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# Presidential Documents

Title 3—

The President

## Proclamation 6570 of June 4, 1993

## National Safe Boating Week, 1993

**By the President of the United States of America**

**A Proclamation**

Nearly 70 million Americans enjoy recreational boating as a favorite pastime. America's scenic lakes, beautiful rivers, and vast waterways provide a wonderful place for boaters to enjoy family outings, waterskiing, fishing, and other activities. It is appropriate that we recognize the many joys recreational boating affords. At the same time, because recreational boating can involve risks to persons, property, and natural resources, it is also important that we reflect upon ways to ensure safe boating.

The U.S. Coast Guard, the National Safe Boating Council, and the many State and local recreational boating organizations allied in the cause of safe boating have chosen "Boat Smart" as the theme of National Safe Boating Week. This theme serves as a reminder to the millions of Americans who engage in recreational boating that this activity should be enjoyed in a thoughtful, responsible manner. Many Americans can benefit from preparation and caution: taking boating safety courses; wearing personal flotation devices; following the "Rules of the Road"; and not using alcohol or drugs when operating boats. Young boaters learn safe boating practices by example, and today's boating practices may affect the well-being of American families for years to come.

Boating is an activity that directly affects our precious national water resources and associated wildlife. Boaters must carefully preserve and protect our rivers, lakes, seashores, and wildlife by avoiding practices that give rise to accidents, injuries, and pollution. Today's boaters must take care to preserve our precious waterways for future generations.

For all of these reasons, I call upon boating Americans, during National Safe Boating Week, 1993, to reflect on the importance of safe boating to the health of our people and the preservation of our natural resources. We must commit ourselves to safe and environmentally sensitive boating—for now and for the future.

To promote boating as a safe sport, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 161), as amended, has authorized and requested that the President annually proclaim the week beginning on the first Sunday in June as "National Safe Boating Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning June 6, 1993, as National Safe Boating Week. I encourage the Governors of the 50 States and the Commonwealth of Puerto Rico, and officials of other areas subject to the jurisdiction of the United States, to provide for the observance of this week with appropriate activities. I urge all Americans to become informed boaters and to enjoy safe, thoughtful recreational boating.

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

William J. Clinton

[FR Doc. 93–13589
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# Rules and Regulations

Federal Register
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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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 294

RIN 3206–AF 42

### Implementation of the Freedom of Information Act

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** This document makes editorial changes to OPM's regulations implementing the Freedom of Information Act (FOIA). These changes are intended to clarify and improve OPM's administration of the FOIA.

**DATES:** Interim rule effective July 8, 1993. Comments must be received on or before July 8, 1993.

**ADDRESSES:** Send comments to C. Ronald Trueworthy, Chief, Information Policy Branch, Plans and Policies Division, Office of Information Resources Management, Administration Group, Office of Personnel Management, CHP 500, 1900 E Street NW., Washington, DC 20415; or deliver to room 5542 marked "Deliver to C. Ronald Trueworthy, CHP 500."

**FOR FURTHER INFORMATION CONTACT:** Leslie Crawford, (703) 908–8565.

**SUPPLEMENTARY INFORMATION:** OPM published a final rule incorporating changes to § 294.106 and § 294.112, in the July 21, 1992, **Federal Register** (57 FR 32149). These changes clarified OPM's practices concerning material made available for public inspection and copying, and added "confidential commercial information" to comply with E.O. 12600. This interim rule is designed to clarify OPM's regulations by taking the following actions:

In § 294.102, General definitions, the definition of "search" has been amended by moving the non-definitional component to a more appropriate section (294.109(a)(5)).

In § 294.104, Clarifying a requester's category, paragraph (c), an explanation has been added of how OPM will proceed if requested clarifying information is not received within a reasonable time.

The table in § 294.107(b) has been updated to more fully indicate which offices should be approached for which records. § 294.108, Procedures for obtaining records, paragraph (f), has been revised to conform more closely to title 5, U.S.C. 552(a)(6)(A)(i), as to what information should be provided to a requester.

§ 294.109, Fees, contains the same information as previously, but it has been rearranged and edited to establish a better flow of information. Details on the fees chargeable to different categories of requesters are now presented in an easy to understand table.

The table in § 294.401 has been updated to correct references to regulations where information on certain types of records may be found.

### Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the changes being made are strictly editorial and will make no change to OPM's implementation of the FOIA.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because costs associated with requesting information under the Freedom of Information Act are not affected.

### List of Subjects in 5 CFR Part 294

Freedom of information.

U.S. Office of Personnel Management.

**Patricia W. Lattimore,**

*Acting Deputy Director.*

Accordingly, OPM is amending 5 CFR part 294 as follows:

1. The authority for part 294 continues to read as follows:

**Authority:** 5 U.S.C. Freedom of Information Act, Pub. L. 92–502, as amended by the Freedom of Information Reform Act of 1986, Pub. L. 99–570 and E.O. 12600, 52 FR 23781 (June 25, 1987).

## PART 294—AVAILABILITY OF OFFICIAL INFORMATION

2. In § 294.102, the definition of *search* is revised to read as follows:

**§ 294.102 General definitions.**

* * * * *

*Search* means the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

3. In § 294.104, paragraph (c) is revised to read as follows:

**§ 294.104 Clarifying a requester's category.**

* * * * *

(c) *Effect of seeking clarification on time limits for responding.* When applying the time limits in section 552 of title 5, United States Code, OPM will not officially consider any request for records as being received until the official who is assigned responsibility for making a decision on releasing the records has received any additional clarification sought under paragraphs (a) and (b) of this section; and has determined that the clarifying information is sufficient to correctly place the requester in one of the categories prescribed in this section. If the requested clarifying information is not received within a reasonable time, OPM will, based on the information available, determine a final category for the request and calculate applicable fees.

4. In § 294.107, the table in paragraph (b) is revised to read as follows:

**§ 294.107 Places to obtain records.**

* * * * *

(b) * * *

| Send to— | For subject-matter about— |
|---|---|
| Associate Director for Administration | Administrative services; information management, including automated data processing; equal employment opportunity; procurement; and personnel. |
| Associate Director for Retirement and Insurance. | Retirement; life and health insurance. |
| Associate Director for Personnel Systems and Oversight. | Personnel management in agencies; pay; position classification; wage grade jobs; performance management; and employee and labor relations. |
| Assistant Director for Workforce Information. | Governmentwide personnel statistics; official personnel and employee medical folders. |
| Associate Director for Investigations . | Background investigations and related records on individuals. |
| Associate Director for Career Entry .. | Nationwide examining and testing for employment; promotions; administrative law judges; affirmative employment programs for minorities, women, veterans, and the handicapped; recruiting and employment; and staffing policy. |
| Chief Financial Officer ..... | Financial management. |
| Director for Human Resources Development. | Training, education, and development; senior executive service. |
| Director, Washington Area Service Center. | Examining, testing, and training operations in Washington, DC. |

5. In § 294.108, paragraph (f) is revised to read as follows:

**§ 294.108 Procedures for obtaining records.**

* * * * *

(f) *Responses within 10 working days.* Except in unusual circumstances (as defined in 5 U.S.C. 552(a)(6)(B)), OPM will determine whether to disclose or deny records within 10 working days after receipt of the request (excluding weekends and holidays) and will provide notice immediately of its determination and the reasons therefor, and of the right to appeal any adverse determination.

6. Section 294.109 is revised to read as follows:

**§ 294.109 Fees.**

(a) *Applicability of fees.*

(1) OPM will furnish, without charge, reasonable quantities of material that it has available for free distribution to the public.

(2) OPM may furnish other materials, subject to payment of fees intended to recoup the full allowable direct costs of providing services. Fees for these materials may be waived if the request meets the requirements specified in paragraph (f) of this section.

(3) If a request does not include an acceptable agreement to pay fees and does not otherwise convey a willingness to pay fees, OPM will promptly provide notification of the estimated fees. This notice will offer an opportunity to confer with OPM staff to reformulate the request to meet the requester's needs at a lower cost. Upon agreement to pay the required fees, OPM will further process the request.

(4) As described in § 294.107, OPM ordinarily responds to FOIA requests in a decentralized manner. Because of this, OPM may at times refer a single request to two or more OPM entities to make separate direct responses. In such cases, each responding entity may assess fees as provided by this section, but only for direct costs associated with any response it has prepared.

(5) If fees for document search are authorized as provided in paragraph (c) of this section, OPM may assess charges for employee time spent searching for documents and other direct costs of a search, even if a search fails to locate records or if records located are determined to be exempt from disclosure. Searches should be conducted in the most efficient and least expensive manner so as to minimize the cost for both the agency and the requester, e.g., personnel should not engage in line-by-line search when photocopying an entire document would be a less expensive and quicker way to comply with a request.

(6) Services requested and performed but not required under the FOIA, such as formal certification of records as true copies, will be subject to charges under the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes.

(b) *Rates used to compute fees.* The following rates form the basis for assessing reasonable, standard charges for document search, duplication, and review as required by 5 U.S.C. 552(a)(4). The listing of rates below should be used in conjunction with the fee components listed in paragraph (c) of this section:

| Service | Rate |
|---|---|
| Employee time ..... | Salary rate plus 16% to cover benefits. |
| Photocopies (up to 8½" X 14"). | $.013 per page. |
| Printed materials, per 25 pages or fraction thereof. | $.025. |
| Computer time ..... | Actual direct cost. |
| Supplies and other materials. | Actual direct cost. |
| Other costs not identified above. | Actual direct cost. |

(c) *Assessing fees based on requester's category.* Rates are assessed differently for the different categories of requesters as defined in § 294.103. Requests have three cost components for the purpose of assessing fees: the cost of document search, the cost of duplication, and the cost of review. OPM will apply the rates in paragraph (b) of this section to the cost components that apply to the requester's category as follows:

| Requester's category | Search | Review | Duplication |
|---|---|---|---|
| Commercial | Actual direct costs | Actual direct costs | Actual direct costs. |
| Non-commercial (educational or scientific institution) or news media. | No charge | No charge | Actual direct costs.[1] |
| All others | Actual direct costs[2] | No charge | Actual direct costs.[1] |

[1] First 100 pages of paper copies or reasonable equivalent, such as a microfiche containing the equivalent of 100 pages, are copied free.
[2] First 2 hours of manual search time are free. If requested records are maintained in a computerized data base, OPM will use the following formula, suggested by OMB, to provide the equivalent of 2 hours manual search time free before charging for computer search time: The operator's hourly salary plus 16% will be added to the hourly cost of operating the central processing unit that contains the record information.

(d) *Payment of fees.* Fees are payable by check or money order to the Office of Personnel Management.

(1) If the total charge for fulfilling the request will be less than $25, no fee will be assessed (except as provided in paragraph (d)(3) of this section).

(2) If a request may reasonably result in a fee assessment of more than $25, OPM will not release the records unless the requester agrees in advance to pay the anticipated charges.

(3) OPM may aggregate requests and charge fees accordingly, when there is a reasonable belief that a requester, or a group of requesters acting in concert, is attempting to break down a request into a series of requests to evade the assessment of fees.

(i) If multiple requests of this type occur within a 30-day period, OPM may provide notice that it is aggregating the requests and that it will apply the fee provisions of this section, including any required agreement to pay fees and any advance payment.

(ii) Before aggregating requests of this type made over a period longer than 30 days, OPM will assure that it has a solid basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees.

(iii) OPM will not aggregate multiple requests on unrelated subjects from one person.

(e) *Payment of fees in advance.* If OPM estimates or determines that fees are likely to exceed $250, OPM may require the payment of applicable fees in advance.

(1) If an OPM official, who is authorized to make a decision on a particular request, determines that the requester has a history of prompt payment of FOIA fees, OPM will provide notice of the likely cost and obtain satisfactory assurance of full payment.

(2) When a person, or an organization that a person represents, has previously failed to pay assessed fees in a timely manner (i.e., payment was not made within 30 days of the billing date), OPM will require full payment of all fees in advance.

(3) If a person, or an organization that a person represents, has not paid fees previously assessed, OPM will not begin to process any new request for records until the requester has paid the full amount owed plus any applicable interest, and made a full advance payment for the new request.

(f) *Waiver or reduction of fees.* OPM will furnish documents without any charge, or at a reduced charge, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and release of the material is not primarily in the commercial interest of the requester.

(1) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, OPM shall consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Government";

(ii) The information value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of Government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities.

(2) In determining whether disclosure of the information is or is not primarily in the commercial interest of the requester, OPM shall consider the following factors:

(i) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so—

(ii) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) In all cases the burden of proof shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(g) *Denial of waiver request.* (1) An OPM official may deny a request for a full or partial waiver of fees without further consideration if the request does not include:

(i) A clear statement of the requester's interest in the requested information;

(ii) A clear statement of the use proposed for the information and whether the requester will derive income or other benefit from such use;

(iii) A clear statement of how the public will benefit from OPM's release of the requested information; and

(iv) If specialized use of the documents is contemplated, a clear statement of the requester's qualifications that are relevant to the specialized use.

(2) A requester may appeal the denial of a waiver request as provided by § 294.110 of this part.

(h) *Fees not paid; penalties; debt collection.*

(1) If a request, which requires the advance payment of fees under the criteria specified in this section, is not accompanied by the required payment, OPM will promptly notify the requester that the required fee must be paid within 30 days, and that OPM will not further process the request until it receives payment.

(2) OPM may begin assessing interest charges on an unpaid bill starting on the 31st day following the date on which the bill was sent. Interest will be charged at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

(3) To encourage the repayment of debts incurred under this subpart, OPM may use the procedures authorized by Public Law 97–365, the Debt Collection Act of 1982. This may include disclosure to consumer reporting

agencies and the use of collection agencies.

