must provide access to any survey and certification information incidental to a SNF's or NF's participation in Medicare or Medicaid upon written request by the State Medicaid fraud control unit established under Part 1002, Subpart C, of this title, consistent with current State laws.

**§ 488.180 Certification of compliance or noncompliance.**

(a) *General rules.*

(1) *Responsibility for certification.*

(i) Except in the case of a validation survey, the State survey agency surveys all facilities for compliance or noncompliance with requirements for long term care facilities.

(A) The State certifies the compliance or noncompliance of non-State operated NFs. Regardless of the State entity doing the certification, it is final, except in the case of a complaint or validation survey conducted by HCFA, or HCFA review of the State's findings.

(B) HCFA certifies the compliance or noncompliance of all State-operated facilities.

(C) The State survey agency certifies the compliance or noncompliance of a non-State operated SNF, subject to the approval of HCFA.

(D) HCFA and the State certify compliance or noncompliance for a dually participating SNF/NF. In the case of a disagreement between HCFA and the State, the certification of noncompliance takes precedence over that of compliance.

(ii) In the case of a validation survey, the Secretary's determination as to the facility's noncompliance is binding, and takes precedence over a certification of compliance resulting from the State survey.

(2) *Basis for certification.*

(i) Certification by the State is based on the survey agency findings.

(ii) Certification by HCFA is based on either the survey agency findings or, in the case of a validation survey, or HCFA's own survey findings.

(b) *Effect of certification.*

(1) *Certification of compliance.*

A certification of compliance constitutes a determination that the facility is eligible to participate in Medicaid as a NF, or in Medicare as a SNF, or in Medicare and Medicaid as a dually participating facility.

(2) *Certification of noncompliance.*

A certification of noncompliance requires denial of participation for prospective providers and enforcement action for current providers in accordance with Subpart E of this part. Enforcement action may involve any of the following:

(i) Termination of any Medicare or Medicaid provider agreements that are in effect.

(ii) Application of alternative remedies instead of, or in addition to, termination procedures, to continue until the effective date of the termination or until compliance has been achieved.

(c) *Notice of certification of compliance and resulting action.*

The notice of certification of noncompliance and resulting action is issued by HCFA, except when the State is taking the action for a non-State operated NF.

(d) *Content of notice of certification of noncompliance.*

The notice of certification of noncompliance includes information on any or all of the following:

(1) Nature of noncompliance.

(2) Any alternative remedies to be imposed under Subpart E of this part.

(3) Any termination or denial of participation action to be taken under this part.

(4) Any appeal rights available to the facility under this part.

(5) Timeframes to be met by the provider and certifying agency with regard to each of the enforcement actions or appeal procedures addressed in the notice.

(e) *Appeals.*

(1) Notwithstanding any provision of State law, the State must impose remedies promptly on any provider of services participating in the Medicaid program—

(i) At the time the State identifies violations of Federal requirements;

(ii) After promptly notifying the facility of the deficiencies and impending remedy; and

(iii) Except for civil money penalties, during any pending hearing that may be requested by the provider of services.

(2) The provisions of part 498 of this chapter apply when the provider requests a hearing on HCFA's denial of participation, termination of provider agreement, or the Secretary's certification of noncompliance leading to an enforcement remedy, except State monitoring, against all State-operated facilities, as a result of a HCFA validation survey or HCFA's review of the State's survey findings and for non-State operated SNF and dually participating SNF/NFs. The State must take identical enforcement action, which is also subject to these appeal procedures.

(3) The provisions of part 431 of this chapter apply when the provider requests a hearing on the State's denial of participation, termination of provider agreement, or certification of noncompliance leading to an alternative remedy, except State monitoring, against a non-State Medicaid NF.

(f) *Provider agreements.*

HCFA or the Medicaid agency may execute a provider agreement when a prospective provider meets all the requirements for participation for a SNF or NF, respectively.

(g) *Special rules for Federal validation surveys.*

(1) HCFA may make independent certifications of a NF's, SNF's, or dually participating facility's noncompliance based on a HCFA validation survey.

(2) HCFA issues the notice of actions affecting facilities for which HCFA did a validation survey.

(3) For SNFs and State-operated facilities, HCFA's certification of noncompliance takes precedence over any current survey agency certification of compliance, and HCFA's choice of remedies is binding.

(4) For non-State operated NFs and non-State operated dually participating facilities, any disagreement between the HCFA certification or recommended remedies and survey agency certification or recommended remedies are resolved in accordance with § 488.234.

(5) Either HCFA or the survey agency, at HCFA's option, revisits the facility to ensure that corrections are made.

**§ 488.182 Investigation of complaints of violations: Investigations and Monitoring.**

(a) The State survey agency must establish procedures and maintain adequate staff to investigate complaints of violations of participation requirements.

(b) The State survey agency must conduct onsite monitoring on an as necessary basis when—

(1) A facility is not in compliance with the requirements and is in the process of correcting deficiencies;

(2) A facility has corrected deficiencies and verification of continued compliance is needed; or

(3) The survey agency has reason to question the compliance of the facility with requirements of participation.

(c) A State may use a specialized team, which includes an attorney, auditor and appropriate health professionals, to identify, survey, gather and preserve evidence, and administer remedies to noncompliant facilities.

**§ 488.184 Educational programs.**

A State must conduct periodic educational programs for the staff and residents (and their representatives) of SNFs and NFs in order to present current regulations, procedures, and policies under this subpart and Subpart F of this part.

**§ 488.185 Action on complaints of neglect, abuse, and misappropriation of property.**

(a) *Investigation.* The State must review all allegations and, if there is reason to believe, either through oral or written evidence that the abuse, neglect or misappropriation of property occurred, investigate such allegations.

(b) *Source of complaints.* The State must investigate complaints regardless of their source.

(c) *Notification.* If the State determines based on oral or written evidence that the abuse, neglect or misappropriation of property occurred, it must notify by mail the individual implicated in the investigation of the—

(1) Nature of the allegation(s);

(2) Date and time of the occurrence;

(3) Right to a hearing;

(4) Survey agency's intent to report the substantiated findings, once the individual has had the opportunity for a hearing, to the nurse aide registry or appropriate licensure authority; and

(5) Fact that the individual's failure to request a hearing in writing within 30 days from the date of the notice will result in the survey agency reporting the substantiated findings to the nurse aide registry.

(d) *Conduct of hearing.*

(1) The State must complete the hearing and the hearing record within 120 days from the day it receives the request for a hearing.

(2) The State must hold the hearing at a place and time convenient for the individual.

(e) A State must not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(f) *Report of findings.* If the finding is that the individual has neglected or abused a resident or misappropriated resident property or if the individual waives the right to a hearing, the State must report the findings to—

(1) The individual;

(2) The administrator of the facility that employs the individual; and

(3) The licensing authority for staff other than nurse aides.

(g) *Report of findings to the nurse aide registry.* The survey agency, which may not delegate this responsibility, must report to the nurse aide registry within 10 working days of the finding the following information:

(1) The finding made as a result of the hearing;

(2) Any statement by the individual disputing the finding;

(3) That the individual waived the right to a hearing, if applicable; and

(4) Any failure by the individual to respond to the allegation.

(h) *Required content of registry records.* The survey agency must retain in accordance with State recordkeeping requirements—

(1) Records of occurrence;

(2) Investigative reports;

(3) Hearing findings; and

(4) Waivers of hearing rights.

5. A new subpart F is added to read as follows:

**Subpart F—Remedies for Long-Term Care Facilities with Deficiencies**

Sec.
488.200 Statutory basis.
488.201 Definitions.
488.202 General provisions.
488.204 Determination of remedies.
488.206 Available remedies.
488.208 Choice of remedies.
488.210 Action when there is immediate and serious threat.
488.212 Action when there is no immediate and serious threat.
488.214 Action when there is reported noncompliance.
488.215 Temporary management.
488.217 Denial of payment for all new admissions.
488.222 State monitoring.
488.224 Directed plan of correction.
488.226 Closure of a Medicaid facility and transfer of residents.
488.228 Alternative or additional State remedies.
488.230 Civil money penalties.
488.232 Continuation of payments to a facility with deficiencies.
488.234 State and Federal disagreements involving findings not in agreement in situations where there is no immediate and serious threat.
488.236 Duration of remedies.
488.238 Termination of provider agreement.
488.240 Transfer of residents.

## Subpart F—Remedies for Long-Term Care Facilities with Deficiencies

### § 488.200 Statutory basis.

Sections 1819(h) and 1919(h) of the Act specify remedies that may be used by the Secretary or the State respectively when a SNF or an NF is out of compliance with the requirements for participation in the Medicare and Medicaid programs. These sections also provide for ensuring prompt compliance and specify that these remedies are in addition to any others available under State or Federal law, and, except for civil money penalties, are imposed prior to the conduct of a hearing.

### § 488.201 Definitions.

As used in this subpart—

*Immediate family* means husband or wife; natural or adoptive parent, child or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of grandparent or grandchild.

*Immediate jeopardy* or *immediate and serious threat* means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements of participation is at a severity level of 3 or 4, regardless of scope, and has already caused, or is likely to cause, at any time, serious injury, harm, impairment, or even death, to residents of the facility.

*New admission* means a resident who is admitted to the facility on or after the effective date of a denial of payment remedy and, if previously admitted, has been discharged before that effective date. Residents admitted before the effective date of the denial of payment, and taking temporary leave, are not considered new admissions, nor subject to the denial of payment.

*Plan of correction* means a plan developed by the facility and approved by the certifying agency which describes the actions the facility will take to correct deficiencies and specifies the date by which those deficiencies will be corrected.

### § 488.202 General provisions.

(a) *Purpose.*

The purpose of remedies is to encourage prompt, rapid compliance with program requirements so as to protect residents from actual or potential harmful outcomes resulting from deficiencies.

(b) *Basis for imposition of remedies.*

(1) The State or HCFA decides to apply one or more remedies on the basis of deficiencies found during surveys conducted by HCFA or by the survey agency. Survey findings are reported to the State and HCFA with recommendations for corrective action.

(2) The State or HCFA may apply one or more of the remedies specified in § 488.206 instead of terminating the provider agreement, or in addition to termination procedures, to continue until the effective date of the termination.

(c) *Number of remedies.*

HCFA or the State may apply a separate remedy for each deficiency, or a single remedy for all deficiencies that are interrelated and subject to correction by the same remedy.

(d) *Plan of correction requirement.*

Regardless of which remedy or remedies are applied, each facility that is out of compliance with a program requirement, except deficiencies at a scope and severity level of 1, must submit a plan of correction for approval by HCFA or the survey agency.

(e) *Disagreement regarding remedies.*

If the State and HCFA disagree on the decision to impose remedies, the disagreement is resolved in accordance with § 488.234.

(f) *Notification requirements.*

Except when the State is taking the action for a non-State operated NF, HCFA gives the provider notice of, the reasons for, and the effective date of the remedy. For all remedies specified in § 488.206, the notice must be given at least 2 days, but not more than 4 days, before the effective date of the remedy in immediate and serious threat situations, and at least 15 days before the effective date in non-immediate and serious threat situations.

### § 488.204 Determination of remedies.

(a) *Severity and scope scale guides.*

In order to determine the seriousness of deficiencies, the survey team applies the severity and scope scale guides specified in paragraphs (b) and (c) of this section.

(b) *Severity scale.*

The four levels of the severity scale are as follows:

(1) *Level 1.* Any deficiency with respect to requirements for long term care facilities that does not meet the criteria for severity levels 2, 3, or 4.

(2) *Level 2.* Either a negative outcome or resident rights violation has occurred, or, in the survey team's judgment, the

ability of the individual to achieve the highest practicable physical, mental, or psychosocial well-being has been compromised, or both.

(3) *Level 3.* Potential physical harm, which could cause serious harm, impairment or death. In the survey team's judgment, there is a recognizable health or safety hazard, which if left unabated, is likely to cause serious harm, impairment or death.

(4) *Level 4.* Actual physical harm, which has caused serious impairment or death. Life threatening harm, severe impairment, or death has occurred.

(c) *Scope Scale.*

The four levels of the scope scale are as follows:

(1) *Level 1*—Isolated. The survey team might conclude that a deficiency is isolated if its perception is such that it believed the deficiency to exist only in a very limited number of cases.

(2) *Level 2*—Occasional. The survey team might conclude that a deficiency is occasional if in its combined judgment the deficiency is identified in a number of cases, but which in its view does not appear to reflect a pattern of facility behavior.

(3) *Level 3*—Pattern. The survey team might conclude that a pattern exists where, in its judgment, there are a sufficient number of repeated observations that it is likely that the deficiency might exist in cases not reviewed by the team.

(4) *Level 4*—Widespread. The survey team might conclude that a deficiency exists in sufficient number that, in its judgment, the deficiency represents a systemic or pervasive practice of the facility.