7. In section 294.401, the table is revised to read as follows:

**§ 294.401 References.**

* * * * *

| Type of information | Location |
|---|---|
| Classification appeal records | 511.616. |
| Classification information | 175.101. |
| Employee performance folders. | 293.311. |
| Examination and related subjects records. | 300.201. |
| Grade and pay retention records. | 536.307. |
| Investigative records | 736.104. |
| Job grading reviews and appeals records. | 532.707. |
| Medical information | 297.205 and 293 Subpart E. |
| Official Personnel Folders | 293.311. |
| Privacy and personnel records. | 297. |
| Retirement | 831.106 and 841.108. |

[FR Doc. 93–13379 Filed 6–7–93; 8:45 am]

BILLING CODE 6325–01–M

## 5 CFR Part 351

**RIN 3206–AF47**

## Reduction in Force Notice; Exception to 60 Days Specific Notice

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rulemaking.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing revised interim regulations that authorize the Director of OPM to approve a reduction in force (RIF) notice period of less than 60 days specific written notice. These interim regulations also authorize the Director of OPM to approve a RIF notice period of less than 120 days specific written notice when a significant number of Department of Defense (DOD) employees will be separated. In both situations, the Director of OPM may approve the shortened RIF notice period only in situations caused by unforeseeable circumstances, and the shortened RIF notice period must include at least 30 days specific written notice.

**DATES:** Interim rules effective June 8, 1993. Written comments will be considered if received no later than August 9, 1993.

**ADDRESSES:** Send or deliver written comments to: Associate Director for Career Entry, room 6F08, Office of Personnel Management, Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Glennon, (202) 606–0960; FAX (202) 606–0390.

**SUPPLEMENTARY INFORMATION:** The present RIF notice requirements were published in the **Federal Register** at 56 FR 43995 on September 6, 1991, as revised by technical amendment at 57 FR 32685 on July 23, 1992. The present RIF regulations require agencies to give all employees and their union representatives, if any, at least 60 days specific written notice prior to a RIF, with an exception under 5 CFR 351.801(b) authorizing OPM to approve a RIF notice period of less than 60 days, but at least 30 days, before the effective date of a RIF action when a RIF is caused by unforeseeable circumstances.

Section 4433 of Public Law 102–484 (the National Defense Authorization Act for Fiscal Year 1993), approved October 23, 1992, revised 5 U.S.C. 3502 by adding new sections (d) and (e) containing new notice requirements for RIF actions. The new RIF notice requirements are effective January 20, 1993.

New paragraph 5 U.S.C. 3502(d)(1)(A) provides that agencies are required to give employees and their union representative(s), if any, at least 60 days specific written notice of a RIF. In a special note to revised 5 U.S.C. 3502, section 4433 of Public Law 102–484 provides that DOD employees, under regulations issued by that agency, are entitled to at least 120 days specific written notice of a RIF when a significant number of employees will be separated during the period extending from January 20, 1993, to February 1, 1998. However, the basic requirement for 60 days specific written notice, rather than the requirement for 120 days specific written notice, still applies when less than a significant number of DOD employees will be separated by RIF. These new notice provisions are covered in revised 5 CFR 351.801(a).

New paragraph 5 U.S.C. 3502(e)(1) provides that the President of the United States may approve a RIF notice period of less than, as appropriate, 60 or 120 days, based on unforeseeable circumstances. New paragraph 5 U.S.C. 3503(e)(3) provides that the shortened RIF notice period must cover at least 30 days. E.O. 12828, approved on January 5, 1993 (58 FR 2965), authorizes OPM to shorten the applicable mandatory 60 or 120 day specific written RIF notice requirement to a minimum of 30 days specific written notice of a RIF action. OPM is now revising 5 CFR 351.801(b) to implement E.O. 12828 and authorize the Director of OPM to approve a shortened notice period at the request of an agency head or designee.

New paragraphs 5 U.S.C. 3502(d) (2) and (3) also set additional new statutory requirements covering the content of a specific written RIF notice. To implement new 5 U.S.C. 3502(d)(2)(C), 5 CFR 351.802 is revised to add a new paragraph (b) requiring that an agency must provide each employee receiving a specific RIF notice a copy of OPM's retention regulations upon the employee's request. The other new statutory RIF notice requirements set forth in new 5 U.S.C. 3502(d) are covered in present 5 CFR 351.801(a), 5 CFR 351.802(a) (1)–(6), and 5 CFR 351.803.

Section 351.805 is revised to provide that an employee who is reached for a more severe RIF action is entitled to a new written notice of, as appropriate, at least 60 or 120 full days. The change is necessary because of the new 120 day RIF notice period referenced in 5 CFR 351.801(a)(2) that is applicable to certain DOD employees.

### Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest to delay access to benefits. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The delay in the effective date is being waived to give effect to the benefits extended by the amendment provisions at the earliest practicable date.

### E.O. 12291 Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

### List of Subjects in Part 351

Government employees.

U.S. Office of Personnel Management.

**Patricia W. Lattimore,**

*Acting Deputy Director.*

Accordingly, OPM is amending part 351 of title 5, Code of Federal Regulations, as follows:

## PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 is revised to read as follows:

**Authority:** 5 U.S.C. 1302, 3502, 3503; § 351.801 also issued under E.O. 12828, 58 FR 2965.

2. Subpart H, consisting of §§ 351.801 through 351.806, is revised to read as follows:

Sec.
351.801 Notice period.
351.802 Content of notice.
351.803 Notice of eligibility for reemployment and other placement assistance.
351.804 Expiration of notice.
351.805 New notice required.
351.806 Status during notice period.

**§ 351.801 Notice period.**

(a)(1) Except as provided in paragraph (b) of this section, each competing employee selected for release from a competitive level under this part is entitled to a specific written notice at least 60 full days before the effective date of release.

(2) Under authority of section 4433 of Public Law 102–484, each competing employee of the Department of Defense is entitled, under implementing regulations issued by that agency, to a specific written notice at least 120 full days before the effective date of release when a significant number of employees will be separated by reduction in force. This 120 days notice requirement is applicable during the period from January 20, 1993, through January 31, 1998. The basic requirement for 60 full days specific written notice set forth in paragraph (a) of this section is still applicable when less than a significant number of employees will be separated by reduction in force.

(3) At the same time an agency issues a notice to an employee, it must give a written notice to the exclusive representative(s), as defined in 5 U.S.C. 7103(a)(16), of each affected employee at the time of the notice. When a significant number of employees will be separated, an agency must also satisfy the notice requirements of §§ 351.803(b) and (c) of this section.

(b) When a reduction in force is caused by circumstances not reasonably foreseeable, the Director of OPM, at the request of an agency head or designee, may approve a notice period of less than 60 days, or a notice period of less than 120 days when a significant number of Department of Defense employees will be separated. The shortened notice period must cover at least 30 full days before the effective date of release. An agency request to OPM shall specify:

(1) The reduction in force to which the request pertains;

(2) The number of days by which the agency requests that the period be shortened;

(3) The reasons for the request; and

(4) Any other additional information that OPM may specify in the Federal Personnel Manual.

(c) The notice period begins the day after the employee receives the notice.

(d) When an agency retains an employee under § 351.607 or § 351.608 of this part, the notice to the employee shall cite the date on which the retention period ends as the effective date of the employee's release from the competitive level.

**§ 351.802 Content of notice.**

(a) The notice shall state specifically:

(1) The action to be taken and its effective date;

(2) The employee's competitive area, competitive level, subgroup, service date, and annual performance ratings of record received during the last four years;

(3) The place where the employee may inspect the regulations and record pertinent to this case;

(4) The reasons for retaining a lower-standing employee in the same competitive level under § 351.607 or § 351.608 of this part;

(5) Information on reemployment rights, except as permitted by paragraph 351.803(a) of this part; and

(6) The employee's right, as applicable, to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations or to grieve under a negotiated grievance procedure. The agency shall also comply with § 1201.21 of this title.

(b) When an agency issues an employee a notice, the agency must, upon the employee's request, provide the employee with a copy of OPM's retention regulations found in part 351 of this chapter.

**§ 351.803 Notice of eligibility for reemployment and other placement assistance.**

(a) An employee who receives a specific notice of separation under this part must be given information concerning the right to reemployment consideration under subparts B (Reemployment Priority List) and C (Displaced Employee Program) of part 330 of this chapter. The employee also must be given information concerning how to apply for unemployment insurance through his or her appropriate State program. This information must be provided either in or with the specific reduction in force notice, or as a supplemental notice to the employee.

(b) When 50 or more employees in a competitive area receive separation notices under this part, the agency must provide written notification of the action, at the same time it issues specific notices of separation to employees, to:

(1) The State dislocated worker unit(s), as designated or created under title III of the Job Training Partnership Act;

(2) The chief elected official of local government(s) within which these separations will occur; and

(3) OPM.

(c) The notice required by paragraph (b) of this section must include:

(1) The number of employees to be separated from the agency by reduction in force (broken down by geographic area or other basis specified by OPM);

(2) the effective date of the separations; and

(3) Any other information specified in the Federal Personnel Manual, including information needs identified from consultation between OPM and the Department of Labor to facilitate delivery of placement and related services.

**§ 351.804 Expiration of notice.**

A notice expires except when followed by the action specified, or by an action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action. An agency may not take the action specified before the effective date in the notice. An action taken after the specific date in the notice shall not be ruled invalid for that reason except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for reduction in force as a result of the action.

**§ 351.805 New notice required.**

An employee is entitled to a written notice of, as appropriate, at least 60 or 120 full days if the agency decides to take an action more severe than first specified.

**§ 351.806 Status during notice period.**

When possible, the agency shall retain the employee on active duty status during the notice period. When in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with or without his or her consent, on leave without pay with his or her consent, or in a nonpay status without his or her consent.

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5 CFR Part 550

RIN 3206–AE18

## Pay Administration (General); Hazard Pay Differentials

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final rule that provides eligible General Schedule (GS) employees who experience a significant risk of exposure to hazardous levels of airborne asbestos fibers with a hazardous duty pay (HDP) differential. The final rule incorporates the Occupational Safety and Health Administration (OSHA) permissible exposure limit (PEL) standard for concentrations of airborne asbestos fibers.

**EFFECTIVE DATE:** The final rule is effective on June 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jane R. Kuhl (202) 606–2858.

**SUPPLEMENTARY INFORMATION:** On August 1, 1990, the Office of Personnel management (OPM) published a proposed rule and request for comments (55 FR 31190) that would provide General Schedule (GS) employees who are exposed to the hazards of airborne asbestos fibers with a hazardous duty pay (HDP) differential of 8 percent of basic pay. The 60-day comment period ended on October 1, 1990. Seventeen responses were received—nine from agencies, four from labor organizations, three from individuals, and one from an association of former manufacturers of asbestos products. Three of the comments were received shortly after the end of the comment period. The comments and the revisions in the proposed rule are summarized below.

### Adoption of OSHA PEL Standards for Exposure to Asbestos

The proposed rule read as follows: "(6) Asbestos. Working in an area where airborne concentrations of asbestos fibers may expose employees to potential illness or injury and protective devices or safety measures have not practically eliminated the potential for such personal illness or injury." The proposed rule was identical in wording to the existing environmental differential pay (EDP) category that covers asbestos exposure for Federal prevailing rate (wage) employees.

A sub-unit of an agency recommended that the proposed rule be adopted as written because it was identical in wording to the existing EDP asbestos category for wage employees. The agency organization described a specific location where GS and wage employees working together may have been exposed to asbestos near an abandoned asbestos mine. Another agency concurred with the proposed rule because the agency believed there was no compelling rationale to treat GS employees differently from wage employees.

However, six large agencies observed that the proposed rule lacked a clear definition of "exposure" and recommended that the Occupational Safety and Health Administration (OSHA) permissible exposure limit (PEL) standard for asbestos be used as the standard for exposure. The following representative comments highlight the various issues identified.

One agency believed that the end result of incorporating the OSHA PEL standard in the final rule would be improved consistency in agency pay determinations and greater equity within the Federal service and with the non-Federal sector. Other agencies believed the establishment of a minimum exposure level (such as that included in the PEL standard) would reduce frivolous claims and would preclude inconsistent or varying arbitration decisions.

Several major agencies suggested that the proposed rule, if adopted as written, might result in significant additional costs because "exposure" is not defined clearly. For example, a large agency was concerned about an arbitrator's decision that (in the absence of a specific standard defining exposure) found wage employees entitled to EDP for any exposure to airborne asbestos fibers. Another agency was concerned that claims under the Federal Employee Compensation Act could increase because there would be no specific measurable standard for exposure.

The manufacturers' association asserted that the wording of the proposed rule was too permissive and that agencies would end up paying almost all GS employees who could conceivably have been exposed to any level of asbestos. The manufacturers' association letter concludes, therefore, that the proposed rule would not limit payment for asbestos exposure to the existence of an unusual hazard, as required by the statutes for both EDP and HDP, but would instead permit payment for virtually any possible presence of airborne asbestos fibers, whether or not a significant risk is likely to exist. The association believes the proposed rule provides much greater coverage than the statute warrants and that the proposed rule should be revised to reflect the law more clearly. The association also believes a clear standard is needed to define a minimum level of exposure, such as the OSHA PEL standard.

OPM is incorporating in the final rule a reference to the OSHA PEL regulatory standard for the purpose of assisting Federal employing agencies in determining the level of exposure that poses a significant risk. An agency suggested that the rule incorporate the requirement for specific exposure monitoring and for medical screening included in the OSHA standard. The final rule incorporates the entire OSHA PEL regulatory standard for asbestos. Because the agency's concerns are thoroughly addressed in the OSHA standard, OPM does not believe additional regulations are needed.

While OPM has incorporated the OSHA PEL standard in the final regulations, this standard cannot serve as the sole basis for determining whether hazardous duty pay for exposure to airborne concentrations of asbestos fibers is payable. The final rule incorporates the concept of "significant risk" of exposure to airborne concentrations of asbestos fibers in excess of the OSHA PEL standard. Thus, the mere existence of airborne concentrations of asbestos fibers in a particular work environment is not enough, by itself, to warrant the payment of HDP under this new category. In each situation, the employing agency must make a further determination that a given employee is subject to a "significant risk" of exposure to asbestos in excess of the OSHA PEL standard.

Put another way, an agency's determination concerning whether HDP should be paid must be a two-part determination. First, it must determine that airborne concentrations of asbestos fibers are (or are likely to be) in excess of the OSHA PEL standard in the employee's work environment. Second, it must determine that a given employee is subject to a significant risk of exposure to such concentrations. While the former determination is quantifiable (at least with respect to the concentration of airborne asbestos fibers in the work environment at any given point in time), the latter, by its very nature, usually is not quantifiable. For example, in making the latter determination, an agency should take into account the availability of protective devices or safety measures that may reduce or eliminate the risk of exposure. Furthermore, as noted below, the final rule provides that HDP is payable only "when the risk of exposure is directly connected with the performance of assigned duties."

Commenting agencies, almost without exception, supported the adoption of the OSHA PEL standard for asbestos. The final rule incorporates a reference to the standard and cites title 29, Code of Federal Regulations, § 1910.1001 or § 1926.58 (construction work only). Under the final rule, any OSHA regulatory change in the PEL standard for asbestos will be incorporated automatically into the OPM regulations effective on the first day of the first pay period beginning on or after the effective date of the change in the PEL standard.

The final rule clarifies that the differential is payable for a significant risk of exposure to airborne concentrations of asbestos fibers in excess of the PELS in the OSHA asbestos standard, but only when the risk of exposure is directly connected with the performance of assigned duties. Employees whose assigned work is not directly connected with the risk of exposure and who might be incidentally exposed to the hazard should be removed from the area or circumstances presenting the hazard.

A labor organization pointed out that HDP should not be used in lieu of removing or abating asbestos hazards. The establishment of an HDP category for exposure to asbestos does not relieve agencies of their responsibility to create and maintain safe and healthful workplaces, including removing employees who might be incidentally exposed to asbestos from areas where unsafe levels of asbestos fibers are found to exist. In fact, by adopting the OSHA PEL standard for asbestos, OPM is drawing agencies' attention to the requirements in the standard that provide a full range of protection to employees.

**Background of the OSHA PEL Standard for Asbestos**

OSHA is the Federal agency responsible for establishing regulatory standards concerning hazards in the workplace. Federal agencies are required by law to follow OSHA standards. Although OSHA has regulated asbestos exposure since 1971, it was not until the Supreme Court rendered the "benzene decision" (*Industrial Union Department, AFL–CIO* v. *American Petroleum Institute* 448 U.S. 601 (1980)) that the concept of "significant risk" became a part of the determination of the PEL. In this decision, the Court found that a risk of death of one in one billion would not be considered significant. However, faced with a risk of death of one in one thousand from regularly breathing 2 percent benzene gasoline vapors, a reasonable person might well consider the risk of death significant and attempt to reduce or eliminate it. Therefore, OSHA adopted the Court's requirements that (1) "the existence of a significant risk" would be the regulatory threshold for exposure to toxic substances, and (2) the issuance of a new or revised OSHA standard would require employers to reduce or eliminate the significant risk.

OSHA determines "significant risk" by analyzing the best available evidence through such means as quantitative risk assessments. Given substantial evidence that a certain level of risk exists, the determination that a particular level of risk is "significant" is at least partially based on policy considerations. OSHA enacts the most protective standard possible to eliminate a significant risk of material health impairment, subject only to the constraints of technological and economic feasibility (*American Textile Manufacturers Institute, Inc.* v. *Donovan*, 452 U.S. 490 (1981)).

In 1986, OSHA published a revised PEL standard that included a change in the airborne concentration of asbestos fibers to 0.2 fibers per cubic centimeter (0.2 f/cc) of air, determined as an 8-hour time-weighted average. (See 29 CFR 1901.1001. Earlier PEL's were 12 f/cc in 1971, 5 f/cc in 1972, and 2 f/cc in 1976.) If the PEL is exceeded, there is a significant risk of material health impairment. The OSHA standard also contains several appendices that explain the measurement of the airbone concentration of asbestos fibers and provide information about the procedures, equipment, monitoring, and controls required to protect employees from such a significant risk. In July 1990, OSHA proposed a more restrictive PEL of 0.1 f/cc, but the final rule has not yet been published.

In 1986, OSHA also published a separate standard (same PEL) for construction work (29 CFR 1926.58) because of the non-fixed and sometimes unique worksites and because of the tendency of employees to move about in construction work (in contrast to those fixed-site facilities). OPM has adopted both OSHA's general standards and the standard for construction work. The general standard will apply in most situations; however, the standard for construction work will apply to some Federal employees.

OPM reminds agencies of their obligation to comply with the entire OSHA PEL standard for asbestos not only because it provides a clear definition of "exposure," but also because its purpose is the protection of employees in the workplace from a significant risk of material health impairment. Likewise, OPM's paramount concern is the protection of employees from the hazards of exposure to airbone asbestos.

**Problems Administering the EDP Asbestos Category**

The use of the OSHA PEL standard will mitigate the considerable difficulties experienced by agencies in the administration of EDP asbestos category, such as those associated with interpretation of the term "practically eliminated." This term has been used historically in EDP categories concerning toxic chemicals and micro-organisms, as well as in the EDP asbestos category.

Three large agencies identified ongoing problems in defining the term "practically eliminated" and in relating it to a threshold for payment or non-payment of an EDP differential. They indicated that differences in interpretation by local activities and by arbitrators have resulted in inconsistent pay treatment for like exposures. One agency noted that efforts by the Federal Prevailing Rate Advisory Committee (FPRAC) in the mid-1980's to refine the EDP system regarding this matter were unsuccessful. The agency also suggested that OSHA PEL standards could be extended to other existing categories (where appropriate) as measures of whether or not the risk of the hazard is practically eliminated.

OPM has decided that the term "practically eliminated" is not necessary in the final rule because the OSHA standard provides very detailed training requirements, engineering controls, work practices, health monitoring and housekeeping procedures, etc., that are designed to reduce the risk to a less than significant level. In a specific situation, an agency can make its own assessment about whether the risk of exposure is at a less than significant level, and, therefore, that HDP would not be payable on the basis of this category.

**Amount of the Differential**

One agency noted that the proposed rate of the hazardous duty differential for asbestos is lower than the rates for the other five similar HDP categories. An 8 percent rate was proposed for white-collar workers to parallel the existing allowance for blue-collar employees. While we recognize that the blue- and white-collar programs evolved independently of one another and diverge at many points, the existing payment for blue-collar workers is nonetheless an important consideration. Therefore, OPM is adopting the proposed rate of 8 percent. Although OPM believes the rates of payment for

various similar HDP and EDP categories merit future consideration and review, such a review is not within the scope of this rulemaking.

**Retroactive Coverage and Payment**

Two Federal labor organizations requested that the final rule provide for retroactive coverage and payment. They pointed out that many GS employees may have been exposed along with wage employees over a long period of time and deserve compensation, especially if they have only recently been removed from the hazardous environment. One organization mentioned the inability of an agency to comply with an arbitrator's decision to award back pay to GS employees who may have been exposed to asbestos because of the lack of an HDP category.

Under the Administrative Procedure Act, such retroactivity is not favored where it could work an inequity. OPM believes retroactivity could create as many inequities as it alleviates, since there has not been an objective standard in the past. This is because the OSHA standard requires objective measurements of the concentration of airborne asbestos fibers over specified time periods. In some cases, the necessary measurements may be available, while in other cases, no records will be available. In addition, any retroactive effective date would be arbitrary and difficult to justify.

**Coverage for Specific Occupations**

Comments from several individuals requested coverage for specified occupations, such as industrial hygienists; firefighters; and air conditioning, plumbing and heating personnel—especially employees in these occupations who are exposed to aircraft brake dust and to asbestos while fighting fires. One of the individuals pointed out that industrial hygienists with responsibilities that include asbestos abatement/control may be exposed over a long time period and should be covered because of such long-term exposure, even though they do wear protective equipment.

Assuming other regulatory requirements are met, coverage for a hazardous duty listed in appendix A to subpart I, part 550, of title 5, Code of Federal Regulations, is based on the employee's authorized position description and whether or not that particular hazard was taken into account in the classification of his or her position—i.e., whether the duty is part of the knowledge, skills, and abilities required of the incumbent of the position. The status of the employee—i.e., the number of years the employee has served as an industrial hygienist or other similar personal factors—is not a determining factor. Appendix A is not designed to list hazards or hardships on the basis of occupations or for individual cases. Instead, it consists of a list of duties or situations that OPM has found to involve unusual physical hardship or hazard.

One agency requested that guidelines include a discussion of the occupations for which coverage was intended—i.e., those occupations for which the hazard was not taken into account in the classification of the job. Again, such a determination must be based on the employee's authorized position description; it is usually not possible to make such a determination based merely on the employee's occupation. Moreover, the Federal Employees Pay Comparability Act of 1990 (FEPCA) amended 5 U.S.C. 5545(d) to allow OPM to regulate exceptions to the prohibition against paying a differential when the hazardous duty was taken into account in the classification of the position under unusual circumstances and atypical situations.

**Updated Federal Personnel Manual (FPM) Guidance**

An agency requested that OPM issue guidance to support the use of OSHA criteria. A sub-unit of an agency believed that the descriptions of the HDP categories (listed in appendix A to subpart I of part 550) are too brief and do not provide adequate examples. OPM invites agencies to provide appropriate examples from their own work environments for inclusion in future FPM guidance.

Another agency requested that the FPM guidance include a definition of the term "in close proximity to," which appears in the regulatory phrase introducing the group of five hazardous categories to which the asbestos category is being added. As stated in the final rule on exposure to airborne concentrations of asbestos fibers, an employee is working "in close proximity to" the hazardous agent when the risk of exposure is directly connected with the performance of his or her assigned duties.

**Need for a Study**

One agency believed that action should be deferred on the proposed rule until a study can be conducted on non-Federal practices involving compensation for unusually severe hazards, hardships, or working conditions, including asbestos exposure. The results of the study would be used to make appropriate revisions in both the EDP and HDP programs. Several comments reflected concern about the differences between the HDP program and the EDP programs. While all of these concerns merit future study and investigation, such concerns are beyond the scope of this rule.

**Waiver of Delay in Effective Date**

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. The regulation is being made effective immediately in order to make this benefit available to employees on the earliest practicable date.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 550**

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management
**Patricia W. Lattimore,**
*Acting Deputy Director.*

Accordingly, OPM is amending subpart I of 5 CFR part 550 as follows:

## PART 550—PAY ADMINISTRATION (GENERAL)

### Subpart I—Pay for Irregular or Intermittent Duty Involving Physical Hardship or Hazard

1. The authority citation for subpart I of part 550 continues to read as follows:

**Authority:** 5 U.S.C. 5445(d), 5548(b).

2. The title of subpart I of part 550 is revised to read as follows:

### Subpart I—Pay for Duty Involving Physical Hardship or Hazard

3. Appendix A to subpart I of part 550 is amended by adding a new entry to the table "Hazard Pay Differential, of Part 550 Pay Administration (General)" under the heading "Exposure to Hazardous Agents, work with or in close proximity to", to read as follows:

**Appendix A—Schedule of Pay Differentials Authorized for Hazardous Duty Under Subpart I**

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION
[General]

| Duty | Rate of hazard pay differential (percent) | Effective date |
|---|---|---|
| * * * * * * * | | |
| Exposure to Hazardous Agents, work with or in close proximity to: | | |
| * * * * * * * | | |
| (6) Asbestos. Significant risk of exposure to airborne concentrations of asbestos fibers in excess of the permissible exposure limits (PELS) in the standard for asbestos provided in title 29, Code of Federal Regulations, §§ 1910.1001 or 1926.58, when the risk of exposure is directly connected with the performance of assigned duties. Regulatory changes in § 1910.1001 or 1926.58 are hereby incorporated in and made a part of this category, effective on the first day of the first pay period beginning on or after the effective date of the changes ..... | 8 | June 8, 1993 |
| * * * * * * * | | |

[FR Doc. 93–13380 Filed 6–7–93; 8:45 am]
BILLING CODE 6325–01–M

## 5 CFR Parts 831 and 843

RIN 3206–AE40

## Children's Survivor Annuities During School Attendance

**AGENCY:** Office of Personnel Management.
**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is adopting final regulations concerning children's survivor annuities under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) during school attendance. These regulations clarify the requirements for eligibility for payments during interim breaks, define full-time school attendance and make other minor changes in the rules governing survivor benefits paid to full-time students from 18 to 22 years of age. They are necessary to clarify the existing regulations and to address issues not covered in the current regulations.
**EFFECTIVE DATE:** July 8, 1993.
**FOR FURTHER INFORMATION CONTACT:** Harold L. Siegelman, (202) 606–0299.
**SUPPLEMENTARY INFORMATION:** Section 8341(e) of title 5, United States Code, authorizes payment of survivor annuities to children of deceased employees and retirees who were covered under the Civil Service Retirement System (CSRS). Generally, a child's eligibility for an annuity terminates at age 18. However, children who are full-time students may qualify for benefits until age 22. Section 8443 of title 5, United States Code, contains similar provisions for the Federal Employees Retirement System (FERS).

On July 15, 1992, we published (at 57 FR 31333) proposed regulations to revise §§ 831.616 and 843.410 of title 5, Code of Federal Regulations, which contain OPM's current regulations concerning student children's annuities under CSRS and FERS, respectively. We proposed to revise the regulations to address several previously-unaddressed policy issues relating to children's survivor annuities during school attendance.

We received one comment on the proposed regulations. The commenter suggested deleting "or other evidence" from § 831.616(c)(4) that states the rules under which we will accept a facsimile of a school official's signature. Our purpose is to verify that the certificate is authentic and that the facsimile signature has been used properly. We do not wish to unnecessarily restrict the types of evidence that can be used reliably to establish authenticity and proper use.

The commenter also suggested that § 831.616(d)(3), concerning evidence we require to show a good faith intent to return to school after a break, be changed to require proof of tuition payment for the next term. Since payment may not be made until the time of registration for the term (generally, after the end of the interim break), the suggestion is not practical. Accordingly, we have not adopted either suggestion.

The Administration has recently recommended that the law be amended to eliminate benefits under CSRS and FERS for college students age 18 and older. The proposal does not affect those receiving benefits before October 1, 1993, and would conform our system to the criteria for Social Security payments to surviving children of covered workers. Under the proposal, college students eligible for student benefits before the effective date of a change in law would continue to receive benefits under current rules. This means that there would be a 4-year phase-out as these individuals reach age 22. Therefore, these regulations will continue to be necessary if the proposed change in the program is enacted.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

### List of Subjects

*5 CFR Part 831*

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

*5 CFR Part 843*

Administrative practice and procedure, Claims, Disability benefits, Government employees, Intergovernmental relations, Pensions, Reporting and recordkeeping, Retirement.