**§ 488.206 Available remedies.**

(a) *General.* In addition to termination of the provider agreement, the following remedies are available:

(1) Temporary management;

(2) Denial of payment including—

(i) Denial of payment for all new admissions;

(ii) Denial of payment for all new admissions in certain diagnostic categories or requiring specialized care; and

(iii) Denial of all payment (to be imposed only by HCFA) to facilities, for Medicare and to States, for Medicaid.

(3) Directed plan of corrections;

(4) State monitoring; and

(5) Civil money penalties.

(b) *Non-State operated Medicaid-only and dually participating facilities.* In addition to the remedies specified in paragraph (a) of this section, the following remedies are also available for non-State operated facilities that participate only in Medicaid or non-State operated dually participating facilities:

(1) Closure of the facility and transfer of residents; and

(2) Additional or alternative State remedies.

(c) *State plan requirement.* If a State wishes to use additional or alternative remedies, it must specify those remedies in the State plan, and demonstrate to HCFA's satisfaction that those remedies are as effective as the remedies listed in paragraph (a) of this section, for deterring noncompliance and correcting deficiencies. Whatever other additional or alternative remedies the State establishes, it must, at least, establish denial of payment for new admissions, and State monitoring.

**§ 488.208 Choice of remedies.**

(a) *General rule.*

In order to determine the appropriate remedy or remedies, HCFA follows (and the survey agency must follow) the procedures set forth in this section.

(b) *Initial assessment.*

The survey agency or HCFA assesses individual deficiencies or clusters of deficiencies first according to the following initial factors:

(1) The presence or absence of immediate and serious threat to resident health and safety;

(2) The severity of the deficiency; and

(3) The scope of the deficiency.

(c) *Other factors considered.*

Following the initial assessment, HCFA and the survey agency may consider the following secondary factors:

(1) The relationship of one deficiency or group (cluster) of deficiencies to other deficiencies; and

(2) The facility's prior compliance history in general and specifically with reference to the cited deficiencies.

(d) *Selection of remedies.*

(1) The selection of a remedy is based on the nature of the deficiencies or cluster of deficiencies.

(2) Sections 488.210 and 488.212 set the rules for imposition of particular remedies in specified circumstances. Regardless of which remedy or remedies are imposed, each facility that is out of compliance with a program requirement must submit a plan of correction for approval by HCFA or the survey agency, except in the case of deficiencies that HCFA or the State determines to be at a scope and severity level of 1.

(3) The choice of remedy, by either HCFA or the State, including the manner in which HCFA or the State uses the scope and severity scales specified in § 488.204 is not subject to review as part of the appeals process set forth in Parts 431 or 498 of this chapter.

**§ 488.210 Action when there is immediate and serious threat.**

(a) If there is an immediate and serious threat to residents' health and safety, (severity level of 3 or 4 regardless of scope) the State must (and HCFA does) either terminate the provider agreement within 23 days of the last date of the survey or appoint a temporary manager to remove the immediate and serious threat. The rules for appointment of a temporary manager in an immediate and serious threat situation are as follows:

(1) The State must (and HCFA does) notify the facility that a temporary manager is being appointed.

(2) If the facility does not accept the temporary manager or a temporary manager will not be available within 10 days of the last day of survey, the State must (and HCFA does) terminate the provider agreement within 23 days of the last day of survey if the immediate and serious threat is not removed.

(3) If the facility accepts the temporary manager, the State must (and HCFA does) notify the facility that, unless it removes all immediate and serious threat deficiencies, its provider agreement will be terminated effective on the 23rd day after the date of appointment of the temporary manager.

(4) The State must (and HCFA does) terminate the provider agreement on the 23rd day after the appointment of a temporary manager if the immediate and serious threat has not been removed.

(b) HCFA or the State may also impose other remedies, as appropriate.

(c)(1) In a Medicaid NF or dually participating facility, if either HCFA or the State finds that a facility's deficiencies pose an immediate and serious threat to resident health and safety HCFA or the State must notify the other of such a finding.

(2) HCFA will or the State must—

(i) Take immediate action to remove the jeopardy and correct the deficiencies through temporary management; or

(ii) Terminate the facility's provider participation under the State plan. If this is done, HCFA will also terminate the facility's provider participation in Medicare if it is a dually participating facility.

(d) The State must provide for the safe and orderly transfer of residents when the facility is terminated.

(e) The State must notify attending physicians and licensure boards of the immediate and serious threat, as specified in § 488.175(i).

**§ 488.212 Action when there is no immediate and serious threat.**

(a) *General rules.*

(1) If a facility's deficiencies do not pose immediate jeopardy to residents' health and safety, HCFA or the State may allow the facility to continue to participate for 6 months from the date of the survey if—

(i) The State finds that it is more appropriate to impose alternative remedies than to terminate the facility;

(ii) The State survey agency has submitted a plan of correction approved by HCFA; and

(iii) The facility in the case of a Medicare SNF or the State in the case of a Medicaid NF agrees to repay to the Federal government payments received if corrective action is not taken in accordance with the approved plan of correction.

(2) If a facility does not meet the eligibility criteria for continuation of payment under paragraph (a)(1) of this section, HCFA will and the State must terminate the facility's provider agreement.

(3) If any deficiency at any severity or scope level remains uncorrected within 90 calendar days after the last day of survey, HCFA will and the State must deny payment for new admissions.

(4) HCFA terminates provider agreements for SNFs and NFs, and stops FFP for NFs for which participation was continued under paragraph (a)(1) of this section, if cited deficiencies are not corrected within 6 months of the last day of the survey.

(b) *Specific rules: Low severity and scope levels.*

(1) If both the severity level and the scope level are 1, a deficiency still exists, but no alternative remedies are imposed or plan of correction is required as long as correction is achieved within 90 calendar days from the last day of survey.

(2) The State survey agency must give the facility a summary of the deficiencies.

(3) If the State survey agency identifies a recurrence of these deficiencies at the next standard survey, HCFA or the State imposes one or more remedies specified at § 488.206 due to the persistence of the deficiencies over time.

(c) *Specific rules: All other severity and scope levels.*

(1) If the severity level is 1 and the scope is 2, 3, or 4, the State must (and HCFA does) require a plan of correction and may impose one or more remedies specified at § 488.206.

(2) If the severity level is 2 and the scope level is 1 or 2, the State must (and HCFA does) impose one or more of the remedies specified at § 488.206 paired with a plan of correction.

(3) If the severity level is 2 and the scope level is 3 or 4 in quality of care, the State must (and HCFA does) impose one or more of the remedies specified at § 488.206 paired with a plan of correction. The State must notify the attending physician of each resident to which such finding is made as well as any State board responsible for the licensing of the facility administrator, as specified in § 488.175(i).

**§ 488.214 Action when there is repeated noncompliance.**

If a facility has been found to have provided substandard care on the last three consecutive surveys, regardless of other remedies provided, the Secretary will or the State must—

(a) Impose a denial of payment for new admissions remedy as described at § 488.217, and

(b) Impose the State monitoring remedy as described at § 488.222.

**§ 488.215 Temporary management.**

(a) *Definition.*

Temporary management means the temporary appointment by HCFA or the State of a substitute facility manager or administrator with authority to hire, terminate or reassign staff, obligate facility funds, alter facility procedures, and manage the facility to correct deficiencies identified in the facility's operation.

(b) *Qualifications.*

The temporary manager must—

(1) Be a licensed nursing home administrator in the State or have a reciprocal agreement with the State in which the deficient facility is located;

(2) Demonstrate prior competency as a nursing home administrator; and

(3) Have had no disciplinary action taken against him or her by any licensing board or professional society in any State.

(4) The temporary manager or a member of his or her immediate family has no financial, direct or indirect ownership interest.

(c) *Payment of salary.*

The temporary manager's salary is paid by the facility while the temporary manager is assigned to that facility.

(d) *Failure to agree to temporary management.*

If a facility fails to agree to the appointment of a temporary manager or fails to relinquish authority to the temporary manager as described in this section, HCFA will or the State must terminate the provider agreement in accordance with § 488.238.

**§ 488.217 Denial of payment for all new admissions.**

(a) *Denial of payment for all new admissions.*

(1) HCFA or the State may deny payment for new admissions. However, HCFA will and the state must deny payment for new admissions if—

(i) Any deficiency remains uncorrected within 90 calendar days after the last day of survey identifying the deficiencies; or

(ii) The survey agency has cited a facility with substandard quality of care on the last 3 consecutive standard surveys.

(2) If the facility achieves compliance with the requirements, HCFA does or the State must resume payments to the facility prospectively from the date that it determined that compliance has been achieved.

(b) Denial of payment for new admissions in certain diagnostic categories or requiring specialized care.

(1) HCFA or the State may deny payment for new admissions who have certain specified diagnoses or special care needs when HCFA or the State finds that—

(i) The facility is not currently able to provide care for these individuals; or

(ii) Caring for these individuals will adversely affect care provided to other residents.

(2) If the facility achieves compliance with the requirements, HCFA does or the State must resume payment to the facility prospectively from the date that it determines that compliance has been achieved.

**§ 488.222 State monitoring.**

(a) A State monitor—

(1) Oversees the correction of deficiencies at the facility site;

(2) Is an employee or a contractor of the survey agency;

(3) Is identified by the State as an appropriate health care professional for cited deficiencies;

(4) Is not an employee of the facility; and

(5) Does not function as a consultant to the facility.

(b) A State monitor must be used when a survey agency has cited a facility with substandard quality of care deficiencies on the last 3 consecutive standard surveys.

**§ 488.224 Directed plan of correction.**

HCFA, the State, or the temporary manager (with HCFA or State approval) may develop a plan of correction and require a facility to take action within specified timeframes.

**§ 488.226 Closure of a Medicaid facility and transfer of residents.**

In an emergency, the Medicaid facility may close and have its residents

transferred by the State as an available remedy in accordance with factors specified at § 488.206(c).

**§ 488.228 Alternative or additional State remedies.**

Alternative or additional State remedies for facilities participating in Medicaid and non-State operated dually participating facilities may be imposed if the State demonstrates to HCFA's satisfaction that the alternative or additional remedies are as effective in deterring noncompliance and correcting deficiencies as the HCFA remedies. The alternative or additional remedies must be specified in the State plan, must be approved by HCFA, and must include, at least, denial of payment for new admissions and State monitoring.

**§ 488.230 Civil money penalties.**

(a) *Basis for imposing penalty.*

(1) HCFA or the State may impose a civil money penalty on any facility that is out of compliance with one or more participation requirements, regardless of whether or not the deficiencies constitute an immediate and serious threat.

(2) HCFA or the State may impose a civil money penalty for the number of days of noncompliance between two certifications of compliance.

(b) *Condition under which penalties will not be imposed.*

HCFA will not and the State may not impose a civil money penalty while the facility has a hearing pending on the imposition of a remedy.

(c) *HCFA notice of penalty.*

(1) HCFA will send a written notice of intent to impose the penalty to the facility by mail, return receipt requested, for all facilities except non-State operated NFs when the State is imposing the penalty.

(2) The notice that HCFA sends will include—

(i) The statutory basis for the penalty;

(ii) The amount of penalty per day of noncompliance;

(iii) Any circumstances specified in paragraph (g) of this section, such as repeated noncompliance, that were considered when determining the amount of the penalty; and

(iv) Instructions for responding to the notice, including a statement of the facility's right to a hearing, and the implication of waiving a hearing.

(d) *State notice.* The State must notify the facility in accordance with State procedures for all non-State operated NFs when the State takes the action.

(e) *Waiver of a hearing.* The facility may waive the right to a hearing, in accordance with procedures and time periods specified in § 498.40 of this chapter for Medicare, and § 431.221 of this chapter for Medicaid. If the facility waives the right to a hearing within 60 days from the date of notice, HCFA or the State may reduce the civil money penalty by 35 percent.

(f) *Amount of penalty.*

(1) The penalties are within the following ranges, set at $50 increments:

(i) Deficiencies constituting immediate and serious threat: $3,050–$10,000 each day the threat continues; and

(ii) Deficiencies that do not constitute immediate and serious threat, but which are above a severity and scope level of 1: $50–$3,000 per day.

(2) The amount of penalty is based on HCFA's or the State assessment of factors listed in paragraph (g) of this section.

(3) HCFA or the State may increase the daily penalty if the facility alleges compliance, but on a revisit, HCFA or the State finds that the facility is still noncompliant.

(g) *Factors affecting the amount of penalty.* In determining the amount of penalty, HCFA or the State must take into account the following factors:

(1) The facility's history of prior offenses, including repeat deficiencies;

(2) The facility's financial condition;

(3) The scope, severity, and duration of the noncompliance; and

(4) Whether the requirements with which the facility is out of compliance are health and safety requirements or administrative requirements.

(h) *Effective date of penalty.* The effective date of a civil money penalty is the 10th day after the last day of the survey in immediate and serious threat situations and the 20th day after the last day of the survey in non-immediate and serious threat situations.

(i) *Computation and Notice of Penalties.*

(1) When HCFA's or the State's decision of noncompliance is upheld after a hearing decision or the facility waives its right to a hearing, the civil money penalty will be for the number of days between the effective date of the penalty and the date of correction of deficiencies, or, if applicable, the date of termination.