U.S. Office of Personnel Management.
**Patricia W. Lattimore,**
*Acting Deputy Director.*

Accordingly, OPM amends subpart F of 5 CFR part 831 as follows:

## PART 831—RETIREMENT

1. The authority citation for part 831 continues to read in part as follows:

**Authority:** 5 U.S.C. 8347; * * *

### Subpart F—Survivor Benefits

2. Section 831.616 is revised to read as follows.

**§ 831.616 Annuity for a child age 18 to 22 during full-time school attendance.**

(a) *General requirements for an annuity.* (1) For a child age 18 to 22 to be eligible to receive an annuity as a full-time student, the child must also meet all other requirements applicable to qualify for an annuity by a child who has not attained age 18.

(2) In addition to the requirements of paragraph (a)(1) of this section, OPM must receive certification, in a form prescribed by OPM, that the child is regularly pursuing a full-time course of study in an accredited institution.

(b) *Full-time course of study.* (1) Generally, a full-time course of study is a noncorrespondence course which, if successfully completed, will lead to completion of the education within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned.

(2) A certification by an accredited institution that the student's workload is sufficient to constitute a full-time course of study for the program in which the student is enrolled is prima facie evidence that the student is pursuing a full-time course of study.

(c) *Certification of school attendance.* (1) OPM may periodically request the recipient of a child's annuity payments to furnish certification of school attendance. The certification must be completed in the form prescribed by OPM.

(2) If OPM requests the recipient of a child's annuity payments to provide a self-certification of school attendance, the recipient must complete and sign the certification form.

(3) If OPM requests the recipient of a child's annuity payments to provide a certification by the school, the certification must be signed by an official who is either in charge of the school or in charge of the school's records. OPM will not accept certification forms signed by instructors, counselors, aides, roommates, or others not in charge of the school or the records.

(i) If the educational institution is above the high school level, the certification must be signed by the president or chancellor, vice president or vice chancellor, dean or assistant dean, registrar or administrator, assistant registrar or assistant administrator, or the equivalent.

(ii) If the educational institution is at the high school level, the certification must be signed by the superintendent of schools, assistant superintendent of schools, principal, vice principal, assistant principal, or the equivalent.

(iii) If the educational institution is a technical or trade school, the certification must be signed by the president, vice president, director, assistant director, or the equivalent.

(4) OPM will accept a facsimile signature of a school official only if it is accompanied by a raised seal of the institution or other evidence clearly demonstrating the authenticity of the certification and making unauthorized use of the signature stamp unlikely.

(d) *Continuation of annuity during interim breaks.* A child's annuity continues during interim breaks between school years if the following conditions are satisfied:

(1) The student must have been a full-time student at the end of the school term immediately before the break.

(2) The break between the end of the last term of full-time attendance and the return to full-time attendance must not exceed 5 months. (See § 831.107, concerning calculation of this time period.)

(3) The recipient of a child's annuity payments must show that the student has a bona fide intent to return to school as a full-time student immediately after the break. The full-time certification for the prior term and the certification (in a form prescribed by OPM) by the recipient of a child's annuity payments that the student intends to return to school (immediately after the break) as a full-time student constitute prima facie evidence of a bona fide intent to return to school.

(e) *Benefits after age 22.* (1) A student's eligibility for a child's annuity terminates based on reaching age 22 on—

(i) June 30 of the calendar year of the child's 22nd birthday if the child's birthday is before July 1; or

(ii) The last day of the month before the child's 22nd birthday if the child's birthday occurs after June 30 but before September 1 of the calendar year; or

(iii) June 30 of the year after the one in which the child attains age 22 if the child's birthday is after August 31 of the calendar year.

(2)(i) An otherwise eligible child who becomes a full-time student after his or her 22nd birthday but before the date the annuity terminates under paragraph (e)(1) of this section is eligible for annuity while he or she is a full-time student until the termination date under paragraph (e)(1) of this section.

(ii) An otherwise eligible child who is a full-time student, and whose parent dies after the child's 22nd birthday but before the date the annuity terminates under paragraph (e)(1) of this section, is eligible for annuity while he or she is a full-time student after the death of the parent until the termination date under paragraph (e)(1) of this section.

## PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

3. The authority citation for part 843 continues to read as follows:

**Authority:** 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

### Subpart D—Child Annuities

4. Section 843.410 is revised to read as follows.

**§ 843.410 Annuity for a child age 18 to 22 during full-time school attendance.**

(a) *General requirements for an annuity.* (1) For a child age 18 to 22 to be eligible to receive an annuity as a full-time student, the child must also meet all other requirements applicable to qualify for an annuity by a child who has not attained age 18.

(2) In addition to the requirements of paragraph (a)(1) of this section, OPM must receive certification, in a form prescribed by OPM, that the child is regularly pursuing a full-time course of study in an accredited institution.

(b) *Full-time course of study.* (1) Generally, a full-time course of study is a noncorrespondence course which, if successfully completed, will lead to completion of the education within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned.

(2) A certification by an accredited institution that the student's workload is sufficient to constitute a full-time course of study for the program in which the student is enrolled is prima facie evidence that the student is pursuing a full-time course of study.

(c) *Certification of school attendance.* (1) OPM may periodically request the recipient of a child's annuity payments to furnish certification of school attendance. The certification must be completed in the form prescribed by OPM.

(2) If OPM requests the recipient of a child's annuity payments to provide a self-certification of school attendance,

the recipient must complete and sign the certification form.

(3) If OPM requests the recipient of a child's annuity payments to provide a certification by the school, the certification must be signed by an official who is either in charge of the school or in charge of the school's records. OPM will not accept certification forms signed by instructors, counselors, aides, roommates, or others not in charge of the school or the records.

(i) If the educational institution is above the high school level, the certification must be signed by the president or chancellor, vice president or vice chancellor, dean or assistant dean, registrar or administrator, assistant registrar or assistant administrator, or the equivalent.

(ii) If the educational institution is at the high school level, the certification must be signed by the superintendent of schools, assistant superintendent of schools, principal, vice principal, assistant principal, or the equivalent.

(iii) If the educational institution is a technical or trade school, the certification must be signed by the president, vice president, director, assistant director, or the equivalent.

(4) OPM will accept a facsimile signature of a school official only if it is accompanied by a raised seal of the institution or other evidence clearly demonstrating the authenticity of the certification and making unauthorized use of the signature stamp unlikely.

(d) *Continuation of annuity during interim breaks.* A child's annuity continues during interim breaks between school years if the following conditions are satisfied:

(1) The student must have been a full-time student at the end of the school term immediately before the break.

(2) The break between the end of the last term of full-time attendance and the return to full-time attendance must not exceed 5 months. (See § 841.109 of this chapter, concerning calculation of this time period.)

(3) The recipient of a child's annuity payments must show that the student has a bona fide intent to return to school as a full-time student immediately after the break. The full-time certification for the period term and the certification (in a form prescribed by OPM) by the recipient of a child's annuity payments that the student intends to return to school (immediately after the break) as a full-time student constitute prima facie evidence of a bona fide intent to return to school.

(e) *Benefits after age 22.* (1) A student's eligibility for a child's annuity terminates based on reaching age 22 on—

(i) June 30 of the calendar year of the child's 22nd birthday if the child's birthday is before July 1; or

(ii) The last day of the month before the child's 22nd birthday if the child's birthday occurs after June 30 but before September 1 of the calendar year; or

(iii) June 30 of the year after the one in which the child attains age 22 if the child's birthday is after August 31 of the calendar year.

(2)(i) An otherwise eligible child who becomes a full-time student after his or her 22nd birthday but before the date the annuity terminates under paragraph (e)(1) of this section is eligible for annuity while he or she is a full-time student until the termination date under paragraph (e)(1) of this section.

(ii) An otherwise eligible child who is a full-time student, and whose parent dies after the child's 22nd birthday but before the date the annuity terminates under paragraph (e)(1) of this section, is eligible for annuity while he or she is a full-time student after the death of the parent until the termination date under paragraph (e)(1) of this section.

[FR Doc. 93–13383 Filed 6–7–93; 8:45 am]

BILLING CODE 6325–01–M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 123

### Disaster—Physical Disaster and Economic Injury Loans

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Final Rule.

**SUMMARY:** This rule implements a provision in SBA's Fiscal Year 1993 Appropriations Act (October 6, 1992), which prohibits the use of SBA disaster loan funds for direct loans to homeowners or businesses that wish to voluntarily relocate outside the business area in which a disaster has occurred.

**DATES:** This final rule is effective as of the date of publication in the Federal Register.

**ADDRESSES:** Bernard Kulik, Assistant Administrator for Disaster Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Bernard Kulik, Assistant Administrator for Disaster Assistance, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** On October 6, 1992, the President signed Public Law 102–395 (106 Stat. 1828, 1864), the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1992, which, among other things, prohibits borrowers from using SBA's direct disaster loan funds to relocate voluntarily outside the business area where the disaster occurred.

In the Conference Report accompanying Public Law 102–395, the Senate and House conferees expressed their expectation that SBA would promulgate regulations implementing this provision "under any expedited procedures available by law." (Cong. Rec. H 9566, September 28, 1992.) Congress concluded that communities devastated by recent disasters needed immediate reassurance that federal government funds will not be used to assist borrowers to move away from those communities and further delay restoration of essential services for individuals and businesses remaining in the area. In recognition of Congress' direction to SBA to proceed swiftly in implementing this law, SBA published an interim final regulation (See 57 FR 54504, Nov 19, 1992), availing itself of its authority to change the disaster regulations without advance notice by publishing this emergency regulation. Comments were, nevertheless, solicited and were taken into consideration in the preparation of this final rule.

The interim final rule essentially tracked the language of the legislation it implemented. Under that rule, effective October 7, 1992, SBA no longer makes direct disaster loans, whether for physical loss or economic injury, to businesses or homeowners who voluntarily relocate out of the business area in which the disaster occurred. In accordance with the Congressional intent expressed in the Conference Report, it was SBA's intention to strictly apply this prohibition to businesses, but to allow for more flexibility in the application of the provision to homeowners. Thus, in general, a relocation is not considered voluntary if, for a business, it is made necessary by uncontrollable or compelling circumstances or, for a homeowner, it is caused by special or unusual circumstances impacting the homeowner.

SBA also provided a definition of business area in the rule which was intended to restrict relocations to the municipality which provides general governmental services to the damaged business or home. In general, the municipality is the city or town in which the borrower is located. For example, if Montgomery County, Maryland is declared a disaster area and the applicant business or homeowner is located in the City of Rockville within

Montgomery County and the City of Rockville provides general governmental services, then Rockville is the business area and SBA will make a loan to the applicant only if the applicant does not relocate outside of the city borders. In unusual cases, where the municipality is comprised of more than one county (e.g., New York City), the business area is the county in which the borrower is located and the borrower must remain within the county boundaries in order to receive a disaster loan from SBA. SBA did not intend to restrict the business area to divisions smaller than a city or town. In that regard, school, hospital and other special purpose districts, election wards and districts, precincts, and the like do not define the business area. In those cases where a borrower is not located in a municipality which provides general governmental services, business area means the county or equivalent political entity in which the borrower is located.

In order to administer this new rule, as of October 7, 1992, SBA required borrowers of direct SBA disaster assistance to certify that SBA loan funds will not be used to relocate out of the business area for reasons other than those permitted under this rule. This certification is required at the time of the closing of the loan.

In response to the publication of the interim final rule SBA received a single set of comments which was jointly submitted by a group of seventeen submitters. The submitters included trade associations of businesses which had been adversely impacted by the Los Angeles civil disturbance; individual attorneys; law firms and trade associations; community groups and political representatives. SBA has decided to adopt the interim final rule as a final rule with one amendment which was suggested by the comments.

The comments proposed that two revisions of the interim final rule be included in the final rule. First it was suggested that SBA provide additional guidance as to the meaning of uncontrollable or compelling circumstances which would cause a business which has been adversely affected by a disaster to relocate. For example, it was suggested that such circumstances as forced relocation because of public policies adopted by a local government, or requirements expressed in local statutes or ordinances and the inability to meet the costs associated with compliance with those requirements, or the unavailability in a disaster area of business space at rents comparable to those existent prior to a disaster, be enumerated in the regulation as examples of uncontrollable or compelling circumstances excusing relocation by a business.

SBA has carefully reviewed this suggestion and is satisfied that the examples offered by the comment have been satisfactorily dealt with in the interim final regulation. In this regard, the interim final rule provided that relocation of a business outside the business area because of either a substantial change in business costs as a result of the disaster which make continuation of a business in the business area not economically viable, or because of a change in the demographics of the business area as a result of the disaster would not be deemed to be a voluntary relocation for purposes of the statute. Thus adoption of the interim final rule would cover the examples given in the comments.

Second, the comments suggested that SBA broaden the definition of business area contained in the interim final regulation to mean counties rather than municipalities or smaller political subdivisions. It is SBA's view that the legislation specifically intended that the term business area not be construed to mean county but rather a smaller community in which the damaged property is located. It is also SBA's position that municipalities and townships are the types of local governmental entities most closely equatable to the concept of business area.

In this regard, among the types of local governments which are most akin to the concept of a business area which are recognized as governmental entities by the U.S. Department of Commerce Bureau of the Census are municipalities and townships. As published in the U.S. Department of Commerce Bureau of the Census Directory of Governments, these types of government organizations are defined as follows:

"Municipal Governments—Organized local governments authorized in State constitutions and statutes and established to provide general government for a specific concentration of population in a defined area;"

"Township governments—Organized local governments authorized in State constitutions and statutes and established to provide general government for areas defined without regard to population concentration."

SBA has checked with the U.S. Department of Commerce Bureau of the Census and National League of Cities, the National Association of Towns and Townships and the Government Finance Officers Association and found that these definitions are the generally accepted definitions of these terms. Further, these organizations have informed us that the sources of revenue for these types of government vary. While revenue sources for municipalities and towns/townships are derived from a variety of sources (some of which may result from a redistribution of county or State taxes), most derive revenue from the levy of property taxes.

In some cases, it may be more efficient for a State and/or county to collect a uniform tax (i.e., sales, payroll, etc.) to assure areawide applicability. However, a portion of such revenue is then generally allocated to a subjurisdiction in the State or county (i.e., municipalities, towns or townships) to add to other revenues generated (from property taxes, user fees, etc.) to fund general government services which the municipality, town or township may utilize. Such services are provided by the subjurisdiction's own employees or by a contract for specific services (i.e., fire, water, sanitation) from the private sector or from another local government.

Therefore, for the purpose of clarification of what is intended by the term Municipality in this regulation SBA will add a sentence at the end of § 123.9(c)(4) of the interim final rule in its preparation of the final rule which references the Bureau of the Census definitions of municipality and township.

**Compliance With Executive Orders 12291, 12612 and 12778, and the Regulatory Flexibility and Paperwork Reduction Acts**

*Executive Order 12291 and the Regulatory Flexibility Act*

SBA has determined that this rule is not a major rule for purposes of E.O. 12291 and will not have a substantial economic impact on a significant number of small entities for purposes of the Regulatory Flexibility Act. In this regard, while the regulation will affect the dispensation of SBA disaster assistance we do not believe that it will in itself have an economic impact in excess of $100 million. As indicated above, Pub. Law 102–395 required the promulgation of this implementing regulation and compliance with the regulation will not result in any qualifiable cost to homeowners or small businesses. It merely establishes the parameters of a statutorily required eligibility criterion. There are no Federal regulations which duplicate, overlap or conflict with this regulation, and SBA is unaware of regulatory alternatives which would achieve the same objectives at lower cost.

*Executive Order 12612*

SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

*Paperwork Reduction Act*

For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35, we hereby certify that this rule will impose no new recordkeeping or reporting requirements.

*Executive Order 12778*

SBA certifies that this rule has been drafted, to the extent practicable, in accordance with the standards of § 2 of E.O. 12778.

**List of Subjects in 13 CFR Part 123**

Disaster assistance, Loan programs/business, Small businesses.

For the reasons set forth above, part 123 of title 13, Code of Federal Regulations, is amended as follows:

**PART 123—[AMENDED]**

1. The authority citation for part 123 is revised as follows:

**Authority:** Sections 5(b)(6), 7(b), (c), (f) of the Small Business Act, 15 U.S.C. 634(b)(6), 636(b), (c), (f); and Pub. L. 102–395, 106 Stat. 1828, 1864.

2. Section 123.9 is amended by revising paragraph (c) to read as follows:

**§ 123.9 Terms and amounts of loans.**

* * * * *

(c) *Relocation restrictions.* (1) As of October 7, 1992, no direct loan may be made under this part to any borrower who voluntarily relocates outside the business area in which the disaster has occurred. See also § 123.24(g).

(2) For purposes of this paragraph (c), a business will not be deemed to "voluntarily relocate" if the relocation is made necessary by uncontrollable or compelling circumstances which would make it necessary for the business to relocate. Such circumstances may include, but are not limited to:

(i) The elimination or substantial decrease of the market for the business product or service as a consequence of the disaster;

(ii) A change in the demographics of the business area within 18 months prior to the disaster or as a result of the disaster which make it uneconomical to continue the business in the business area;

(iii) A substantial change in business costs as a result of the disaster which makes the continuation of the business in the business area not economically viable;

(iv) Location of the business in a hazardous area such as a special flood hazard area, an earthquake prone area or any other area prone to disaster (as defined in the Small Business Act);

(v) A change in the public infrastructure in the business area which 18 months prior to or as a result of the disaster that would result in substantially increased expenses for the business in the business area;

(vi) The implementation of decisions adopted and partially implemented within 18 months prior to the disaster to move the business out of the business area for good and sufficient business or personal reasons; or

(vii) Other factors which undermine the economic viability of the business area.

(3) For purposes of this paragraph (c), a homeowner will not be deemed to "voluntarily relocate" if the relocation is caused by special or unusual circumstances impacting the individual homeowner. Such considerations may include, but are not limited to:

(i) A risk of recurrence of a disaster (as defined in the Small Business Act) in the business area;

(ii) A change in employment status, such as employment transfers, relocation for a new job, lack of adequate job opportunities in the business area, or implementation of retirement plans within 18 months after the occurrence of the disaster;

(iii) Medical reasons; or

(iv) Special family considerations which necessitate a move outside of the business area.

(4) For purposes of this paragraph (c), "business area" means the municipality which provides general governmental services to the damaged business or home. If the damaged business or home is not located within a municipality which provides general governmental services, then "business area" means the county or equivalent political entity in which the damaged business or home is located. As used in this paragraph (c), "municipality" means a municipality or township as those terms are defined in the U.S. Department of Commerce Bureau of the Census Directory of Governments.

3. Section 123.24 is amended by revising the heading and revising the first sentence in paragraphs (g) (1) and (2) to read as follows:

**§ 123.24 Conditions affecting all physical disaster loans.**

* * * * *

(g) *Relocation.* (1) *Unrestricted relocation.* If the disaster victim voluntarily elects to construct or buy another home or business facility in a new location outside the business area, the loan may be used for such purpose, subject to § 123.25(a), provided it was authorized and obligated prior to October 7, 1992. * * *

(2) *Mandatory relocation.* Where relocation inside or outside the business area becomes necessary because applicable law prevents rehabilitation of real property, damage to such property shall be deemed to amount to total loss. * * *

* * * * * *

4. Section 123.41 is amended by revising paragraph (h) to read as follows:

**§ 123.41 General provisions.**

* * * * *

(h) *Other requirements.* For application requirements, see § 123.18; for terms of loans, see § 123.9(a); for relocation restrictions, see § 123.9(c); for types of loans, see § 123.4; for services fees, see § 123.6 of this part.

Dated: May 26, 1993.

**Erskine B. Bowles,**

*Administrator.*

[FR Doc. 93–13476 Filed 6–7–93; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 92–ASW–42; Amendment 39–8542; AD 93–07–10]**

## Airworthiness Directives; McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc., Model 369D, 369E, 369F, 369HE, and 369HS Series Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to McDonnell Douglas Helicopter Company (MDHC) and Hughes Helicopters, Inc. Model 369D, 369E, 369F, 369HE and 369HS series helicopters, equipped with a specific external cargo container kit (baggage pod). This action requires installation of a durable placard on the instrument panel to alert the pilot to limit airspeed during descent or autorotation, insertion of an airspeed limitation into the rotorcraft flight manual supplement, and insertion of procedures for handling an engine failure at high cruise speeds. This amendment is prompted by reports of hazardous yaw oscillations at certain airspeeds or during autorotation. The

actions specified in this AD are intended to prevent hazardous yaw oscillations that could result in loss of control of the helicopter in certain flight profiles.

**DATES:** Effective on July 6, 1993.

Comments for inclusion in the Rules Docket must be received on or before July 23, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–42, 4400 Blue Mound Road, Fort Worth, Texas 76106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sol Maroof, Aerospace Engineer, ANE–172, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York, telephone (516) 791–6220.

**SUPPLEMENTARY INFORMATION:** Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition was found to exist on certain MDHC Model 369D, 369E, 369F, 369HE and 369HS series helicopters. Transport Canada advises that these particular models, equipped with external cargo container kit (baggage pod), Supplemental Type Approval (STA) No. SH78–1, exhibit hazardous lateral-directional handling qualities at indicated airspeed in excess of 90 knots while in moderate rates of descent (greater than 1,000 feet per minute) or in autorotation. Transport Canada issued AD CF–92–17 on July 17, 1992, to correct this safety-of-flight problem.

The baggage pod, which is manufactured in Canada, is also certificated for installation on MDHC Model 369D, 369E, 369F, 369HE, and 369HS series helicopters in the United States by Supplemental Type Certificate (STC) SH 1134EA. Pursuant to the United States-Canada bilateral airworthiness agreement, Transport Canada has informed the FAA of the airworthiness situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other helicopters of the same type and supplemental type design registered in the United States, this AD is being issued to prevent hazardous yaw oscillations that could result in loss of control of the helicopter in certain flight profiles. This AD requires the installation of a durable placard on the instrument panel near the airspeed indicator to remind the pilot that a baggage pod is installed and that VNE is reduced to 90 knots indicated airspeed (KIAS) during powered descents when descent rates are greater than 1,000 feet per minute (fpm) or during autorotation. This AD also requires changes in the Operating Limitations Section of a flight manual supplement for the Rotorcraft Flight Manual (RFM) to reflect the reduction in airspeed with the baggage pod installed and changes in the Emergency and Malfunction Procedures Section of the RFM supplement associated with the baggage pod approved in accordance with the Supplemental Type Certificate (STC) No. SH1134EA.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this final rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ASW–42." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**AD 93–07–10 McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc.:** Amendment 39–8542. Docket Number 92–ASW–42.

*Applicability:* Model 369D, 369E, 369F, 369HE and 369HS series helicopters,

equipped with Gajon Associates, LTD. (Viking Helicopters Limited) Supplemental Type Certificate (STC) No. SH1134EA external cargo container kit (baggage pod), with or without the auxiliary fuel system, certificated in any category.

*Compliance:* Required within 10 days or 25 hours' time-in-service, whichever occurs first, after the effective date of this AD, unless accomplished previously.

To prevent hazardous yaw oscillations during descents, which could result in loss of control of the helicopter, accomplish the following:

(a) Install a durable placard on the instrument panel as close as is practical to the airspeed indicator and that is legible to the pilot that reads:

Baggage POD Installed

$V_{ne}$–90 KIAS in powered descent (>1000 fpm) or in autorotation

(b) Insert the following statement into the Operating Limitations Section of the flight manual supplement for the baggage pod:

Airspeed Limits

$V_{ne}$ is 90 KIAS in moderate rates of powered descent (greater than 1,000 fpm) or in autorotation with baggage pod installed.

(c) Insert the following statement into the Emergency and Malfunction Procedures Section of the flight manual supplement for the baggage pod:

Engine Failure at High Cruise Speed

Note: At speeds in excess of 90 KIAS in stabilized moderate descents (greater than 1,000 fpm) or in autorotation, the lateral directional handling of the helicopter is degraded. Yaw oscillation may occur and persist, and there is a tendency for the pilot to overcontrol.

(1) Adjust collective pitch according to altitude and airspeed to maintain rotor speed between 410 and 508 RPM.

(2) Apply pedal pressure as necessary to control aircraft yaw.

(3) Adjust cyclic control as necessary to reduce airspeed to 90 KIAS or less as collective is lowered and stabilized autorotation is achieved.

Note: See basic rotorcraft flight manual for recommended minimum rate of descent and maximum glide distance power-off speeds.

(d) Compliance with Paragraphs (b) and (c) above may be accomplished by attaching a copy of the appropriate AD paragraphs to the Operating Limitations Section and Emergency Procedure Section of the flight manual supplement.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, New York Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on July 6, 1993.

Issued in Fort Worth, Texas, on May 3, 1993.

**James D. Erickson,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 93–13421 Filed 6–7–93; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing, Federal Housing Commissioner

### 24 CFR Part 203

[Docket No. R–93–1509; FR–2853–F–03]

RIN 2502–AF02

### Mutual Mortgage Insurance and Rehabilitation Loans; Miscellaneous Amendments, Technical Amendment

**AGENCY:** Office of the Assistant Secretary for Housing, Federal Housing Commissioner, HUD.

**ACTION:** Technical amendment.

**SUMMARY:** The purpose of this technical amendment is to amend agency regulations on property condition, by adding text that was inadvertently omitted when the final rule was published in the **Federal Register** on October 20, 1992 (57 FR 47966).

**EFFECTIVE DATE:** November 19, 1992.

**FOR FURTHER INFORMATION CONTACT:** Joseph Bates, Director, Single Family Servicing Division, room 9178, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708–1672 or, for hearing and speech-impaired, (202) 708–4594. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** On October 20, 1992 (57 FR 47966), the Department published in the **Federal Register**, a final rule that made final a proposed rule published April 25, 1991 (56 FR 19212) that described miscellaneous amendments to regulations governing actions by mortgagees with respect to insured mortgages in default. The purpose of the rule was to improve the efficiency of the Single Family Mortgage Insurance Program.

It has been recently noted that when the final rule was published in the **Federal Register**, part of the text that was submitted to the **Federal Register** by HUD for publication for § 203.378(c)(3), was inadvertently omitted. In order to avoid further confusion, § 203.378(c)(3) will be republished in its entirety in this document.

**List of Subjects in 24 CFR Part 203**

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, part 203 of title 24 of the Code of Federal Regulations, is amended to read as follows:

1. The authority citation for 24 CFR part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b; 42 U.S.C. 3535(d). In addition, subpart C is also issued under 12 U.S.C. 1715(u).

2. Section 203.378 is amended by revising paragraph (c)(3) to read as follows:

**§ 203.378 Property condition.**

* * * * *

(c) * * *

(3) As to all mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992, any damage of whatsoever nature that the property has sustained while in the possession of the mortgage if the property is conveyed to the Secretary without notice to and approval by the Secretary as required by § 203.379 of this part.

* * * * *

Dated: June 1, 1993.

**Brenda W. Gladden,**

*Acting Assistant General Counsel for Regulations.*

[FR Doc. 93–13384 Filed 6–7–93; 8:45 am]

BILLING CODE 4210–27–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OH7–1–5083; FRL–4664–1]

### Approval and Promulgation of Air Quality Implementation Plans; Ohio

**AGENCY:** U.S. Environmental Protection Agency (U.S. EPA).

**ACTION:** Final rule.

**SUMMARY:** U.S. EPA is reinstating the federally promulgated sulfur dioxide ($SO_2$) emission limitations for the

Cleveland Electric Illuminating Company (CEI)—Eastlake and Avon Lake plants as part of the Ohio Implementation Plan.

On August 27, 1976, U.S. EPA promulgated the $SO_2$ implementation plan for Ohio, including emission limits of 1.43 pounds of $SO_2$ per million British Thermal Units (lbs/MMBTU) for the CEI Eastlake plants and 1.5 lbs/MMBTU for the CEI Avon Lake plant. On June 24, 1980, U.S. EPA promulgated revised $SO_2$ emission limitations for the CEI plants (Eastlake—5.64 lbs/MMBTU, Avon Lake—4.65 lbs/MMBTU). Several entities petitioned the Court of Appeals for the Sixth Circuit Court to review these revised limits.

On October 2, 1986, the Court remanded the case to U.S. EPA for further proceedings consistent with the Court's opinion (Ohio, et al. v. U.S. EPA, Case Numbers 80–3575, 3576, 3579, 3581, and 3582 and 81–3525, reported at 798 F.2d 882). In response to the Court's decision, U.S. EPA reevaluated its plan for the two CEI facilities and proposed on January 4, 1990, to reinstate its June 24, 1980, plan for these facilities. U.S. EPA is reinstating the 1980 emission limitations for these two plants.