(2) Penalties are computed after compliance is verified or on the effective date of the provider's termination.

(3) In the case of the provider achieving compliance, HCFA will or the State must send a separate notice to the facility containing—

(i) The amount of penalty per day;

(ii) The number of days involved;

(iii) The due date of the penalty; and

(iv) The total amount due.

(4) In the case of a facility to be terminated, HCFA will or the State must send this penalty information in the termination notice.

(5) The daily accrual of civil money penalties is imposed for no longer than 6 months for non-immediate and serious threat deficiencies after which HCFA will terminate the provider agreement and discontinue FFP and the State may terminate the provider agreement if any of the deficiencies remain.

(6) In the case of immediate and serious threat deficiencies, HCFA will or the State must terminate the provider agreement on the 23rd day after the appointment of temporary management if the threat remains.

(7) If the provider can supply documentation acceptable to HCFA or the State agency that compliance with participation requirements was attained on a date preceding that of the revisit, fines only accrue until that date of correction for which there is credible evidence.

(j) *Collection of penalties.*

(1) Payments for civil money penalties are due—

(i) Fifteen days after the survey agency verifies compliance if:

(A) A hearing decision upholding the imposition of the penalty had been rendered before compliance had been verified; or

(B) The 60-day period for requesting a hearing has expired and the facility has not requested a hearing or has waived its right to a hearing;

(ii) Fifteen days after a hearing decision upholding the imposition of the penalty if the hearing decision is rendered after compliance is verified; or

(iii) Fifteen days after the effective date of termination if—

(A) A hearing decision upholding the imposition of the penalty had been rendered prior to the effective date of termination; or

(B) The 60-day period for requesting a hearing has expired and the facility has not requested a hearing or has waived its right to a hearing.

(2) The amount of the penalty, when determined, may be deducted from any sum then or later owing by HCFA or the State to the facility.

(3) Interest will be assessed on the unpaid balance of the penalty, beginning on the due date.

(4) Civil money penalties or corresponding interest collected by HCFA or the State from Medicare and Medicaid facilities must be returned to the Medicare Trust Fund or the State, respectively.

(5) Civil money penalties collected from dually participating facilities are returned to the Medicare Trust Fund and the State in proportion commensurate

with the relative proportions of Medicare and Medicaid beds at the facility actually in use at the time the facility receives notice of the imposition of the civil money penalty.

(6) Civil money penalties collected by the State must be applied to the protection of the health and property of residents of facilities that the State or HCFA finds deficient, including—

(i) Payment for the cost of relocating residents to other facilities;

(ii) State costs related to the operation of a facility pending correction of deficiencies or closure; and

(iii) Reimbursement of residents for personal funds lost.

(k) *Settlement of penalties.*

(1) HCFA has authority to settle cases at any time prior to a final administrative law judge hearing decision for Medicare-only SNFs, State-operated facilities, or other facilities for which HCFA's enforcement action prevails, in accordance with § 488.180.

(2) The State has the authority to settle cases at any time prior to the evidentiary hearing decision for all cases in which the State's enforcement action prevails.

**§ 488.232 Continuation of payments to a facility with deficiencies.**

(a) *Criteria.*

(1) HCFA may continue payments to a facility with deficiencies, for the periods specified in paragraph (c) of this section if the following criteria are met:

(i) The State finds that is more appropriate to impose alternative remedies than to terminate the facility;

(ii) The State has submitted a plan of correction approved by HCFA; and

(iii) The facility in the case of a Medicare SNF or the State in the case of a Medicaid NF agrees to repay the Federal government payments received if corrective action is not taken in accordance with the approved plan of correction.

(2) HCFA or the State may terminate the SNF or NF agreement before the end of the six month correction period if the criteria in paragraph (a)(1) of this section are not met.

(b) *Cessation of payments.* If any of the criteria set forth in paragraph (a)(1) of this section are not met or agreed to by either the State or the facility, the facility will receive no Medicare or Federal Medicaid payments, as applicable, from the date of the determination of noncompliance by either HCFA or the State.

(c) *Period of continued payments.* If the conditions in paragraph (a)(1) of this section are met, HCFA or the State may continue payments to a facility with deficiencies that do not constitute immediate and serious threats for up to 6 months from the last day of the survey.

(d) *Deficiencies not corrected.* If the facility does not correct deficiencies by the end of the period specified in paragraph (b) of this section,

(1) HCFA will—

(i) Terminate the provider agreement for Medicare SNFs in accordance with § 488.238; and

(ii) Discontinue FFP to Medicaid NFs.

(2) The State may terminate the provider agreement for NFs.

(d) The required termination notice is sent 15 days before the end of the 6 month period and the notice period runs concurrently with the last 15 days of the 6 month period.

(e) *Appeals.* Medicare SNFs and dually participating facilities adversely affected by the requirement in paragraph (a)(1)(iii) of this section to repay the government all payments received if corrective action is not taken in accordance with paragraph (c) of this section, may appeal the decision in accordance with—

(1) 42 CFR part 498; and

(2) If the State terminates the NF provider agreement, 42 CFR part 431.

**§ 488.234 State and Federal disagreements involving findings not in agreement in situations where there is no immediate and serious threat.**

(a) *Disagreement over whether facility has met requirements.*

(1) The State's finding of noncompliance takes precedence when—

(i) HCFA finds that a NF or a dually participating facility has met all the participation requirements; and

(ii) The State finds that a NF or dually participating facility has not met all the participation requirements.

(2) HCFA's findings of noncompliance take precedence when—

(i) HCFA finds that a NF or a dually participating facility has not met all participation requirements; and

(ii) The State finds that a NF or a dually participating facility has met all the participation requirements.

(3) When HCFA's survey findings take precedence, HCFA may—

(i) Impose any of the alternative remedies specified in § 488.206; and

(ii) Permit payments to continue to the NF and dually participating facility if the applicable conditions of § 488.232 are met.

(b) *Disagreement over decision to terminate a non-State operated NF or dually participating facility.*

(1) HCFA's decision to terminate the participation of a facility takes precedence when—

(i) Both HCFA and the State find that the facility has not met all requirements; and

(ii) HCFA, but not the State, finds that the facility's participation should be terminated. HCFA will permit continuation of payment during the period prior to the effective date of termination not to exceed 6 months.

(2) The State's decision to terminate a facility's participation and the timing of termination, as specified in § 431.153(c) of this chapter, takes precedence when—

(i) The State, but not HCFA, finds that a facility's participation should be terminated; and

(ii) The State's timing is for no later than 6 months after the last day of survey.

(c) *Disagreement over timing of termination of facility.* The State's timing of termination, as specified in § 431.153(c) of this chapter, takes precedence if it does not occur later than 6 months after the date of the finding to terminate when both HCFA and the State find that—

(1) A NF or dually participating facility has not met all the requirements for participation; and

(2) The facility's participation should be terminated.

(d) *Disagreement over remedies.*

(1) When HCFA or the State, but not both, establishes one or more remedies, in addition to or as an alternative to termination, the additional or alternative remedies will also apply when—

(i) Both HCFA and the State find that a NF has not met all the participation requirements; and

(ii) Both HCFA and the State find that no immediate jeopardy exists.

(2) *Overlap of remedies.* When HCFA and the State establish one or more remedies, in addition to or as an alternative to termination, the HCFA remedies apply when both HCFA and the State find that a NF or dually participating facility has not met all the requirements for participation.

(e) Regardless of whose decision controls in paragraph (b), (c), or (d) of this section, the compliance and enforcement decision for the Medicaid agreement is binding on the Medicare agreement in the case of a dually participating facility.

**§ 488.236 Duration of remedies.**

Alternative remedies continue until—

(a) HCFA or the State determines that the facility has corrected all deficiencies;

(b) HCFA or the State terminates the provider agreement; and

(c) HCFA discontinues FFP.

**§ 488.238 Termination of provider agreement.**

(a) *Effect of termination.* Termination of the provider agreement ends—

(1) Payment to the facility; and

(2) Any alternative remedy.

(b) *Basis for termination.*

(1) HCFA and the State may terminate a facility's provider agreement if a facility—

(i) Fails to correct deficiencies within the specified time;

(ii) Fails to submit a plan of correction within the time specified by HCFA; or

(iii) Does not meet the eligibility criteria for continuation of payment as set forth in § 488.212(a)(1).

(2) HCFA and the State will terminate a facility's provider agreement if a facility with immediate and serious threat deficiencies refuses temporary management, if that remedy is offered by HCFA or the Medicaid agency.

(c) *Notice of termination.* Before terminating a provider agreement, HCFA does and the State must notify the facility and the public—

(1) At least two and not more than four calendar days before termination for a facility with immediate and serious threat deficiencies; and

(2) At least fifteen calendar days before termination for a facility with non-immediate and serious threat deficiencies.

(d) *Procedures for termination.*

(1) HCFA will terminate the provider agreement of a SNF in accordance with procedures set forth in § 489.53 of this chapter; and

(2) The State must terminate the provider agreement of a NF in accordance with procedures specified in parts 431 and 442 of this chapter.

**§ 488.240 Transfer of residents.**

The State must arrange for the orderly transfer of all residents to another facility when—

(a) HCFA or the State terminates the provider agreement; or

(b) The State closes a NF or a non-State operated dually participating facility.

## PART 489—PROVIDER AND SUPPLIER AGREEMENTS

E. Part 489 is amended as follows:

1. The authority citation for part 489 is revised to read as follows:

**Authority:** Secs. 1102, 1819, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i–3, 1395x, 1395aa(m), 1395cc, and 1395hh).

**§ 489.15 [Removed and Reserved]**

2. Section 489.15 is removed and reserved.

**§ 489.16 [Removed and Reserved]**

3. Section 489.16 is removed and reserved.

4. In subpart E, § 489.53 is amended by revising paragraph (c)(2) to read as follows:

**§ 489.53 Termination by HCFA.**

* * * * *

(c) *Notice of termination.* * * *

(2) *Exception.* For a provider or supplier with deficiencies that pose immediate jeopardy to patients' health and safety, HCFA will give notice of termination at least two and no more than four calendar days before the effective date of termination of the provider agreement.

* * * * *

### Subpart F—[Removed and Reserved]

5. Subpart F, consisting of §§ 489.60, 489.62, 489.64, and 489.66 is removed and reserved.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare Hospital Insurance)

Dated: August 10, 1992.

**William Toby,**

*Acting Deputy Administrator, Health Care Financing Administration.*

Approved: August 12, 1992.

**Louis W. Sullivan,**

*Secretary.*

[FR Doc. 92–20372 Filed 8–27–92; 8:45 am]

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Friday
August 28, 1992

## Part III

# Department of Housing and Urban Development

### Office of the Assistant Secretary for Housing; Federal Housing Commissioner

### NOFA for Federally Assisted Low Income Housing Drug Elimination Grants; FY 1992; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing, Federal Housing Commissioner

[Docket No. N-92-3436; FR-3235-N-01]

### NOFA for Federally Assisted Low Income Housing Drug Elimination Grants; FY-1992

**AGENCY:** Office of the Assistant Secretary for Housing, Federal Housing Commissioner, HUD.

**ACTION:** Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1992.

**SUMMARY:** This NOFA announces HUD's FY 1992 funding of $10,000,000 for Federally Assisted Low Income Housing Drug Elimination Grants. (Note: This NOFA does NOT apply to the funding available under the statute for Public and Indian Housing.) In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, financial requirements, management, and application processing, including how to apply, how selections will be made, and how applicants will be notified of results.

**DATES:** No applications will be accepted after 4 p.m. (local time) for the Regional Office on October 27, 1992. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A "FAX" will not constitute delivery.

**ADDRESSES:** *(a) Application Form:* An application form may be obtained from the HUD Regional Office having jurisdiction over the location of the applicant project. The Regional Office will be available to provide technical assistance on the preparation of applications during the application period.

*(b) Application Submission:* Applications (original and one copy) must be received by the deadline at the appropriate HUD Regional Office with jurisdiction over the applicant project, Attention: Regional Director of Housing. It is not sufficient for the application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. Applications received after the deadline will not be considered.

**FOR FURTHER INFORMATION CONTACT:** William Schick, Office of Multifamily Housing Management, Operations Division, (202) 708-2654 (voice) or (202) 708-3938 (TDD for hearing-impaired). (These are not toll free numbers).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act Statement**

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**.

**I. Purpose and Substantive Description**

*(a) Authority*

These grants are authorized under chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Public Law 101-625.

*(b) Allocation Amounts*

(1) Federal Fiscal Year 1992 Funding

The amount available for funding under this NOFA is $10,000,000. Section 581 of NAHA expanded the Drug Elimination Program to include federally assisted, low-income housing. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1992, (approved October 28, 1991, Pub. L. 102-139), (92 app. Act) appropriated $165 million for the Drug Elimination Program and made $10,000,000 of the total Drug Elimination Program appropriation available for federally assisted, low-income housing.