**EFFECTIVE DATE:** This final rulemaking becomes effective July 8, 1993.

**ADDRESSES:** Copies of all information relevant to this action are available at the following address: (It is recommended that you telephone Maggie Greene, at (312) 886–6088, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air Enforcement Branch (AE–17), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of all information relevant to this action are contained in the docket for this revision (5A–88–1). This docket is available for inspection at the above Regional Office and at: U.S. Environmental Protection Agency, Jerry Kurtzweg, ANR–443, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Maggie Greene, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604–3590, (312) 886–6088.

**SUPPLEMENTARY INFORMATION:** This document discusses U.S. EPA's analysis in five parts:

I. Background Information
II. Model Evaluation Study
III. Stack Height Issues
IV. Public Comments
V. Final Action

## I. Background Information

On August 27, 1976, U.S. EPA promulgated the $SO_2$ implementation plan for Ohio, including emission limits of 1.43 pounds of $SO_2$ per million British Thermal Units (lbs/MMBTU) for the CEI Eastlake plant and 1.5 lbs/MMBTU for the CEI Avon Lake plant.[1] These emission limitations were based on the use of the RAM-urban model, the appropriate U.S. EPA model for the Cleveland (urban) metropolitan area. The Eastlake plant is located in Lake County, Ohio, and the Avon Lake plant is located in Lorain County, Ohio.

On June 12, 1979, U.S. EPA proposed to revise the $SO_2$ emission limitations for the Eastlake and Avon Lake plants (i.e., 6.58 lbs/MMBTU for Eastlake and 6.09 lbs/MMBTU for Avon Lake). U.S. EPA chose to propose emission limits that reflect status quo emissions based on: (a) Its determination that neither the existing RAM-urban nor RAM-rural models are appropriate for setting emission limits for the two plants (i.e., air quality data demonstrate that neither model accurately predicts the impact of the plants); (b) the installation of Good Engineering Practicing stacks at both plants; and (c) current air quality data. U.S. EPA stated that "in the absence of a more appropriate modeling technique, an emission limit based on the status quo emissions represents a reasonable margin of safety (pending collection of further monitoring data)." As part of its proposed rulemaking, U.S. EPA required CEI to expand the ambient monitoring system to ensure that status quo emissions will protect the National Ambient Air Quality Standards (NAAQS) and to develop site-specific information on ground-level concentrations caused by the plants.

On February 22, 1980, U.S. EPA announced the technical design of the expanded monitoring programs at Eastlake and Avon Lake. The objective of the monitoring program identified by U.S. EPA was to: (1) Assess the attainment status in the vicinity of the CEI plants, (2) assess the expected location of maximum ground-level concentrations due to the CEI plants, (3) evaluate the influence of Lake Erie on these concentrations, (4) collect data necessary to develop control strategies adequate to protect the NAAQS, and (5) aid in the refinement or development of a site-specific model for these lakeshore plants.

[1] In the January 4, 1990, notice of proposed rulemaking, U.S. EPA stated that Centerior Energy Corporation was the owner of the Eastlake and Avon Lake plants. We are correcting this to reference that Cleveland Electric Illuminating is the owner of both plants.

On June 24, 1980, U.S. EPA promulgated revised $SO_2$ emission limitations for the CEI plants (Eastlake—5.64 lbs/MMBTU, Avon Lake—4.65 lbs/MMBTU). The revised limits were based on the use of the CRSTER (rural) model and a new taller (merged) stack at each plant. U.S. EPA determined that because the immediate vicinity of each plant was rural, the use of CRSTER (the benchmark model for non-urban areas) was appropriate. In addition, screening analysis with a state-of-the-art shoreline fumigation technique (Lyons-Cole model) suggested that in most cases high concentrations associated with lakeshore fumigation would not be any greater for these plants than the high concentrations calculated by CRSTER for Class A stability conditions. Thus, U.S. EPA concluded that the emission limitations based on CRSTER would be adequate to ensure attainment and maintenance of the $SO_2$ NAAQS.

In August 1980, CEI, the North American Coal Corporation (NACCO), the NACCO Mining Company, and the Northern Ohio Lung Association (NOLA) filed petitions for reconsideration. The petitioners stated that they had no opportunity to comment on the use of the CRSTER model and Class A stability meteorological conditions and on a revision to U.S. EPA's Stack Height policy (which was proposed at the same time U.S. EPA promulgated the revised emission limitations). On January 27, 1981, U.S. EPA granted the petitions for reconsideration and, consequently, solicited further comments from interested parties. On July 22, 1981, after consideration of all public comments, U.S. EPA reaffirmed the new emission limitation.

The States of Ohio and Massachusetts, CEI, NACCO, NACCO Mining Company, and NOLA subsequently filed suit in the U.S. Court of Appeals for the Sixth Circuit. The States of Pennsylvania, New York, and New Hampshire; the Ohio Mining and Reclamation Association (OMRA); and the Youghiogheny and Ohio (Y&O) Coal Company were allowed to intervene.

On February 26, 1986, the Court ruled that U.S. EPA acted arbitrarily using the CRSTER model to set emission limitations "without adequately validating, monitoring, or testing its reliability or its trustworthiness in forecasting pollution in the vicinity of these plants," and ordered further action to test and validate the model as an adequate forecasting technique for these plants, given the specific meteorological and geographic problems present at the plant sites. The Court noted that it had no information about

"what effect Lake Erie has on the diffusion of sulfur dioxide from these plants built along the shoreline." Claiming that Agency "changing of course by rescinding rule" requires closer judicial scrutiny, the Court cited U.S. EPA's change of modeling techniques, and the resulting 400 percent increase in allowable $SO_2$ emissions, without evaluation, validation or empirical testing as the basis for its decision. The Court did note, however, that it was not insisting that all models be validated at all sites.

On October 2, 1986, the Court issued its judgment entry and order of remand. The Court reversed U.S. EPA's use of the CRSTER Model for these plants and remanded the case to U.S. EPA for further proceedings consistent with the Court's opinion. Additionally, the Court established interim $SO_2$ emission limitations as set by the Ohio Administrative Code Rules for the Avon Lake and Eastlake plants.

## II. Model Evaluation Study

CEI performed a model evaluation study entitled "Evaluation of the Use of the CRSTER Model at the Eastlake and Avon Lake Plants." The purpose of the study was to evaluate the performance of the CRSTER model against actual monitored concentration of $SO_2$ in the vicinity of the Eastlake and Avon Lake plants. The study involved the evaluation of CRSTER (UNAMAP Version 5), MPTER (UNAMAP Version 5); and Lyons-Cole.[2] A more detailed discussion of the model evaluation procedures used in this analysis is contained in the study mentioned above, U.S. EPA's March 3, 1988, technical support document, and U.S. EPA's January 4, 1990, proposed rulemaking (55 FR 311–314).

*Results of the Evaluation*

A. Eastlake

CRSTER and MPTER both overestimated the maximum 1-hour concentration at Eastlake, but slightly underestimated the maximum 3-hour and 24-hour concentrations. The final scores suggest MPTER is a slightly more accurate model than CRSTER for Eastlake. This result was found for the highest 25 concentrations. Since the two stacks at Eastlake are within approximately 160 meters and the effective stack heights are similar, the similarity in results is not unexpected.

B. Avon Lake

CRSTER and MPTER both overestimated the maximum 1-hour, 3-hour, and 24-hour concentrations at Avon Lake. This result of overestimating concentrations for all three averaging times was also found for the 25 highest concentrations. The final scores suggest that MPTER is a more accurate model than CRSTER for Avon Lake. This result is not unexpected because of the variation in effective stack heights and stack locations at the plant.

C. Lakeshore Fumigation

A comparison of Lyons-Cole, CRSTER, and monitored data was done for the hours satisfying the lakeshore fumigation criteria (approximately 350 hours for each plant). The results show that the Lyons-Cole model overpredicted the highest and 25 highest 1-hour concentrations at both plants and, thus, may be a conservative tool for this situation. Further, CRSTER yielded even greater 1-hour concentrations; thus, substantiating U.S. EPA's finding in 1980 that concentrations associated with lakeshore fumigation would not be higher here than the non-lakeshore fumigation concentrations calculated by CRSTER. This evaluation satisfies the instructions in the remand from the Sixth Circuit Court of Appeals to consider the "specific meteorological and geographic problems present at these sites," most notably the "lakeshore effects on the dispersion of $SO_2$."

## III. Stack Height Issues

The State of Ohio has reviewed both plants relative to U.S. EPA's Stack Height Regulations.[3] The previous modeling assumed credit for taller merged stacks at Eastlake and Avon Lake. At Eastlake, the four 91.4 meter stacks serving boilers 1–4 were replaced with one 164.6 meter stack in 1978. At Avon Lake, the two 89.9 meter stacks serving Boilers 9 and 10 were replaced with one 152.4 meter stack in 1977. Physical stack height and merged stack credits have been determined to be acceptable.

## IV. Public Comments

On January 4, 1990, U.S. EPA proposed its findings and proposed to reinstate its 1980 emission limits at CEI Eastlake and Avon Lake. On February 2, 1990, CEI and Centerior submitted comments on U.S. EPA's proposed reinstatement of the $SO_2$ emission limitations. The comments and U.S. EPA's responses are as follows:

*Comment*

The Cleveland Electric Illuminating Company is the legal owner of the Eastlake and Avon Lake Plants.

*Response*

U.S. EPA has made the necessary changes to reflect the above statement.

*Comment*

The Companies submitted additional evidence to address all of the "Information Deficiencies" cited by the Sixth Circuit in the remand of the emission limitations.

*Response*

This additional information has been reviewed and is available to the public at the U.S. EPA Region 5 offices.

*Comment*

The technical support document contains minor errors that do not affect the overall conclusion of the document.

*Response*

U.S. EPA has prepared an addendum to the technical support document to address these minor errors. Note, these errors do not change the decision in this notice of final rulemaking.

*Comment*

The present record demonstrates that these emission limitations are overly stringent. If remodeling were done to reflect sources that have been shut down, the MPTER model, and appropriate stack heights, less stringent emission limits would be necessary. Additionally, in 1985 CEI submitted data that showed that emission limits could be averaged over 30 days.

*Response*

If CEI believes that the emission limits in the plan are overly stringent, it may perform modeling analysis, using current guideline techniques, which predict appropriate emission limits for the facilities. These analyses then could be submitted to the State of Ohio. The State may then, if it wishes, adopt these limits and submit the limits and the analyses to U.S. EPA as site specific revisions to the Ohio implementation plan. If the State's plan demonstrates attainment and maintenance of the $SO_2$ NAAQS, U.S. EPA can approve the revised plan.

[2] U.S. EPA's "Guideline on Air Quality Models (Revised)", July 1986 and "Supplement A to the Guideline on Air Quality Models (Revised)", July 1987 recommend air quality modeling techniques that should be applied to SIP revisions for existing sources. In rural areas with multiple sources (e.g., single plant with separated stacks), the recommended model is MPTER. In rural areas with single sources (e.g., single plant with co-located stacks), the recommended model is CRSTER. (The Lyons-Cole model was identified in a previous version of the guideline as a possible technique applicable to lake/sea breezes.)

[3] U.S. EPA promulgated stack height regulations implementing section 123 of the Clean Air Act on July 8, 1985, 50 FR 27892.

As to CEI's submission of an analysis purporting to demonstrate that the emission limits in the plan, when averaged over 30 days, will protect the $SO_2$ NAAQS, U.S. EPA notified the State of Ohio on July 15, 1986, that CEI's January 1986 analysis was flawed, because it inappropriately assumed a dependence between emissions and meteorology. Further, although U.S. EPA has evaluated various other techniques that are designed to develop emission limits, which, when averaged over 30 days, still protect the short term $SO_2$ NAAQS, U.S. EPA has not approved any of them at this time for the purpose of setting emission limits.

**V. Final Action**

Since review of the CEI and Centerior public comments did not change the proposed decision by U.S. EPA, U.S. EPA is reinstating the following emission limitations:

Eastlake—Stack 6 (Boilers 1–4): 5.64 lbs/MMBTU
—Stack 5 (Boiler 5): 5.64 lbs/MMBTU
Avon Lake—Stack 1 (Boilers 1,2): 0.32 lbs/MMBTU
—Stack 2 (Boilers 3,4): 0.32 lbs/MMBTU
—Stack 3 (Boilers 5,6): 0.32 lbs/MMBTU
—Stack 4 (Boilers 7,8): 0.32 lbs/MMBTU
—Stack 9 (Boilers 9,10): 4.65 lbs/MMBTU
—Stack 7 (Boiler 11): 4.65 lbs/MMBTU
—Stack 8 (Boiler 12): 4.65 lbs/MMBTU

The compliance test method and procedures used for determining compliance for the Eastlake and Avon Lake plants is stack gas sampling as specified at 40 CFR 60.46. Compliance tests shall be conducted under such conditions as the Administrator shall specify based on representative performance of the affected facility. Notification and recordkeeping procedures shall be those prescribed in 40 CFR 60.7. The owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of the performance tests. See 40 CFR 52.1881(b)(2).

Titles I, IV, and V of the 1990 Clean Air Act Amendments will effect changes in the implementation of the $SO_2$ NAAQS program. In order for all three titles to be carried out as efficiently as possible, U.S. EPA is requiring States nationwide to correct existing enforceability deficiencies in the SIPs. In June 1991, U.S. EPA released the "Yellow Book," which discussed various types of enforcement deficiencies. Also, the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498–13570 (April 16, 1992) and 57 FR 18070–18077 (April 28, 1992), provided guidance on requirements for continuous compliance monitoring. Notwithstanding this guidance, U.S. EPA is not today changing the compliance method for the emissions limits being reinstated, based on several considerations: (1) Today's action simply reinstates emissions limits for the two affected CEI plants, (2) U.S. EPA proposed no modifications to the compliance method, and (3) the compliance method is consistent with the compliance method used for other sources subject to the Federal $SO_2$ plan for Ohio. Nevertheless, Ohio has stated its intention to review the rules that apply to $SO_2$ sources in the State and correct the enforceability deficiencies that these rules are judged to contain. U.S. EPA believes that it is appropriate to address the application of the General Preamble guidance to CEI's plants at that time.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

The Agency has reviewed this action for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: May 28, 1993.

**Carol M. Browner,**

*Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF AIR QUALITY IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 52.1881 is amended by revising paragraphs (b)(35)(vi) and (b)(38)(iii) to read as follows:

**§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).**

* * * * *

(b) * * *

(35) * * *

(vi) The Cleveland Electric Illuminating Company, or any subsequent owner or operator of the Eastlake Plant in Lake County, Ohio, shall not cause or permit the emission of sulfur dioxide from any stack at the Eastlake Plant in excess of 5.64 pounds of sulfur dioxide per million BTU actual heat input. Recordkeeping and reporting requirements and compliance test methods are those found at paragraph (b)(2) of this section.

* * * * *

(38) * * *

(iii) The Cleveland Electric Illuminating Company, or any subsequent owner, or operator of the Avon Lake Plant in Lorain County, Ohio, shall not cause or permit the emission of sulfur dioxide in pounds per million BTU actual heat input from any stack at the Avon Lake Plant in excess of the rates specified below:

*Stack No. Boiler identification and Emission Limit (lbs/MMBTU)*

Stack 1 (Boilers 1,2)=0.32
Stack 2 (Boilers 3,4)=0.32
Stack 3 (Boilers 5,6)=0.32
Stack 4 (Boilers 7,8)=0.32
Stack 9 (Boilers 9,10)=4.65
Stack 7 (Boiler 11)=4.65
Stack 8 (Boiler 12)=4.65

Recordkeeping and reporting requirements and compliance test method are those found at paragraph (b)(2) of this section.

* * * * *

[FR Doc. 93–13427 Filed 6–7–93; 8:45 am]

BILLING CODE 6560–50–P

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**40 CFR Part 761**

**[OPPTS–66016A; FRL–4626–6]**

**Polychlorinated Biphenyls (PCBs); Use of Waste Oil; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** In the **Federal Register** of March 23, 1993, EPA issued a final rule to amend the provisions of 40 CFR 761.20(e) (58 FR 15435). This document corrects the omission of a citation found in paragraph (4) of the definition for a "qualified incinerator" at § 761.3. The reference to industrial furnaces and boilers which are identified in 40 CFR 266.41(b) should have been changed to read 40 CFR 279.61(a)(1) and (2).

**EFFECTIVE DATE:** March 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** In the March 23, 1993, issue of the **Federal Register**, published at 58 FR 15435, EPA issued, under the Toxic Substances Control Act (TSCA), a final rule which amended the provisions which are found at § 761.20(e) of the Polychlorinated Biphenyl (PCB) regulations for the marketing and burning of used oil containing quantifiable levels of PCBs (i.e., >2–49 ppm). A reference to the Resource Conservation and Recovery Act (RCRA) marketing and burning requirements found in the definitions at § 761.3 for a "qualified incinerator" was overlooked. Paragraph (4) of the definition for "qualified incinerator" should have been changed to read "(4) Industrial furnaces and boilers which are identified in 40 CFR 260.10 and 40 CFR 279.61(a)(1) and (2) when operating at their normal operating temperatures (this prohibits feeding fluids, above the level of detection, during either startup or shutdown operations)." Paragraph (4) of the definition for "qualified incinerator" is corrected below.

**List of Subjects in 40 CFR Part 761**

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: May 27, 1993.

**John W. Melone,**

*Director, Chemical Management Division, Office of Pollution Prevention and Toxics.*

Therefore, 40 CFR part 761 is amended as follows:

## PART 761 — [AMENDED]

1. The authority citation for part 761 continues to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

### § 761.3 — [Amended]

2. In § 761.3, the definition for "qualified incinerator," paragraph (4) is amended by replacing the citation "40 CFR 266.41(b)" with "40 CFR 279.61(a)(1) and (2)."

[FR Doc. 93–13452 Filed 6–7–93; 8:45 am]
BILLING CODE 6560–50–F

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 207 and 210

### Defense Federal Acquisition Regulation Supplement; Elimination of Ozone-Depleting Substances

**AGENCY:** Department of Defense (DoD).

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

**SUMMARY:** The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address procedures for the elimination of ozone-depleting substances in DoD contract requirements.

**DATES:** Effective date: May 21, 1993.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before July 8, 1993, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 697–9845. Please cite DFARS Case 92–D354 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, (703) 697–7266.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 326 of the Fiscal Year 1993 Defense Authorization Act (Pub. L. 102–484) places restrictions on the award and modification of contracts requiring the use of ozone-depleting substances. The Director of Defense Procurement issued an interim rule on May 21, 1993, by Departmental Letter 93–005, to implement the requirements of Section 326.

**B. Regulatory Flexibility Act**

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because any additional expenses to contractors resulting from this rule will be reimbursable expenses under the applicable contracts. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 93–610 in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

**D. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense to issue this regulation as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment in order to meet the statutory implementation date of June 1, 1993. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

**List of Subjects in 48 CFR Parts 207 and 210**

Government procurement.

**Claudia L. Naugle,**

*Deputy Director, Defense Acquisition Regulations Council.*

Therefore, CFR parts 207 and 210 are amended as follows:

1. The authority citation for 48 CFR parts 207 and 210 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 FAR subpart 1.3.

## PART 207—ACQUISITION PLANNING

2. Section 207.105 is amended by adding paragraph (b)(15) to read as follows:

**207.105 Contents of written acquisition plans.**

* * * * *

(b) Plan of action.

* * * * *

(15) Environmental considerations.

Discuss actions taken to ensure either elimination of or authorization to use

class I ozone-depleting chemicals and substances (see 210.002–71).

* * * * *

## PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

3. Section 210.002–71 is added to read as follows:

**210.002–71 Elimination of use of class I ozone-depleting substances.**

(a) Contracts awarded on or after June 1, 1993.

No DoD contract awarded on or after June 1, 1993, may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or member of the Senior Executive Service of the requiring activity in accordance with Section 326 of the Fiscal Year 1993 Defense Authorization Act (Pub. L. 102–484).

(b) Contracts modified on or after June 1, 1993.

(1) Contracts with a value in excess of $10 million, awarded before June 1, 1993, that are modified or extended (including option exercise) on or after June 1, 1993, and, as a result, will expire more than one year after the effective date of the modification or extension, must be evaluated in accordance with agency procedures for the elimination of ozone-depleting substances.

(i) The evaluation must be carried out within 60 days after the first modification or extension.

(ii) No further modification or extension may be made to the contract until the evaluation is complete.

(2) If, as a result of this evaluation, it is determined that an economically feasible substitute substance or alternative technology is available, the contracting officer shall modify the contract to require the use of the substitute substance or alternative technology.

(3) If a substitute substance or alternative technology is not available, a written determination shall be made to that effect at a level no lower than a general or flag officer or member of the Senior Executive Service of the requiring activity.

[FR Doc. 93–13321 Filed 6–7–93; 8:45 am]
BILLING CODE 3810–01–M

## 48 CFR Parts 215 and 252

## Defense Federal Acquisition Regulation Supplement; Industrial Modernization Incentive Program

**AGENCY:** Department of Defense (DOD).

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule that deletes Defense Federal Acquisition Regulation Supplement language on the Industrial Modernization Incentives Program since the program has been cancelled.

**EFFECTIVE DATE:** January 14, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric Mens (703) 697–7266. Please cite DFARS Case 92–D041.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Deputy Secretary of Defense on September 18, 1992, cancelled the DoD Industrial Modernization Incentive Program (IMIP). Subsequently, governing DoD Directive 5000.44 and DoD guide 5000.44–G were cancelled. DFARS 215.870 and the clause at 252.215–7003 are removed from the DFARS to reflect cancellation of the IMIP.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because this final rule is not a significant revision within the meaning of Public Law 98–577. This revision, which removes DFARS 215.870 and the clause at 252.215–7003, is necessary because the Deputy Secretary of Defense on September 18, 1992, cancelled the IMIP and subsequently, governing DoD Directive 5000.44 and DoD Guide 5000.44–G were also cancelled. Comments from small entities will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DFARS Case 92–D041 in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act applies. The Office of Management and Budget (OMB) approved the information collection for the IMIP on March 2, 1992, under clearance number 0704–0232, through March 31, 1995. DoD has submitted a request for clearance to OMB to reduce the total burden hours approved for DFARS Part 215.

### List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

**Claudia L. Naugle,**

*Deputy Director, Defense Acquisition Regulations Directorate.*

Therefore, 48 CFR parts 215 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 215 and 252 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

## PART 215—CONTRACTING BY NEGOTIATION

**215.870 [Removed and reserved]**

2. Sections 215.870 through 215.870–6 is removed and section 215.870 is reserved.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**252.215–7003 [Removed]**

3. Section 252.215–7003 is removed.

[FR Doc. 93–13320 Filed 6–7–93; 8:45 am]
BILLING CODE 3810–01–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 651

**[Docket No. 930522–3122; I.D. 040293A]**

## Northeast Multispecies Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency interim rule.

**SUMMARY:** The Secretary of Commerce (Secretary) amends the regulations implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This emergency interim rule implements a 2,500-pound (1,134-kg) haddock possession limit applying to all vessels permitted under regulations for this fishery; the area known as Closed Area II will be expanded by 20 minutes longitude to the west and 15 minutes latitude to the south along its existing western and southern boundaries; Closed Area II is closed through the month of June; and a ban on pair trawling in the multispecies fishery. The intended effect of this rule is to provide additional protection to haddock and cod and to promote rebuilding of these depleted fish stocks.

**EFFECTIVE DATE:** This emergency interim rule is effective from June 3, 1993 through September 7, 1993.

**ADDRESSES:** Copies of the environmental assessment (EA) supporting this action may be obtained from Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Jack Terrill, Resource Policy Analyst, Northeast Region, NMFS, 508–281–9252.

**SUPPLEMENTARY INFORMATION:** The FMP, prepared by the New England Fishery Management Council (Council), was implemented in 1986. It established a system of management based upon the use of a minimum mesh size in specified areas, minimum fish sizes, and closed areas. Small mesh (less than the regulated mesh size) fishing was permitted under area, season, and bycatch restrictions. The FMP has been amended four times to increase minimum fish sizes, increase the regulated mesh areas, establish species protection areas and introduce a system by which regulatory actions could be taken to protect spawning, juvenile or sublegal groundfish.

Despite these measures, the primary groundfish species have declined to record or near record low levels of stock abundance, largely resulting from record high fishing mortality through increased fishing effort.

To reverse this trend and rebuild the stocks, the Council has been developing Amendment 5 to the FMP. Amendment 5 is still in the draft proposed stage with public hearings on the amendment having occurred in May 1993. During the hearings, the Council received comments on its proposals to rebuild the cod, haddock, and yellowtail stocks through reductions in fishing time, a moratorium on new permits, an increased minimum mesh size, modifications to existing closed areas, additional closed areas and control areas for juvenile fish, possession limits on regulated species when possessing small mesh, and a possession limit on haddock. Several of these measures were initially presented at a public hearing in the spring of 1992 so that some comment has already been received on them.

NMFS was recently petitioned by the Conservation Law Foundation (CLF) to implement the measures mentioned in the summary of this rule. Also, the Center for Marine Conservation (CMC) petitioned for regulation on pair trawl gear. These actions are being considered in the draft proposed Amendment 5. In making the request, CLF cited the recent stock assessment on cod, which determined that the spawning stock biomass was at record low levels while fishing mortality on the stock was at record high levels. CLF's request to ban pair trawl gear was based on recent information prepared by the Northeast Fisheries Science Center, NMFS, for the Council, which showed that the number of vessels pair trawling had increased and that their catch when compared to a single vessel was three to six times greater. CLF expressed concern over the increased landings of cod and haddock attributed to the pair trawl vessels.

At the request of the Director, Northeast Region, NMFS, the Council, at its February meeting, reviewed CLF's request in order to recommend the type of action the Secretary should take. Participants in the pair trawl fishery commented to the Council on the lack of opportunity for public comment, the adequacy of the data, and the appropriateness of limiting advances in technology. In addition to CLF and CMC comments favoring an emergency prohibition on pair trawling, other commenters supported the prohibition on pair trawl gear, but opposed the haddock measures. Comments favoring an increase of the haddock possession limit to 5,000 pounds (2,268 kg) were also received. After considering the comments, the Council recommended that emergency action be taken to implement a haddock possession limit, expand Closed Area II, and prohibit pair trawling for groundfish.

The 1992 spawning stock level for haddock is estimated to be 13,000 metric tons (mt), which is significantly lower than the 130,000 mt required to provide a maximum sustainable yield of 50,000 mt. The fishing mortality rate for haddock of 0.52 is higher than the goal of 0.4 derived from the Council's definition of overfishing, and an additional season of increased fishing pressure on the depressed stock without any reductions in fishing mortality will reduce the likelihood of rebuilding occurring. This is because a fishing mortality rate of 0.4 is a rate that would maintain the stock at its present level over the long term; given the low stock level, this would not be enough to allow rebuilding to take place. In order for rebuilding to take place, fishing mortality must be reduced even further below this level until stock abundance itself has substantially increased.

The fishing mortality rate for the Georges Bank cod stock was 1.07 in 1992, and the spawning stock biomass was estimated to be 41,000 mt. At the same time, the Gulf of Maine cod stock had a fishing mortality rate of 1.14 and an estimated spawning stock biomass of 13,600 mt. For both stocks, the fishing mortality rates were approximately three times greater than the rates associated with the definition of overfishing for these stocks.

The Secretary has determined that an emergency exists in the haddock and cod fisheries, and that implementation of measures to protect these species is necessary on an emergency basis in order to prevent further overfishing of these stocks. The possession limit will reduce the incentive to target on the depleted haddock stocks while at the same time providing some assurance that haddock taken as bycatch will not have to be discarded. Less than 3 percent of the trips landing haddock in 1991 would have been affected by the possession limit. Annual haddock savings from these trips would have amounted to 1.4 million pounds (0.6 million kg) but would have resulted in lost revenues of $1.6 million. The changes to Closed Area II will provide additional protection to the concentrations of haddock that occur in the area in this time period. An additional month of closure will reduce the large catches of haddock that are often taken just after the area reopens. The vessel possession limit will also act to reduce the likelihood of large catches of haddock just after the area opens. Haddock savings from this measure if fishing does not shift to other areas are estimated to be 1.1 million pounds (0.5 million kg). The exemption added in the regulations for the benefit of dealers does not enable them to purchase or otherwise receive haddock in excess of the possession limit from an individual vessel.