HUD is distributing grant funds under this NOFA to each of its 10 Regional Offices on the basis of a formula allocation. This formula allocation is based upon the relationship of the number of eligible federally assisted low-income housing units per Region and the level of drug-related crime within each Region, based on statistics compiled by the U.S. Department of Justice, Federal Bureau of Investigation, ("Uniform Crime Reports for Drug Abuse Violations-1990").

(2) Maximum Grant Award Amounts

The maximum grant award amount is limited to $175,000 per project.

(3) Reallocation.

Any grant funds under this NOFA that are allocated to a Region, but that are not reserved for grantees, must be released to HUD Headquarters for reallocation. HUD reserves the right to fund portions of full applications. If the Regional Office determines that an application cannot be partially funded and there are insufficient funds to fund the application fully, any remaining funds after all other applications have been selected will be released to HUD Headquarters for reallocation. Amounts that may become available due to deobligation will also be reallocated to Headquarters.

All reallocated funds will be awarded on a nationwide basis in the following manner: HUD Regional Offices will submit to Headquarters the applications that would have been funded had there been sufficient funds in the Regional allocation to do so. Headquarters will select applications from those submitted by the Regional Offices, using the ranking factors identified in section I.(d), below, of this NOFA, and make awards from any available reallocated funds.

(4) Reduction of Requested Grant Amounts

HUD may award an amount less than requested where:

(i) HUD determines the amount requested for an eligible activity is unreasonable;

(ii) Insufficient amounts remain under the allocation to fund the full amount requested by the applicant and HUD determines that partial funding is a viable option;

(iii) HUD determines that some elements of the proposed plan are suitable for funding and others are not; or

(iv) For any other reason where good cause exists.

(5) Distribution of Funds

HUD is distributing grant funds under this NOFA to its 10 Regional Offices, in accordance with the following schedule:

| HUD Region | Allocation |
|---|---|
| Region I | $507,788 |
| Region II | 746,012 |
| Region III | 1,219,825 |
| Region IV | 2,027,171 |
| Region V | 2,447,368 |
| Region VI | 989,741 |
| Region VII | 476,164 |
| Region VIII | 236,145 |
| Region IX | 1,168,768 |

| HUD Region | Allocation |
|---|---|
| Region X | 181,018 |

*(c) Eligibility*

Following is a listing of eligible activities, ineligible activities, eligible applicants, and general grant requirements under this NOFA:

(1) Eligible Activities

(i) *Physical improvements to enhance security.* Physical improvements that are specifically designed to enhance security are eligible for funding under this program. The improvements may include (but are not limited to) systems designed to limit building access to project residents, the installation of barriers, lighting systems, fences, bolts, locks; the landscaping or reconfiguration of common areas to discourage drug-related crime; and other physical improvements designed to enhance security and discourage drug-related activities. In particular, the Department is seeking plans that provide successful, proven and cost effective drug crime deterrents designed to address the realities of low-income assisted housing environments. All physical improvements must also be accessible to persons with disabilities. For example, some types of locks, buzzer systems, etc., are not accessible to persons with limited strength, mobility, or to persons who are hearing impaired. All physical improvements must meet the accessibility requirements of 24 CFR part 8.

(ii) *Programs to reduce the use of drugs.* Programs designed to reduce the use of drugs in and around federally-assisted low-income housing projects including drug-abuse prevention, intervention, referral, and treatment programs are eligible for funding under this program. The program should facilitate drug prevention, intervention and treatment efforts, to include outreach to community resources and youth activities, and facilitate bringing these resources onto the premises, or providing resident referrals to treatment programs or transportation to out-patient treatment programs away from the premises. Funding is permitted for reasonable, necessary and justified leasing of vehicles for resident youth and adult education and training activities directly related to "Programs to reduce the use of drugs" under this section. Alcohol-related activities/programs are not eligible for funding under this NOFA.

*(A) Drug Prevention*

Drug prevention programs that will be considered for funding under this NOFA must provide a comprehensive drug prevention approach for residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in federally-assisted low-income housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of the applicant's housing projects, and the applicant must act to bring those available program components onto the premises. Activities that should be included in these programs are:

(1) Drug Education Opportunities for Residents

The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract (in accordance with 24 CFR 85.36) with drug education professionals to provide appropriate training or workshops. The drug education professionals contracted to provide these services shall be required to base their services upon the program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of residents.

(2) Family and Other Support Services

Drug prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the project or the community for federally-assisted low-income housing families.

(3) Youth Services

Drug prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services. Activities or services funded under this program may not also be funded under the Youth Sports Program.

(4) Economic/Educational Opportunities for Residents and Youth

Drug prevention programs should demonstrate a capacity to provide residents the opportunity for referral to established higher education or vocational institutions with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals. The program must also demonstrate the ability to provide residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

*(B) Intervention*

The aim of intervention is to identify federally-assisted low-income housing resident drug users and assist them in modifying their behavior and in obtaining early treatment, if necessary. The applicant must establish a program with the goal of preventing drug problems from continuing once detected.

*(C) Drug Treatment*

(1) Treatment funded under this program shall be in or around the premises of the federally-assisted low-income housing projects proposed for funding.

(2) Funds awarded under this program shall be targeted towards the development and implementation of new drug referral treatment services and/or aftercare, or the improvement of, or expansion of such program services for residents.

(3) Each proposed drug program should address the following goals:

(i) Increase resident accessibility to drug treatment services;

(ii) Decrease criminal activity in and around federally-assisted low-income housing projects by reducing illicit drug use among residents; and

(iii) Provide services designed for youth and/or maternal drug abusers, e.g., prenatal/postpartum care, specialized counseling in women's issues, parenting classes, or other drug supportive services.

(4) Approaches that have proven effective with similar populations will be considered for funding. Programs should meet the following criteria:

(i) Applicants may provide the service of formal referral arrangements to other

treatment programs not in or around the project when the resident is able to obtain treatment costs from sources other than this program. Applicants may also provide transportation for residents to out-patient treatment and/or support programs.

(ii) Provide family/collateral counseling.

(iii) Provide linkages to educational/vocational counseling.

(iv) Provide coordination of services to appropriate local drug agencies, HIV-related service agencies, and mental health and public health programs.

(v) Applicants must demonstrate a working partnership with the Single State Agency or State license provider or authority with drug program coordination responsibilities to coordinate, develop and implement the drug treatment proposal.

(vi) Applicants must demonstrate a working partnership with the Single State Agency or State license provider or authority with drug program coordination responsibilities to coordinate, develop and implement the drug treatment proposal. In particular, applicants must review and determine with the Single State Agency or State license provider or authority with drug program coordination responsibilities whether:

(A) The drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years; and

(B) The drug treatment proposal is consistent with the State treatment plan and the treatment service meets all State licensing requirements.

(vii) Funding is not permitted for treatment of residents at any in-patient medical treatment programs/facilities.

(viii) Funding is not permitted for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(ix) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a long period of supportive therapy (e.g. methadone maintenance), rather than for immediate control of a disorder.

(iii) *Resident Councils (RCs).* Providing funding to resident councils to develop programs of eligible activities involving site residents is eligible for funding under this program.

(2) *Ineligible activities.* Funding is not permitted for any activities listed below:

(i) Any activity or improvement that is normally funded from project operating revenues for routine maintenance or repairs, or those activities or improvements that may be funded through reasonable and affordable rent increases;

(ii) The acquisition of real property or physical improvements that involve the demolition of any units in the project or displacement of tenants.

(iii) Costs incurred prior to the effective date of the grant agreement, including, but not limited to, consultant fees for surveys related to the application or its preparation;

(iv) Reimbursement of local law enforcement agencies for additional security and protective services;

(v) The employment of one or more individuals—

(A) to investigate drug-related crime on or about the real property comprising any federally-assisted low-income project; and

(B) to provide evidence relating to such crime in any administrative or judicial proceeding; and

(vi) The provision of training, communications equipment and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials.

(3) *Eligible Applicants.* The applicant must be the owner of a federally assisted low-income housing project under:

(i) Section 221(d)(3), section 221(d)(4) or 236 of the National Housing Act (Note however, section 221(d)(4) and section 221(d)(3) market rate projects without tenant-based assistance contracts are not considered federally assisted low-income housing.)

(ii) Section 101 of the Housing and Urban Development Act of 1965, or

(iii) Section 8 of the United States Housing Act of 1937.

(4) *General grant requirements.* The following requirements apply to all activities, programs, or functions used to plan, budget and evaluate the work funded under this program.

(i) After applications have been ranked and selected, HUD and the applicant shall enter into a grant agreement setting forth the amount of the grant, the physical improvements or other eligible activities to be undertaken, financial controls, and special conditions, including sanctions for violation of the agreement.

(ii) The policies, guidelines and requirements of this NOFA, 48 CFR part 31, other applicable OMB cost principles, HUD program regulations, HUD Handbooks, and the terms of grant/special conditions and subgrant agreements apply to the acceptance and use of assistance by grantees and will be followed in determining the reasonableness and allocability of costs. All costs must be reasonable and necessary.

(iii) The term of funded activities may not exceed 12 months.

(iv) Owners must ensure that any funds received under this program are not commingled with other HUD or project operating funds.

(v) To avoid duplicate funding owners must establish controls to assure that any funding from other sources, such as Reserve for Replacement, Rent Increases, etc., are not used to fund the physical improvements to be undertaken under this program.

(vi) Employment preference. A grantee under this program shall give preference to the employment of residents, and comply with section 3 of the Housing and Urban Development Act of 1968 and 24 CFR part 135, to carry out any of the eligible activities under this part, so long as such residents have comparable qualifications and training as non-housing resident applicants.

(vii) Termination of funding. HUD may terminate funding if the grantee fails to undertake the approved program activities on a timely basis in accordance with the grant agreement; adhere to grant agreement requirements or special conditions; or submit timely and accurate reports.

(viii) Subgrants (subcontracting).

(A) A grantee may directly undertake any of the eligible activities under this NOFA or it may contract with a qualified third party, including incorporated Resident Councils (RCs). Resident groups that are not incorporated RCs may share with the grantee in the implementation of the program, but may not receive funds as subgrantees.

(B) Subgrants or cash contributions to incorporated RCs may be made only under a written agreement executed between the grantee and the RC. The agreement must include a program budget that is acceptable to the grantee, and that is otherwise consistent with the grant application budget. The agreement must obligate the incorporated RC to permit the grantee to inspect and audit the RC financial records related to the agreement, and to account to the grantee on the use of grant funds, and on the implementation of program activities. In addition, the agreement must describe the nature of the activities to be undertaken by the subgrantee, and the scope of the subgrantee's authority; and the amount of insurance to be obtained by the grantee and the subgrantee to protect their respective interests.

(C) The grantee shall be responsible for monitoring, and for providing technical assistance to, any subgrantee

to ensure compliance with HUD program requirements, including OMB Circular Nos. A–110 and A–122, which apply to the acceptance and use of assistance by private nonprofit organizations. The procurement requirements of Attachment O of Circular A–110 apply to RCs. The grantee must also ensure that subgrantees have appropriate insurance liability coverage.

*(d) Selection Criteria and Ranking Factors*

HUD will review each application to determine that it meets the requirements of this NOFA and to assign points in accordance with the selection criteria. A total of 200 points is the maximum score available under the selection criteria. An application must receive a score of at least 131 points out of the maximum of 200 points that may be awarded under this competition to be eligible for funding. After assigning points to each application, HUD will rank the applications in order by Region. HUD will select the highest ranking applications whose eligible activities can be fully funded within each Region. Grants under this program are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321). However, prior to the award of grant funds under the program, HUD will perform an environmental review to the extent required under the provisions of 24 CFR 50.4. Each application submitted will be evaluated on the basis of the following selection criteria:

(1) The Quality of the Plan to Address the Problem (Maximum Points: 70)

In assessing this criterion, HUD will consider the following factors:

(i) The quality of the applicant's plan to address the drug-related crime problem, and the problems associated with drug-related crime, in the projects proposed for funding, and how well the activities proposed for funding fit in with the plan. (points: 20)

(ii) The anticipated effectiveness of the plan and the proposed activities in reducing or eliminating drug related crime problems over an extended period. (points: 20)

(iii) How the activities identified in the plan will affect and address the problem of drug related crime in adjacent properties. (points: 20)

(iii) Evidence that the proposed activities have been found successful in similar circumstances in terms of controlling drug-related crime. (points: 10)

(2) The Support of Local Government/ Law Enforcement Agencies (Maximum Points: 20)

In assessing this criterion, HUD will consider the following factors:

(i) Evidence that the project owner has sought assistance in deterring drug-related crime problems and the extent to which the owner has participated in programs that are available from local governments or law enforcement agencies; (points: 10) and

(ii) The level of support by the local government or law enforcement agency for the applicant's proposed activities. (points: 10)

(3) The Extent of the Drug-Related Crime Problem in the Housing Project Proposed for Assistance (Maximum Points: 70)

In assessing this criterion, HUD will consider the degree of severity of the drug-related crime problem in the project proposed for funding, as demonstrated by the information required to be submitted under section III.(h) of the NOFA.

(4) The Support of Residents in Planning and Implementing the Proposed Activities (Maximum Points: 20)

In assessing this criterion, HUD will consider the following factors:

(i) Evidence that comments and suggestions have been sought from residents to the proposed plan for this program and evidence that the owner carefully considered the comments of residents and incorporated their suggestions in the plan, when practical. (points: 10)

(ii) Evidence of resident support for the proposed plan. (points: 10)

(5) Capacity of Owner and Management to Undertake the Proposed Activities (Maximum Points: 20)

In assessing this criterion, HUD will consider the following:

(i) The most recent Management Review completed by the HUD Office. (Note: the HUD Field Office will conduct another management review after application submission if the most recent management review is more than nine months old). (points: 10)

(ii) Submission of evidence that project owners have initiated other efforts to reduce drug-related crime by working with tenant/law enforcement groups (e.g. establishment of "Tenant Watches" or similar efforts). (points: 5)

(iii) Submission of evidence that project management carefully screens applicants for units and takes appropriate steps to deal with known or suspected tenants exhibiting drug-related criminal behavior. (points: 5)

**II. Application Process**

*(a) Application Form*

An application form may be obtained from the HUD Regional Office having jurisdiction over the location of the applicant project. The Regional Office will be available to provide technical assistance on the preparation of applications during the application period.

*(b) Application Submission*

A separate application must be submitted for each project. An application (original and one copy) must be received by the deadline at the appropriate HUD Regional Office with jurisdiction over the applicant project, Attention: Regional Director of Housing. It is not sufficient for the application to bear a postage date within the submission time period. Applications submitted by facsimile ("FAX") are not acceptable and will not be considered. Applications received after the deadline will not be considered. No applications will be accepted after 4 p.m. (local time) for the Regional Office on October 27, 1992. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

*(c) Application Notification*

HUD will notify all applicants whether or not they were selected for funding.

**III. Checklist of Application Submission Requirements**

To qualify for a grant under this program, an applicant must submit an application to HUD that contains the following:

(a) Application for Federal Assistance form (Standard Form SF–424 and SF–424A). The form must be signed by the applicant.

(b) A description of the applicant's plan for addressing the problem of drug related crime in the projects for which funding is sought, which should include the activities to be funded under this program along with all other initiatives being undertaken by the applicant. The description should also include a discussion of:

(1) The anticipated effectiveness of the plan and the proposed activities in reducing or eliminating drug related crime problems over an extended period.

(2) How the activities identified in the plan will affect and address the problem of drug related crime in adjacent properties.

(3) Other efforts that project owners have initiated to reduce drug-related crime by working with tenant/law enforcement groups (e.g. establishment of "Tenant Watches" or similar efforts).

(4) Procedures that project management uses to screen applicants for units and steps taken to deal with known or suspected tenants exhibiting drug-related criminal behavior.

(c) Each applicant for funding for physical improvements must submit a written plan fully describing the physical improvements to be undertaken with per unit dollar costs for each item. This plan must be signed by the owner.

(d) Each applicant must submit a letter from the local government or police (law enforcement) agency that describes the type of drug-related crime in the project proposed for grant funding and its immediate environs, and expresses a commitment to assist the owner in taking steps to reduce or eliminate the drug-related crime problems of the project.

(e) A description of the procedure used to involve residents in the development of the plan and written summaries of any comments and suggestions received from residents on the proposed plan, along with evidence that the owner carefully considered the comments of residents and incorporated their suggestions in the plan, when practical.

(f) A description of the support of residents for the proposed activities and their willingness to assist the owner in implementing the plan. Letters of support from tenants may be used.

(g) A copy of the most recent management review performed by HUD and evidence supporting the capacity of the owner and management to undertake the proposed activities.

(h) Detailed information, such as local government and police reports, evidencing the degree of drug-related crime in the project and adjacent properties to demonstrate the degree of severity of the drug-related crime problem. This information may consist of:

(1) Objective data. The best available objective data on the nature, source, and extent of the problem of drug-related crime, and the problems associated with drug-related crime. These data may include (but not necessarily be limited to) crime statistics from Federal, State, tribal or local law enforcement agencies, or information from the applicant's records on the types and sources of drug-related crime in the project proposed for assistance; descriptive data as to the types of offenders committing drug-related crime in the applicant's project (e.g., age, residence, etc.); the number of lease terminations or evictions for drug-related criminal activity; the number of emergency room admissions for drug use or drug-related crime; the number of police calls for drug-related criminal activity; the number of residents placed in treatment for substance abuse; and the school drop-out rate and level of absenteeism for youth. If crime statistics are not available at the project or precinct level, the applicant may use other reliable, objective data including those derived from the owner's records or those of private groups that collect such data. The crime statistics should be reported both in real numbers, and as a percentage of the residents in each project (e.g., 20 arrests for distribution of heroin in a project with 100 residents reflects a 20% occurrence rate). The data should cover the past three-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years. Applicants must address in their assessment how these crimes have affected the project, and how the applicant's overall plan and strategy is specifically tailored to address these drug-related crime problems.

(2) Other data on the extent of drug-related crime. To the extent that objective data as described under paragraph (1)(i) of this section may not be available, or to complement that data, the assessment may use relevant information from other sources that have a direct bearing on drug-related crime problems in the project proposed for assistance. However, if other relevant information is to be used in place of, rather than to complement, objective data, the application must indicate the reason(s) why objective data could not be obtained and what efforts were made to obtain it. Examples of other data include: Resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; the use of local government or scholarly studies or other research conducted in the past year that analyze drug activity in the targeted project; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police; and the opinions and observations of individuals having direct knowledge of drug-related crime problems concerning the nature and extent of those problems in the project proposed for assistance. (These individuals may include law enforcement officials, resident or community leaders, school officials, community medical officials, drug treatment or counseling professionals, or other social service providers.)

(i) If applying for drug treatment program funding, a certification that the applicant has notified and consulted with the relevant Single State Agency or other local authority with drug program coordination responsibilities concerning its application; and that the proposed drug treatment program has been reviewed by the relevant Single State Agency or other local authority and that it is consistent with the State treatment plan; and that the relevant Single State Agency or other local authority has determined that the drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years.

(j) Drug-free workplace. The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F and appendix C.

(k) Lobbying. If the amount applied for is greater than $100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. See section VI.(g), below, of this NOFA. If the amount applied for is greater than $100,000 and the applicant has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include the Disclosure of Lobbying Activities Form (SF–LLL).

(l) Form HUD–2880, Applicant/Recipient Disclosure/Update Report.

## IV. Corrections to Deficient Applications

HUD will notify the applicant within ten (10) working days of the receipt of the application if there are any curable technical deficiencies in the application. Curable technical deficiencies relate to minimum eligibility requirements (such as certifications, signatures, etc.) that are necessary for funding approval but that do not relate to the quality of the applicant's program proposal under the selection criteria. The owner must submit corrections in accordance with the information provided by HUD within 14 calendar days of the date of the HUD notification.

## VI. Other Matters

*(a) Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20401.

*(b) Federalism Impact.*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA announces the availability of funds and provides the application requirements for federally Assisted Low Income Housing Drug Elimination Grants focusing on activities designed to deter drug-related crime. Deterring drug-related crime is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

*(c) Family Impact*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families exempt indirectly to the extent of the social and other benefits expected from this program of assistance.

*(d) Section 102 HUD Reform Act Applicant/Recipient Disclosures*

*Documentation and public access.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

*Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

*(e) Section 103 HUD Reform Act.*

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4. Applicants who have general questions about what information may be discussed with them during the selection may contact the HUD Office of Ethics (202) 708-3815. (This is not a toll-free number.)

*(f) Section 112 HUD Reform Act*

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

*(g) Prohibition Against Lobbying Activities*

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage.

**Authority:** 42 U.S.C. 11901 *et. seq.*

Dated: August 25, 1992.

**Arthur J. Hill,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

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Friday
August 28, 1992

# Part IV

# Department of the Interior

## Bureau of Indian Affairs

## Environmental Impact Statement; Crownpoint and Church Rock In Situ Leach Mines, McKinley County, NM; Notice

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Environmental Impact Statement; Crownpoint In Situ Leach (ISL) Mine, and Church Rock Satellite Facility, Hydro Resources, Inc., McKinley County, NM

**AGENCIES:** Bureau of Indian Affairs and the Bureau of Land Management (Interior), and the Nuclear Regulatory Commission.

**ACTION:** Notice of Intent and Public Scoping Meeting.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs, with the cooperation of the Bureau of Land Management and the Nuclear Regulatory Commission, intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for the Crownpoint and Church Rock in situ leach mines proposed for areas including the Navajo Indian Reservation located in McKinley County, New Mexico. A description of the proposed project, location, and environmental considerations to be addressed in the EIS are provided below (see supplemental information). In addition to this notice, public meetings regarding the proposal and preparation of the EIS will be held.

This notice is being published in accordance with the National Environmental Policy Act (NEPA) regulations found in 40 CFR 1501.7, and NRC's reporting requirements found in 10 CFR 51.26. The purpose of the notice is to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are encouraged.

The applicant has submitted an environmental report to accompany its source material license application. Copies of the environmental report are available for public inspection at the addresses listed below.

**DATES:** Comments should be received by October 9, 1992. Public scoping meetings will be held September 24, 1992, in the Navajo Nation Education Center, Morgan Boulevard, Window Rock, Arizona, from 2 p.m. to 4 p.m.; and September 24, 1992, at Crownpoint Chapter House, Crownpoint, New Mexico, from 7 p.m. to 9 p.m.

**ADDRESSES:** Comments should be addressed to Walt Mills, Area Director Navajo Area Office, P.O. Box 1060, Gallup, New Mexico 87301; Larry Woodard, State Director, Bureau of Land Management, New Mexico State Office, 1474 Rodeo Road, P.O. Box 27115, Sante Fe, New Mexico 87502-7115; Ramon Hall, Director, U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, P.O. Box 25325, Denver, Colorado 80225.

**FOR FURTHER INFORMATION CONTACT:** Leonard Robbins, Environmental Quality Coordinator, Bureau of Indian Affairs, Navajo Area Office, P.O. Box 1060, Gallup, New Mexico 87301, telephone (505) 863-8287; David Sitzler, Mining Engineer, Bureau of Land Management, Albuquerque District Office, 435 Montano Road, NE, Albuquerque, New Mexico 87107, telephone (505) 761-8919; Joel Grimm, Project Manager, U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, P.O. Box 25325, Denver, Colorado 80225, telephone (303) 231-5800.

**SUPPLEMENTARY INFORMATION:** The proposed project includes an in situ leach (ISL) mine and central processing plant located near Crownpoint, New Mexico, approximately 160 km (100 miles) west of Albuquerque. In addition, the applicant proposes to operate an ISL mine and satellite ion exchange (IX) plant near Churchrock, New Mexico, another 34 km (21 miles) westward. The project involves recovery of uranium from naturally occurring ore in the Morrison Formation using solution mining methods.

During the uranium extraction process, aqueous solutions including sodium carbonate, sodium bicarbonate, carbon dioxide, oxygen, and hydrogen peroxide, will be added to ground water. The mining solution, known as lixiviant, will be pumped under pressure down injection wells into the mineralized zones where it will dissolve uranium from the formation. The uranium-bearing solution will migrate through the formation, will be recovered from production wells, and the uranium extracted in a processing plant. Concentrated uranium solution from the satellite IX plant will be transported by tanker for processing at the central plant. The leaching solution is then recharged and reused. Well fields will be designed in a five-spot or seven-spot pattern, with each recovery well being located inside a ring of injection wells. The ground water near each mine unit is to be monitored for potential lixiviant excursions.

Following uranium recovery in each mine unit, the applicant shall restore ground-water conditions. Restoration may include ground-water sweep, clean water injection, and geochemical stabilization of the aquifer with a reductant. The goal will be restoring the aquifer to baseline conditions existing prior to mining.

Environmental issues to be addressed in the EIS are expected to include geomorphology, geologic stability, surface and ground-water hydrology, cultural, scientific, and biologic resources, land use, air quality, transportation, noise, health and safety, public services and utilities, and visual resources. In addition, the EIS will address a number of alternatives involving facility size and alternative locations. At this time, traditional methods of uranium mining, including open pit and shaft mining, are not economically feasible.

This notice is published pursuant to § 1501.7 of the Council on Environmental Quality Regulations (40 CFR, parts 1500 through 1508 implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1-6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM-8.

Dated: August 21, 1992.

**David J. Matheson,**

*Acting Assistant Secretary, Indian Affairs.*

[FR Doc. 92-20741 Filed 8-27-92; 8:45 am]

BILLING CODE 4310-02-M

federal register

Friday
August 28, 1992

# PART V

# Department of Transportation

## Federal Transit Administration

49 CFR Ch. VI

**Change in Policy on Sale and Replacement of Transit Vehicles; Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Ch. VI**

## Change in Policy on Sale and Replacement of Transit Vehicles

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of policy.

**SUMMARY:** This Notice changes Federal Transit Administration (FTA) policy concerning use of proceeds from the sale or trade-in of vehicles purchased in part with a grant from the FTA. In addition, the Notice makes clear that a grantee may sell or trade in a vehicle before the vehicle has reached the end of its minimum normal service life.

The new policy provides grantees with options regarding the disposition of federally funded vehicles in circumstances in which the grantee is acquiring like-kind replacement vehicles. The grantee has discretion to apply the mechanisms provided under this policy initiative or to continue to apply existing policy, in which cash reimbursements to the FTA are required in disposition of federally funded vehicles.

**EFFECTIVE DATE:** August 28, 1992.

**FOR FURTHER INFORMATION CONTACT:** Douglas A. Kerr, Office of Grants Management, 202-366-2440.

**SUPPLEMENTARY INFORMATION:**

### I. Purpose

The purpose of this document is to stimulate acquisition of new transit vehicles and to encourage development of a secondary market for the sale of used vehicles. Increasing the rate of acquisition of new transit vehicles will stimulate the economy and expedite the introduction of vehicles complying with the Clean Air Act Amendments of 1991 and the Americans with Disabilities Act of 1990.

### II. Applicability

This policy applies to any passenger vehicle (e.g., transit bus or rail car) acquired with funds provided by the FTA under Sections 3, 5, and 9 of the Federal Transit Act, as amended, and under the Federal Aid to Urban Systems program (FAUS) and the Interstate Transfer Transit Program, public transit programs financed under Title 23, United States Code (The Federal Aid Highway Act). States managing Section 16 and Section 18 grants may undertake the transactions in this Notice pursuant to State procedures to the extent permitted by the Department of Transportation regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR part 18 (common grant management rule).

### III. Policy

Effective immediately, grantees acquiring vehicles to replace existing equipment may sell or trade in the older vehicles and use the net proceeds to offset the cost of replacement vehicles, subject to prior approval of the FTA. All net proceeds from the sale or trade-in must be used to acquire like-kind replacement vehicles (i.e., generally, the same class of transit buses or rail cars). Proceeds may be applied to the leasing or the purchasing of vehicles.

FTA grant recipients wishing to take advantage of the new policy should contact the appropriate FTA Regional Office.

#### *A. Related Existing Policies*

This policy invokes Section 18.32(c)(4) of the common grant management rule, which provides

> When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency. 49 CFR 18.32(c)(4), Equipment.

This policy supersedes statements in FTA Circular 5010.1A, chapter 1, paragraph 15, "Sales Proceeds," by providing grantees the option to apply the proceeds from vehicles sold to like-kind replacement vehicles, rather than return the FTA's proportionate share of the proceeds. This policy will be evaluated after two years of implementation. The circular will be revised with a page change.

This action does not change FTA policies concerning minimum normal service life or Federal interest in a federally funded asset. Those policies are described in full detail in FTA Circular 9030.1A, "Section 9 Formula Grant Application Instructions," 9-18-87. They are summarized here because in certain cases minimum normal service life and the Federal interest in the vehicle have an effect on the calculations of local share and Federal share of grants for the replacement vehicles.

1. Service Life

As described in Circular 9030.1A, in order to ensure that equipment is adequately maintained, the FTA assigns a minimum normal service life in years or mileage to vehicles acquired with FTA assistance. A standard size heavy duty (approximately 35'—40') transit bus, for example, has a minimum normal service life of 12 years or 500,000 miles, and a rail car has a service life of 25 years. A medium size heavy duty (approximately 30') transit bus has a service life of 10 years of 350,000 miles. A small medium-duty (under 30') bus has a service life of 7 years or 200,000 miles, and other vehicles (such as regular and specialized vans) have a service life of 4 years or 100,000 miles.

2. Federal Interest

For purposes of determining the Federal interest in a federally funded transit vehicle during its minimum normal service life, a straight-line depreciation formula is used: for a vehicle with a 12-year useful life, the vehicle's value Decreases each year by $\frac{1}{12}$ of the vehicle's original purchase price. Similarly, the Federal interest in the vehicle decreases each year by $\frac{1}{12}$ of the amount of the Federal funds used to purchase the vehicle.

The Federal interest in a transit vehicle after service life is based on the fair market value of the vehicle.

#### *B. Reimbursement of Federal Interest*

In the past, if a grantee sold a vehicle before the end of its minimum normal service life, a cash payment to the Federal Government equal to the remaining Federal interest in the vehicle was required. With today's announcement, a grantee electing to remove a vehicle from service and sell it before the end of its minimum normal service life for the purpose of acquiring like-kind replacement vehicles will not be required to remit to the Federal Government a cash reimbursement of the remaining Federal interest in the vehicle removed. Instead, the remaining Federal interest shall be transferred to the replacement vehicle.

#### *C. Payment from Sales Proceeds of Fully Depreciated Vehicles*

In the past, if a grantee sold a vehicle that was beyond the end of its minimum normal service life and received sales proceeds exceeding $5,000, the grantee was required to remit a cash payment to the Federal Government equal to a proportional share of the net sales proceeds relative to the percentage of Federal participation in the original grant.

With today's announcement, a grantee electing to sell such a vehicle for the purpose of acquiring a like-kind replacement vehicle may elect not to remit a portion of the sales proceeds to the Federal Government. Instead, the grantee may apply 100 percent of the net

sales proceeds to the acquisition of the like-kind replacement vehicle.

*D. Grantee Financial Responsibility*

In acquiring a like-kind replacement vehicle under the provisions of this policy, a grantee will be responsible for investing (a) the local share for the purchase of the new vehicle and (b) an amount equal to the straight-line depreciated value of the vehicle sold. In the event that the sales proceeds exceed the latter amount, any additional sales proceeds must be invested in the acquisition of the like-kind replacement vehicle or of other items eligible for capital assistance under the Federal Transit Act, as amended.

*E. Trade-Ins*

Grantees have the option under the Common Rule to trade in or sell used vehicles and apply the proceeds to the acquisition of replacement vehicles. FTA requires that the grantee choose the method of disposition that affords the greatest return on the used asset being replaced. FTA's experience suggests that the independent sale of the used vehicle rather than disposition by trade-in generally results in the higher proceeds.

*F. Leasing*

A grantee may choose to sell the vehicle and, rather than purchase replacement vehicles, elect to lease like-kind vehicles, using the proceeds from the sale. The grantee must propose to FTA how it will apply the proceeds. Before undertaking this action, a grantee should discuss alternatives with the appropriate FTA Regional Office.

*G. Purchase of Used Vehicles*

The purchase of used vehicles is eligible for a capital grant.

*H. Disposition*

Disposition standards for equipment are described in FTA Circular 5010.1A, Chng.1, dated 7–22–88, Paragraph 7.c.(3), "Equipment," pages I–19 and 20. This policy will add a new disposition option to these standards in allowing a grantee to sell a passenger vehicle and apply the sales proceeds to a like-kind replacement vehicle.

**Authority:** 49 U.S.C. App. sections 1601 *et seq.*

Issued on: August 25, 1992.

**Brian W. Clymer,**

*Administrator.*

[FR Doc. 92–20723 Filed 8–27–92; 8:45 am]

BILLING CODE 4910–57–M

federal register

Friday
August 28, 1992

# Part VI

# Department of Agriculture

## Food Safety and Inspection Service

9 CFR Parts 317 and 381

**Nutrition Labeling; Format for Use on Meat and Poultry Product Labels; Proposed Rule**

**DEPARTMENT OF AGRICULTURE**

**Food Safety and Inspection Service**

**9 CFR Parts 317 and 381**

**[Docket No. 91-006P-FRMT]**

**RIN 0583-AB34**

## Nutrition Labeling; Format for Use on Meat and Poultry Product Labels

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Propose 1 rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to adopt a standard format for use in presenting nutrition information on the labeling of meat and poultry products. FSIS is proposing to establish the CONTROL WITH DIETARY GUIDANCE (Exhibit 10) or the CONTROL WITH RECOMMENDED DAILY INTAKE RANGE (Exhibit 11) as the standard format. FSIS is requesting comments on the proposed formats, as well as other options. The Agency also seeks comments on various label format elements.

FSIS plans to publish a final regulation on nutrition labeling by November 8, 1992, which will include a standard format for presenting nutrition information on meat and poultry product labels.

This proposal would encourage consumer usage of beneficial nutrition information by presenting such information in a consistent format.

**DATES:** Comments must be received on or before September 28, 1992.

**ADDRESSES:** Written comments to Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. Charles R. Edwards at (202) 205-0080.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 205-0080.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291 and Effect on Small Entities

FSIS published a proposed rule on nutrition labeling in the **Federal Register** on November 27, 1991. (56 FR 60302) The proposed rule was reviewed under USDA procedures established to implement Executive Order 12291 and was classified as a major rule pursuant to section 1(b)(1) of that order because it is likely to result in an annual effect on the economy of $100 million or more. The review is reported in a Preliminary Regulatory Impact Analysis (PRIA), which was published as an appendix to the nutrition labeling proposed rule, and in a supplement to the PRIA which was published on February 18, 1992 (57 FR 5956). The PRIA also satisfies the analysis requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), which deals with the effect on small entities.

This proposed rule on nutrition labeling format is one element of the overall nutrition labeling rulemaking which was considered in the PRIA, but deferred for later publication.

### Executive Order 12778

This proposed rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. This proposed rule provides a standard format for presenting nutrition information on the labels of meat and poultry products.

This proposed rule concerns labeling of meat and poultry products. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat or poultry products that are in addition to, or different from, those imposed under the FMIA or the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and the PPIA, States that maintain meat and poultry inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA or PPIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

In the event of its adoption, no retroactive effect would be given to this proposed rule, and applicable administrative procedures must be exhausted before any judicial challenge to its provisions or their application. Those administrative procedures are set forth in the rules of practice governing proceedings for labeling determinations at 9 CFR parts 335 and 381, subpart W.

### Paperwork Requirements

The proposed rule on nutrition labeling would require manufacturers to revise their labels to show specific nutrition information on most processed meat and poultry products. This proposed rule on format would specify the form in which such nutrition information would be presented on the label.

The paperwork requirements contained in the nutrition labeling proposed rule were submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This proposed rule would not affect those paperwork requirements, and would be covered under OMB's approval of paperwork requirements of the nutrition labeling rulemaking.

### Comments

Interested persons are invited to submit written comments concerning this proposed rule. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket Number 91-006P-FRMT. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Mr. Charles R. Edwards so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this notice will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

### Background

On November 27, 1991, FSIS published in the **Federal Register** a proposed rule entitled "Nutrition Labeling of Meat and Poultry Products." (56 FR 60302) FSIS stated in its proposal that it would issue a separate proposed rule on nutrition label format at a later date.

FSIS seeks comments on the formats it is proposing, as well as on the other options presented in this proposal. Pursuant to the Administrative Procedure Act, the Agency is required to provide the public and the regulated community with adequate notice of, and a reasonable opportunity to comment on, the various formats and the issues raised by these formats, which the Agency will ultimately mandate in a final standard format.

FSIS has determined that it has statutory authority to require nutrition labeling, based on the Secretary of Agriculture's determination that meat

and poultry products, other than single-ingredient, raw products, would be misbranded in the absence of such information on the label, under section 1(n) of the Federal Meat Inspection Act (21 U.S.C. 601(n)) and section 4(h) of the Poultry Products Inspection Act (21 U.S.C. 453(h)). Under these authorities, the Secretary may promulgate regulations, such as those proposed by FSIS concerning the format to be used in nutrition labeling, to ensure that meat and poultry products are not misbranded, *i.e.*, that their labeling is not false or misleading in any particular manner and that it does contain required information.

On July 20, 1992, the Food and Drug Administration (FDA) published in the **Federal Register** (57 FR 32058) a proposed rule to adopt a format for use in presenting nutrition information on the labeling of FDA-regulated foods. At that time, FDA proposed to establish the PERCENT DV WITH DRV, (Exhibit 3), format as the standard format for presenting nutrition information on the food label. At the same time, FDA acknowledged that inclusion of the DRV as a required element of the label will be contingent on a final determination based on review of the comments on its original and supplementary proposals for nutrition labeling, as well as the research results.

Policy has not yet been established within FSIS regarding the use of the DRV's. FSIS, like FDA, is considering whether DRV's represent the best way to help consumers use the nutrition information to plan a healthy diet that meets their individual needs. FSIS is seeking comments on the use of DRV's and on other ways or providing help to consumers in planning a healthy diet. If DRV's are ultimately determined by FSIS not to be the best way to accomplish this, the label format will reflect whatever mechanism is chosen to provide information in the most useful manner.

While FSIS recognizes that FDA has proposed PERCENT DV WITH DRV (Exhibit 3), (as well as requesting comments on a variety of other options, 57 FR 32058), the Agency has decided to propose two formats that differ from the FDA's proposal. While the Agency believes a uniform format for all processed foods is desirable, it is concerned that the FDA's proposed format: (1) Does not provide the consumer with a sufficient range of information on which to base individual dietary choices since advisable calorie, fat, carbohydrate, fiber, and protein intakes vary based on age, sex, height, weight, metabolism, and activity level; (2) the uses of a single set of values that may prove to be misleading to the individual consumer and encourage the consumption of inappropriate levels of nutrients; and (3) the uses of percents, as opposed to absolute amounts, on the nutrition label that may prove to be confusing to a significant portion of the population.

Further, the Agency is open to receiving suggestions about how the label format can be improved to better convey nutrition information in the context of a total daily diet.

A guiding principle for the revision of the nutrition label adopted by FSIS is that consumer ability to use information to facilitate choosing foods consistent with the Dietary Guidelines for Americans should be an important consideration in the selection of a format.

FDA conducted a series of research studies to determine the most useful and appropriate format for nutrition labeling, and to investigate new labeling approaches, such as highlighting, grouping, and techniques for graphic presentation. Extensive discussion of these studies can be found in FDA's July 20, 1992 proposed rule (57 FR 32058). Although FDA-regulated foods were used in the FDA studies, the following are examples of formats using a meat product:

BILLING CODE 3410-DM-M

Exhibit 1

# CONTROL

# CHILI WITH BEANS

**NUTRITION INFORMATION PER SERVING**

Serving Size: 1 cup (253 g)
Serving per Container: 1

| | |
|---|---|
| Calories | 260 |
| Calories from fat | 75 |
| Fat | 8.5 g |
| Saturated fat | 3.5 g |
| Cholesterol | 135 mg |
| Sodium | 1010 mg |
| Carbohydrates | 22 g |
| Fiber | 9 g |
| Protein | 25 g |

**PERCENT OF DAILY VALUE**

| | |
|---|---|
| Vitamin A | 20 |
| Vitamin C | 2 |
| Calcium | 8 |
| Iron | 45 |

INGREDIENTS: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Exhibit 2

## CONTROL/DRV

## CHILI WITH BEANS

**NUTRITION INFORMATION PER SERVING**

Serving Size: 1 cup (253 g)
Serving per Container: 1

| | | |
|---|---|---|
| Calories | 260 | |
| Calories from fat | 75 | |
| | AMOUNT | DAILY VALUE (DV)* |
| Fat | 8.5 g | Less than 75 g |
| Saturated fat | 3.5 g | Less than 25 g |
| Cholesterol | 135 mg | Less than 300 mg |
| Sodium | 1010 mg | Less than 2,400 mg |
| Carbohydrates | 22 g | 325 g or more |
| Fiber | 9 g | 25 g |
| Protein | 25 g | |

| PERCENT OF DAILY VALUE | |
|---|---|
| Vitamin A | 20 |
| Vitamin C | 2 |
| Calcium | 8 |
| Iron | 45 |

* As part of a 2,350 calorie diet
INGREDIENTS: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Exhibit 3

# PERCENT DV WITH DRV

# CHILI WITH BEANS

## NUTRITION INFORMATION PER SERVING

Serving Size: 1 cup (253 g)
Serving per Container: 1

| | | |
|---|---|---|
| Calories | 260 | |
| Calories from fat | 75 | |
| | PERCENT OF DV | DAILY VALUE (DV)* |
| Fat (8.5 g) | 10 | Less than 75 g |
| Saturated fat (3.5 g) | 15 | Less than 25 g |
| Cholesterol (135 mg) | 45 | Less than 300 mg |
| Sodium (1010 mg) | 40 | Less than 2,400 mg |
| Carbohydrates(22 g) | 6 | 325 g or more |
| Fiber (9 g) | 35 | 25 g |
| Protein (25 g) | 50 | |
| Vitamin A | 20 | |
| Vitamin C | 2 | |
| Calcium | 8 | |
| Iron | 45 | |

* As part of a 2,350 calorie diet

INGREDIENTS:xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Exhibit 4

# PERCENT DV WITHOUT DRV

# CHILI WITH BEANS

## NUTRITION INFORMATION PER SERVING

Serving Size: 1 cup (253 g)
Serving per Container: 1

| | |
|---|---|
| Calories | 260 |
| Calories from fat | 75 |
| PERCENT OF DV* | |
| Fat (8.5 g) | 10 |
| Saturated fat (3.5 g) | 15 |
| Cholesterol (135 mg) | 45 |
| Sodium (1010 mg) | 40 |
| Carbohydrates(22 g) | 6 |
| Fiber (9 g) | 35 |
| Protein (25 g) | 50 |
| Vitamin A | 20 |
| Vitamin C | 2 |
| Calcium | 8 |
| Iron | 45 |

* As part of a 2,350 calorie diet
INGREDIENTS: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Exhibit 5

# ADJECTIVE

## CHILI WITH BEANS

### NUTRITION INFORMATION PER SERVING

Serving Size: 1 cup (253 g)
Serving per Container: 1

| | |
|---|---|
| Calories | 260 |
| Calories from fat | 75 |

| | AMOUNT | DAILY VALUE (DV)* |
|---|---|---|
| Fat | MEDIUM (8.5 g) | Less than 75 g |
| Saturated fat | MEDIUM (3.5 g) | Less than 25 g |
| Cholesterol | HIGH (135 mg) | Less than 300 mg |
| Sodium | HIGH (1010 mg) | Less than 2,400 mg |
| Carbohydrates | MEDIUM (22 g) | 325 g or more |
| Fiber | HIGH (9 g) | 25 g |
| Protein | HIGH (25 g) | |

PERCENT OF DAILY VALUE

| | |
|---|---|
| Vitamin A | HIGH 20 |
| Vitamin C | LOW 2 |
| Calcium | MEDIUM 8 |
| Iron | HIGH 45 |

* As part of a 2,350 calorie diet
INGREDIENTS: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Exhibit -6

# HIGHLIGHTING

# CHILI WITH BEANS

**NUTRITION INFORMATION PER SERVING**

Serving Size: 1 cup (253 g)
Serving per Container: 1

| | | |
|---|---|---|
| Calories | 260 | |
| Calories from fat | 75 | |
| | AMOUNT | DAILY VALUE (DV)* |
| Fat | 8.5 g | Less than 75 g |
| Saturated fat | 3.5 g | Less than 25 g |
| Cholesterol | 135 mg | Less than 300 mg |
| Sodium | 1010 mg | Less than 2,400 mg |
| Carbohydrates | 22 g | 325 g or more |
| Fiber | 9 g^^ | 25 g |
| Protein | 25 g | |

| PERCENT OF DAILY VALUE | |
|---|---|
| Vitamin A | 20 |
| Vitamin C | 2 |
| Calcium | 8 |
| Iron | 45 |

* As part of a 2,350 calorie diet
Meets FDA definitions and is consistent with dietary recommendations as: ^^ High in amount per serving
INGREDIENTS: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Exhibit 7

## GROUPING

## CHILI WITH BEANS

**NUTRITION INFORMATION PER SERVING**

Serving Size: 1 cup (253 g)
Serving per Container: 1

| | | |
|---|---|---|
| Calories | 260 | |
| Calories from fat | 75 | |
| **CHOOSE A DIET LOW IN:** | **AMOUNT** | **DAILY VALUE (DV)*** |
| Fat | 8.5 g | Less than 75 g |
| Saturated fat | 3.5 g | Less than 25 g |
| Cholesterol | 135 mg | Less than 300 mg |
| Sodium | 1010 mg | Less than 2,400 mg |
| **CHOOSE A DIET HIGH IN:** | | |
| Carbohydrates | 22 g | 325 g or more |
| Fiber | 9 g | 25 g |

| PERCENT OF DAILY VALUE | |
|---|---|
| Protein | 50 |
| Vitamin A | 20 |
| Vitamin C | 2 |
| Calcium | 8 |
| Iron | 45 |

* As part of a 2,350 calorie diet
INGREDIENTS: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx



BILLING CODE 3410-DM-C

**Use of Reference Values**

In regard to the placement of DRV's in the nutrition label, the format examples shown generally listed the DRV's in the right-hand column on the nutrition label. It is possible to consider other placement for this information, such as in a string at the bottom of the nutrition label. FSIS requests comments on whether the listing of DRV's in a string will conserve label space, and whether this is a desirable tradeoff relative to more difficult access to the DRV's.

In the format examples that included DRV's, the DRV declarations included the terms "or more" and "less than", where appropriate. These terms would not be appropriate for a nutrient, such as dietary fiber, for which dietary guidance is not specific.

FSIS tentatively concludes that at least some consumers will pay attention to the qualifiers and proposes to require the use of qualifying terms in conjunction with the DRV's if the Agency requires the use of DRV's as part of the nutrition label format. However, FSIS also seeks additional comments on the usefulness of the qualifying terms.

**Label Format Elements**

*1. Terminology*

FDA proposed in its supplemental proposal, changes in terminology that would characterize fat for labeling purposes as "total fat" and carbohydrates as "total carbohydrate" to reduce consumer confusion. FSIS requests comments on the usefulness of extending this characterization to calories to clarify the difference between "calories" and "calories from fat."

Subcomponents may be further distinguished by using the term "of which", such as in the following example that distinguishes total calories from calories from fat:

| | |
|---|---|
| Total Calories | 60 |
| of which calories from fat | 20 |

FSIS is considering requiring that the words "of which" or similar terms, such as "including", preface "calories from fat" as a subcomponent of calories; "saturated fat" and "unsaturated fat" (or its subcomponents "polyunsaturated" and "monounsaturated" fats) as subcomponents of total fat; "complex carbohydrate", "sugars", and "sugar alcohol" as subcomponents of total carbohydrate; and "soluble fiber" and "insoluble fiber" as subcomponents of dietary fiber in whatever final format is selected. The Agency requests comment on the terminology that would most effectively distinguish these subcomponents from totals and improve their observability in the label display.

*2. Overall Graphic Presentation*

Overall graphic presentation has the potential to improve effective communication. While interested in maintaining maximum flexibility, FSIS is interested in comments on how other changes in graphic presentation can be made. These changes could include, for example, using graphic elements such as typeface, type size, spacing, and arrangement of various label elements to produce a more effective food label format. These could be applied to any of the formats under consideration.

Any of the formats could also contain an expanded footnote in an effort to clarify that proposed DV's are based on a single caloric intake level and that values will vary according to a person's caloric intake. For example the footnote states: "For a 2,350 calorie diet. Your Daily Value may be higher or lower, depending on your calorie intake." FSIS requests comments on the effectiveness of this statement in conveying to consumers the need to modify these values to meet their nutritional needs and suggestions for alternative footnote statements. Some alternative footnote statements might be:

(1) "Based on a 2,300 calorie diet. Fewer calories are recommended on average for women and young children."

(2) "As part of a 2,400 calorie diet. Many young children and women over 50 need 2,000 calories or less. For a 2,000 calorie diet the Daily Value would be less than 65 g Fat, less than 20 g Saturated Fat, less than 275 g Carbohydrate, and 25 g Fiber (Sodium and Cholesterol do not change)."

(3) "A 2,000 calorie diet is for women over 50 and young children. Most teenagers, sedentary men, active and very active persons, and lactating and breastfeeding women need more calories."

There are many types of formats or methods of graphic enhancement. Comments should address which graphic elements, if any, should be required in final regulations and which should be allowed to be used voluntarily.

*3. Voluntary Format Elements*

FSIS is also seeking comments on the possibility of allowing the use of voluntary format elements. The principal format would be mandatory and would include those elements that FSIS determines to be necessary for accurate and informative labeling. Voluntary format elements that are in keeping with the mandatory format may enhance the educational capability of the label. Another possibility that would increase flexibility is that highlighting be allowed as a voluntary graphic enhancement of the mandatory format rather than being viewed as a separate format. Some of the nutrients highlighted may include calories, total fat, saturated fat, cholesterol, sodium, fiber, calcium, and iron. FSIS requests comments on the feasibility of such an approach.

*4. Simplified Format*

To be consistent with FDA, FSIS proposed the use of a simplified format in its proposed rule on nutrition labeling (56 FR 60302). The proposed simplified format was to be used if a meat or poultry product contains insignificant amounts of more than one-half the nutrients required in the full nutrition label format. An insignificant amount is that amount that may be rounded to zero in nutrition labeling. FSIS believes that a simplified format should resemble, to the maximum degree possible, the full nutrition label.

However, since FSIS is unable to find a meat or poultry product that contains insignificant amounts of more than one-half the nutrients required to be listed and, thus, one that would qualify for the proposed simplified format, FSIS is not proposing the FDA simplified format. Instead, FSIS is proposing a simplified format with differing criteria for meat and poultry products.

When any of the required nutrients, other than the core nutrients, and food components are present in insignificant amounts, FSIS is proposing that they may be omitted from the tabular listing, provided that the following statement is included within the nutrition label: "Not a significant source of _____." The blank would be filled in with the appropriate nutrient or food component. However, at a minimum, the simplified format would include calories, total fat, total carbohydrate, protein, and sodium. The simplified format is a listing of nutrients that can be used in whatever format is ultimately selected. The following is an example of the CONTROL/DRV format modified to represent the simplified format.

BILLING CODE 3410-DM-M

Exhibit 8

## SIMPLIFIED FORMAT

### CONTROL/DRV

### COOKED GROUND BEEF PATTIES

**NUTRITION INFORMATION PER SERVING**

Serving Size: 3 oz (85 g)
Serving per Container: 4

| | |
|---|---|
| Calories | 230 |
| Calories from fat | 150 |

| | AMOUNT | DAILY VALUE (DV)* |
|---|---|---|
| Total fat | 16.5 g | Less than 75 g |
| Saturated fat | 6.5 g | Less than 25 g |
| Cholesterol | 80 mg | Less than 300 mg |
| Total Carbohydrate | 0 g | 325 g or more |
| Sodium | 65 mg | Less than 2,400 mg |
| Protein | 21 g | |

**PERCENT OF DAILY VALUE**

| | |
|---|---|
| Iron | 15 |

Not a significant source of sugars, complex carbohydrates, dietary fiber, vitamin A, vitamin C, or calcium.

* As part of a 2,350 calorie diet



BILLING CODE 3410-DM-C

*5. Alternate Formats*

FSIS is proposing to select a standard format. At the same time, FSIS recognizes that the formats that have been tested obviously do not exhaust all possibilities.

Among the alternative formats discussed in this section and the formats discussed earlier in this document, FSIS requests comments on which format is most comprehensible while providing nutrition information in the context of a total daily diet.

**A. Formats With Daily Values for Men and Women**

Recommended calorie and nutrient intakes vary widely across the general population; therefore, a single daily value may not be appropriate. The factor that has the greatest effect on calorie need is gender. One possible way to address this concern would be to include on the label an average daily value for men and an average daily value for women. The following example includes an illustration of such a format. Would this format help individuals better identify their daily nutritional needs? Would such a format be helpful to individuals even though it presents "average" daily values that are not applicable to all men and all women? Can such a "dual" declaration be accommodated in the space available for nutrition labeling on food labels? If such a format is suggested, the Agency requests comments along with supporting data on what the specific calorie and nutrient intake should be.

BILLING CODE 3410-DM-M

Exhibit 9

# Control with Daily Guide for Men and Women

## Chili with Beans

### Nutrition Information Per Serving

| Size | | Servings | |
|---|---|---|---|
| Serving Size: | 1 cup (253 g) | Servings per Container: | 1 |

| Calories | | | |
|---|---|---|---|
| Calories: | 260 | Calories from fat: | 75 |

| Nutrient | Amount | Daily Guide | Women | Men |
|---|---|---|---|---|
| Total Fat | 8.5 g | Less than | 65 g* | 80 g* |
| Saturated Fat | 3.5 g | Less than | 20 g* | 25 g* |
| Cholesterol | 135 mg | Less than | 300 mg | 300 mg |
| Sodium | 1010 mg | Less than | 2400 mg | 2400 mg |
| Total Carbohydrate | 22 g | More than | 300 g* | 375 g* |
| Complex Carbohydrate | 18 g | | | |
| Sugars | 4 g | | | |
| Dietary Fiber | 9 g | | 25 g* | 30 g* |
| Protein | 25 g | | 50 g* | 65 g* |

| Percent of Daily Guide | | | |
|---|---|---|---|
| Vitamin A | 20% | Calcium | 8% |
| Vitamin C | 2% | Iron | 45% |

* Based on an assumed calorie intake of 2,000 calories for women and 2,500 calories for men. Advisable calorie, fat, carbohydrate, fiber, and protein intake will vary based on age, height, weight, metabolism, and activity level.

INGREDIENTS: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX



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**B. Control With Dietary Guidance Format**

FSIS is concerned that the use of a single DRV level on the label will be interpreted as the appropriate level for all consumers, regardless of sex, height, weight, metabolism, and activity level. Thus, consumers could be led to believe that the single DRV's are dietary recommendations rather than food labeling reference values. An alternative to the use of specific reference values is the following example, based on the CONTROL format. Nutrition information is provided to assist consumers in planning their total daily diet based on the Dietary Guidelines and Americans. In response to the public's desire for authoritative, consistent guidance on diet and health form the Federal Government, the Department of Agriculture joined with the Department of Health and Human Services (HHS) to issue the first edition of "Nutrition and Your Health, Dietary Guidelines for Americans" in 1980. The Guidelines, based on the most up-to-date scientific based information available at the time, were directed to healthy Americans, not to individuals on special diets for medical reasons. The Dietary Guidelines were revised in 1985 and in 1990. A review of the Dietary Guidelines for Americans will take place every five years as required by the National Nutrition Monitoring and Related Research Act of 1990, Public Law 101–445.

The Dietary Guidelines for Americans, a consensus document which serves as the principal statement of Federal dietary guidance, stresses the importance of eating a variety of foods from all five major food groups, taking into account each consumer's individual dietary needs. By following the Dietary Guidelines, one can enjoy better health and reduce the risk of developing certain chronic diseases. The Dietary Guidelines are the best, most up-to-date advice from nutrition scientists.

Because the Dietary Guidelines for Americans are the principal statements of Federal dietary guidance, the National Nutrition Monitoring Act of 1990 requires that all dietary guidance materials produced by any Federal agency or department must be judged to be consistent with the latest version of the Dietary Guidelines for Americans. For this reason, the Agency believes that the format should be consistent with, and not go beyond, the Dietary Guidelines. Consistency with the Dietary Guidelines will assist consumers to implement the Dietary Guidelines in their daily food choices.

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Exhibit 10

## Control with Dietary Guidance

### Chili with Beans

# Nutrition Information Per Serving

| Size | Servings |
|---|---|
| Serving Size: 1 cup (253 g) | Servings per Container: 1 |

**Calories**

| | | | |
|---|---|---|---|
| Calories: | 260 | Calories from fat: | 75 |

| Nutrient | Amount | Percent of Reference Daily Intake | |
|---|---|---|---|
| Total Fat (1g=9 calories) | 8.5 g | Vitamin A | 20% |
| Saturated Fat | 3.5 g | Vitamin C | 2% |
| Cholesterol | 135 mg | Calcium | 8% |
| Sodium | 1010 mg | Iron | 45% |
| Total Carbohydrate (1g=4 calories) | 22 g | | |
| Complex Carbohydrate | 18 g | | |
| Sugars | 4 g | | |
| Dietary Fiber | 9 g | | |
| Protein (1g=4 calories) | 25 g | | |

Use this nutrition information to help you plan your total daily diet. The Dietary Guidelines recommend that Americans:

- Eat a wide variety of foods
- Choose a diet with plenty of vegetables, fruits, and grain products
- Choose a diet low in fat (30% of calories or less), saturated fat (less than 10% of calories), and cholesterol
- Use sugar, salt and sodium only in moderation

INGREDIENTS: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX



BILLING CODE 3410-DM-C

**C. Control With Recommended Daily Intake Range Format**

Another alternative to the use of single reference values is the use of a range of values for those nutrients whose recommended intake levels are based on caloric intake. FSIS seeks comment on the use of a range for reference values and the ability of consumers to use such a range to understand the food's relative significance in the context of the total daily diet.

In the following example, based on the CONTROL format, a range is given in a column entitled "Recommended Daily Intake" adjacent to the quantitative declarations of calories, calories from fat, total fat, saturated fat, total carbohydrate, dietary fiber, and protein. Cholesterol and sodium, which do not have reference values based on caloric intake, are specified by a single value. The calorie intake range depicted is based on the most recent dietary guidance in The Food Guide Pyramid, a publication developed by USDA and supported by the Department of Health and Human Services. The Food Guide Pyramid booklet was developed to help consumers use USDA's research-based Food guidance system contained in the Federal government's current dietary recommendations for healthy Americans ages two years and over (Nutrition and Your Health: Dietary Guidelines For Americans, U.S. Department of Agriculture and U.S. Department of Health and Human Services, Third Edition, 1990). The calorie range discussed in the Food Guide Pyramid booklet is intended to help consumers understand that, while everyone needs certain essential nutrients, no one level of calories and nutrients is appropriate for everyone. This food guidance system combines NAS' Recommended Dietary Allowances (RDA's) and USDA's nationwide food consumption survey data to arrive at a range of 1,600 to 2,800 calories per day. If the range were to be based solely on the RDA's, it would be 1,800 to 3,000 calories per day. Such a format might depict calorie intakes as ranges with upper levels of 2,800 to 3,000 calories per day. These upper limits are based on the recommended intakes for men. The recommended intake for active women is 2,200 calories per day. FSIS seeks comments on the values to be used if a range format is adopted. What, if any, additional information needs to be contained in such labels so that they are not false or misleading?

A variation of this type of format would be the listing of DV's for two or more different caloric intake levels on each label, e.g., based on intakes of 1,600 and 2,800 calories per day.

Another variation might be the use of a footnote to explain that advisable daily intake levels for calories, fat, carbohydrate, fiber, and protein will vary based on sex, age, height, weight, metabolism, and activity levels. For example, a footnote statement might read, "The values under Recommended Daily Intake represent a range for a normal diet. Nutritional needs vary, 1,600 calories for sedentary women and older adults, 2,600 calories for teenage boys, active men, and very active women." Comments are requested on the use of these two suggested variations and whether a footnote is useful and how to best convey such information in a footnote.

The Agency tentatively concludes that the "CONTROL WITH DIETARY GUIDANCE" (Exhibit 10) or the "CONTROL WITH RECOMMENDED DAILY INTAKE RANGE" (Exhibit 11) formats would: (1) Enable consumers to select foods that fit into a healthier diet that meets their individual needs; (2) provide consumers with the most accurate information on which to base their dietary decisions; (3) promote and reinforce a nutrition education message that is familiar to consumers and well accepted by health professionals; and (4) allow the Agency flexibility to adapt to ever changing scientific findings without publishing new regulations. FSIS requests comments on whether each of the formats discussed enables consumers to apply the nutrition information in the context of a total daily diet.

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Exhibit 11

# Control with Recommended Daily Intake Range

## Chili with Beans

### Nutrition Information Per Serving

| Size | | Servings | |
|---|---|---|---|
| Serving Size: 1 cup (253 g) | | Servings per Container: | 1 |

| Calories | | Recommended Daily Intake* |
|---|---|---|
| Calories | 260 | 1600-2800 |
| Calories from fat | 75 | 480-840 |

| Nutrient | Amount | Recommended Daily Intake* |
|---|---|---|
| Total Fat | 8.5 g | 53-93 g |
| Saturated Fat | 3.5 g | 18-31 g |
| Cholesterol | 135 mg | 300 mg |
| Sodium | 1010 mg | 2400 mg |
| Total Carbohydrate | 22 g | 240-420 g |
| Complex Carbohydrate | 18 g | |
| Sugars | 4 g | |
| Dietary Fiber | 9 g | 18-32 g |
| Protein | 25 g | 40-70 g |

| Percent of Recommended Daily Intake | | | |
|---|---|---|---|
| Vitamin A | 20% | Calcium | 8% |
| Vitamin C | 2% | Iron | 45% |

* Ranges are based on recommended intakes and food consumption surveys. Advisable calorie, fat, carbohydrate, fiber, and protein intake should vary based on age, sex, height, weight, metabolism, and activity level.

INGREDIENTS: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX



BILLING CODE 3410-DM-C

**FSIS Proposal**

FSIS is proposing to establish the CONTROL WITH DIETARY GUIDANCE (Exhibit 10) or the CONTROL WITH RECOMMENDED DAILY INTAKE RANGE (Exhibit 11) as the standard format for presenting nutrition information on the food label. FSIS requests comments on the CONTROL WITH DIETARY GUIDANCE format and the CONTROL WITH RECOMMENDED DAILY INTAKE RANGE format and also seeks comments on alternative formats.

Comments on the following questions will be especially helpful:

(1) What is the best method to alert consumers to the need to use label information to plan a total diet based on individual needs?

(2) Does the use of ranges for DRV's improve the usefulness of label information for consumers seeking to use label information to plan a total diet based on individual needs?

(3) Does the use of DRV's on the label imply that the DRV's are dietary recommendations?

(4) Does the provisions in the proposed format (Exhibit 10) of information about the number of calories per gram of fat, carbohydrates, and protein assist consumers in planning a total diet based on individual needs?

On July 20, 1992, FDA proposed in the **Federal Register** (57 FR 32058) that the PERCENT DV WITH DRV be the standard format for use in presenting nutrition information on the labels of FDA-regulated products.

**Effective Date**

On March 25, 1992, FSIS published a notice in the **Federal Register** announcing its intent to publish final nutrition labeling regulations on November 8, 1992, and to implement those regulations 18 months after publication in the **Federal Register** (57 FR 10298). The regulations, therefore, would be implemented on May 8, 1994.

Done at Washington, DC, on: August 21, 1992.

**William L. West,**

*Acting Administrator, Food Safety and Inspection Service.*

[FR Doc. 92-20890 Filed 8-27-92; 8:45 am]

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