The Secretary has also determined that a pair trawling prohibition will be implemented through this emergency rule. This decision is based on: (1) Record low abundance of spawning stock biomass and record high fishing mortality rates of cod; (2) the aforementioned condition of haddock stocks; (3) the high catch rate efficiency of pair trawls when harvesting these species; (4) the potential of a significant increase in the number of vessels using this gear, and the ability of these vessels to target concentrations of fish, potentially increasing mortality on these stocks; and (5) additional benefits associated with potentially reducing discards of haddock (given the 2,500-lb (1,134-kg) possession limit) and of juvenile cod. Additionally, the Secretary has considered the extensive public comment on this issue and the industry's ability to mitigate the impact of this action by switching to other gears, and has determined that, on balance, this action is warranted.

Meanwhile, the Council's draft proposed Amendment 5 contains two alternatives that address the use of pair trawl gear. As its current preferred alternative, the Council would apply a greater reduction in days at sea for vessels using pair trawl gear than those using single trawl gear. A second alternative is to prohibit its use. These measures were presented at public hearings in May. If one is eventually adopted by the Council and submitted as one of the measures of Amendment 5, the possibility exists that the CLF petition will be responded to on a more permanent basis.

**Classification**

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and with other applicable law.

The Secretary finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for public comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of section 553 (b) and (d) of the Administrative Procedure Act. Implementation of these emergency measures will provide much needed protection to the declining haddock and cod stocks.

This emergency interim rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. The rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not practicable to follow the regular procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

This rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. This rulemaking has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

NMFS prepared an environmental assessment for this action and concluded that there will be no significant impact on the human environment. A copy of this EA is available (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 651**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 2, 1993.

**Nancy Foster,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

## PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 651.2, the definition for *pair trawl or pair trawling* is temporarily added in alphabetical order from June 3, 1993 through September 7, 1993 to read as follows:

**§ 651.2 Definitions.**

* * * * *

*Pair trawl or pair trawling* means a single net towed between two vessels.

* * * * *

3. In § 651.7, paragraphs (a)(3), (a)(4), and (a)(5) are temporarily added from June 3, 1993 through September 7, 1993, to read as follows:

**§ 651.7 Prohibitions.**

(a) * * *

(3) Land or possess haddock in excess of the possession limit specified in § 651.28.

(4) Land or possess regulated species harvested by means of pair trawling except under the provisions of § 651.20(d).

(5) Fish for regulated species by means of pair trawling.

* * * * *

4. In § 651.20, paragraph (g) is temporarily added from June 3, 1993 through September 7, 1993, to read as follows:

**§ 651.20 Regulated mesh area and gear limitations.**

* * * * *

(g) No vessel issued a permit under § 651.4 may pair trawl for regulated species, as defined under § 651.2, except under the provisions of paragraph (d) of this section.

5. In § 651.21, paragraph (a)(2) is temporarily suspended and paragraph (a)(5) is temporarily added from June 3, 1993 through September 7, 1993, to read as follows:

**§ 651.21 Closed areas.**

(a) * * *

(5) An area known as Closed Area II bounded by three straight lines connecting the following points in the order stated will remain closed to fishing through the month of June, 1993, and will reopen at 0001 hours on July 1, 1993:

| Point | Latitude | Longitude |
|---|---|---|
| g | 41°00′ N | 67°20′ W. |
| h | 41°00′ N | 66°09.25′ W. |
| i | 42°22′ N | 67°20′ W. |
| g | 41°00′ N | 67°20′ W. |

* * * * *

6. Section 651.28 is temporarily added from June 3, 1993 through September 7, 1993, to read as follows:

**§ 651.28 Haddock possession limit.**

(a) No person owning or operating a vessel issued a permit under § 651.4 may land or possess more than 2,500 pounds (1,134 kg) of haddock.

(b) No person, other than a dealer located on land, may possess more than 2,500 pounds (1,134 kg) of haddock in or harvested from the EEZ.

[FR Doc. 93–13433 Filed 6–3–93; 10:59 am]

BILLING CODE 3510–22–M

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**50 CFR Part 672**

**[Docket No. 921107–3068; I.D. 060393A]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for groundfish, other than demersal shelf rockfish (DSR), by vessels using hook-and-line gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of prohibited species catch (PSC) of Pacific halibut to hook-and-line gear in the GOA has been caught.

**EFFECTIVE DATE:** Effective 12 noon, Alaska local time (A.l.t.), June 4, 1993, through 12 noon, A.l.t., August 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Alaska Region, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the

Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 672.

The 1993 interim final specifications for the GOA (58 FR 16787, March 31, 1993) established the 1993 Pacific halibut PSC limit for hook-and-line gear for groundfish fisheries, other than DSR, at 740 metric tons (mt). In accordance with § 672.20(f)(2), NMFS apportioned 500 mt to the second season, the period May 15 through August 31, 1993.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(1)(ii), that operators of vessels engaged in directed fishing for groundfish, other than DSR, with hook-and-line gear in the GOA have caught the second seasonal apportionment of Pacific halibut. Therefore, NMFS is prohibiting directed fishing for groundfish, other than DSR, by operators vessels using hook-and-line gear in the GOA from 12 noon, A.l.t., June 4, 1993, through 12 noon, A.l.t., August 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

## Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

## List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 3, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–13510 Filed 6–4–93; 8:45 am]

BILLING CODE 3510–22–M

# Proposed Rules

Federal Register
Vol. 58, No. 108
Tuesday, June 8, 1993

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

### Agricultural Marketing Service, USDA

[CN–93–002]

### 7 CFR Part 1205

RIN 0581–AA637

### Amendment to the Cotton Board Rules and Regulations

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service proposes to amend the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. The amended value would reflect the 1992 calendar year average of monthly average prices received by U.S. farmers for Upland cotton.

**DATES:** Written comments concerning the proposed rule must be sent in triplicate and received no later than July 8, 1993.

**ADDRESSES:** Written comments should be sent to: Craig Shackelford, USDA, AMS, Cotton Division; P.O. Box 96456; room 2641–S; Washington, DC 20090–6456.

All comments will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the date and page of the Federal Register publication.

**FOR FURTHER INFORMATION CONTACT:** Craig Shackelford, (202) 720–2259.

**SUPPLEMENTARY INFORMATION:** This proposed amendment to the Cotton Board Rules and Regulations has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a non-major rule under Executive Order 12291 since it does not meet the criteria for a major regulatory action contained in that Order.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would 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 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, 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 person 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 person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry or the ruling.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this action on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This proposed rule would affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This proposed rule would lower the assessments paid by the importers under the Cotton Research and Promotion Order. The Administrator therefore has certified that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under subtitle G of title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991. Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, 56 FR 65450. The final implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This rule would reduce the value assigned to imported cotton in the Cotton Board Rules and Regulations 7 CFR 1205.510(b)(2). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products.

Supplemental assessments are the second part of a two part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms.

Supplemental assessments are levied at a rate of five tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency adopted the use of the average price received by U.S. farmers for Upland cotton as a benchmark for the value of domestically produced cotton. The source for this statistic is "Agricultural Prices", a publication of the National Agricultural Statistics Service of the Department of Agriculture. Use of the average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton.

The current value of imported cotton as published in the **Federal Register** (57 FR 29431) for the purpose of calculating supplemental assessments on imported cotton is $1.384 per kilogram. Using the Average Price Received by U.S. farmers for Upland cotton for the calendar year 1992, which is 0.526 cents per pound, the new value of imported cotton would be $1.160 per kilogram.

An example of the assessment formula and how the various figures are obtained is as follows.

One bale is equal to 500 pounds.
One kilogram equals 2.2046 pounds.
One pound equals 0.453597 kilograms.

One dollar per bale assessment converted to kilograms

| | | |
|---|---|---|
| A 500 pound bale | = | 226.8 kg. (500 × .453597) |
| $1 per bale assessment | = | $0.002000 per pound (1 ÷ 500) |
| | = | $0.004409 per kg. (1 ÷ 226.8) |

Supplemental assessment of 5/10 of one percent of the value of the cotton converted to kilograms

| | | |
|---|---|---|
| Average price received or average value | = | $0.526 per pound |
| | = | $1.160 per kg. (0.526 × 2.2046) |
| 5/10 of one percent of the average price in kg. | = | $0.005798 per kg. (1.1596 × .005) |

Total assessment per kilogram

| | | |
|---|---|---|
| $1 per bale equivalent assessment | = | $0.004409 per kg. |
| Supplemental assessment | + | $0.005798 per kg. |
| Total assessment per kg. | = | $0.010207 |

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510(b)(3) are a result of such a calculation, these figures would require revision. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule number subject to assessment.

The U.S. Customs Service has informed the agency that several numbers listed in the Import Assessment Table are no longer used because of recent statistical changes made to the Harmonized Tariff Schedule (HTS). This proposed rule would incorporate these statistical changes into the assessment table and remove invalid HTS numbers from the table. Other changes to the table would also be made due to the reclassification of a number of textile and apparel products. Those changes are identified with asterisks and are explained in the table.

The conversion factors listed in the center column of the table represent the raw cotton equivalent that the agency has assigned to each HTS number. The agency would change these numbers where necessary to account for reclassification of products and where additional information has been obtained regarding the cotton content of HTS classifications.

Several nonsubstantive changes have been made in these regulations for the purpose of clarity.

**List of Subjects in 7 CFR Part 1205**

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is proposed to be amended as follows:

## PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

**Authority:** 7 U.S.C. 2101–2118.

2. Section 1205.510(b) (2) and (3) would be revised to read as follows:

**§ 1205.510 "Levy of assessments".**

* * * * *

(b) * * *

(2) The 12 month average of monthly average prices received by U.S. farmers will be calculated annually. Such average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.160 per kilogram.

(3) The following table contains the Harmonized Tariff Schedule (HTS) classification numbers and corresponding conversion factors and assessments. The left column of the table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factor in the table. The right column indicates the total assessment per kilogram of the article assessed. Any line item entry of cotton appearing on Customs entry documentation in which the value of the cotton contained therein is less than $220.99 will not be subject to assessments as described in this section.

IMPORT ASSESSMENT TABLE

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 5201001000 | .0000 | 1.0207 |
| 5201002000 | .0000 | 1.0207 |
| 5201002010 | .0000 | 1.0207 |
| 5201002020 | .0000 | 1.0207 |
| 5201002050 | .0000 | 1.0207 |
| 5204110000 | 1.1111 | 1.1341 |
| 5204200000 | 1.1111 | 1.1341 |
| 5205111000 | 1.1111 | 1.1341 |
| *5205112000 | 1.1111 | 1.1341 |
| 5205121000 | 1.1111 | 1.1341 |
| 5205122000 | 1.1111 | 1.1341 |
| 5205131000 | 1.1111 | 1.1341 |
| *5205132000 | 1.1111 | 1.1341 |
| 5205141000 | 1.1111 | 1.1341 |
| 5205210000 | 1.1111 | 1.1341 |
| 5205220000 | 1.1111 | 1.1341 |
| 5205230000 | 1.1111 | 1.1341 |
| 5205240000 | 1.1111 | 1.1341 |
| 5205250000 | 1.1111 | 1.1341 |
| 5205310000 | 1.1111 | 1.1341 |
| 5205320000 | 1.1111 | 1.1341 |
| 5205330000 | 1.1111 | 1.1341 |
| 5205340000 | 1.1111 | 1.1341 |
| 5205410000 | 1.1111 | 1.1341 |
| *5205420000 | 1.1111 | 1.1341 |
| 5205440000 | 1.1111 | 1.1341 |
| *5205450000 | 1.1111 | 1.1341 |
| 5206120000 | .5556 | .5671 |
| 5206130000 | .5556 | .5671 |
| 5206140000 | .5556 | .5671 |
| *5206220000 | .5556 | .5671 |
| 5206230000 | .5556 | .5671 |
| 5206240000 | .5556 | .5671 |
| 5206310000 | .5556 | .5671 |
| 5207100000 | 1.1111 | 1.1341 |
| *5207900000 | .5556 | .5671 |
| 5208112020 | 1.1455 | 1.1692 |
| 5208112040 | 1.1455 | 1.1692 |
| 5208112090 | 1.1455 | 1.1692 |
| 5208114020 | 1.1455 | 1.1692 |
| 5208114060 | 1.1455 | 1.1692 |
| 5208114090 | 1.1455 | 1.1692 |
| 5208118090 | 1.1455 | 1.1692 |
| 5208124020 | 1.1455 | 1.1692 |
| 5208124040 | 1.1455 | 1.1692 |
| 5208124090 | 1.1455 | 1.1692 |
| 5208126020 | 1.1455 | 1.1692 |
| 5208126040 | 1.1455 | 1.1692 |
| 5208126060 | 1.1455 | 1.1692 |
| 5208126090 | 1.1455 | 1.1692 |
| 5208128020 | 1.1455 | 1.1692 |
| 5208128090 | 1.1455 | 1.1692 |
| 5208130000 | 1.1455 | 1.1692 |
| 5208192020 | 1.1455 | 1.1692 |
| 5208192090 | 1.1455 | 1.1692 |
| 5208194020 | 1.1455 | 1.1692 |
| 5208194090 | 1.1455 | 1.1692 |
| *5208196020 | 1.1455 | 1.1692 |
| 5208196090 | 1.1455 | 1.1692 |
| 5208224040 | 1.1455 | 1.1692 |
| 5208224090 | 1.1455 | 1.1692 |
| 5208226020 | 1.1455 | 1.1692 |
| 5208226060 | 1.1455 | 1.1692 |
| 5208228020 | 1.1455 | 1.1692 |
| 5208230000 | 1.1455 | 1.1692 |
| 5208292020 | 1.1455 | 1.1692 |
| 5208292090 | 1.1455 | 1.1692 |
| 5208294090 | 1.1455 | 1.1692 |
| 5208296090 | 1.1455 | 1.1692 |
| 5208298020 | 1.1455 | 1.1692 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 5208312000 | 1.1455 | 1.1692 |
| 5208321000 | 1.1455 | 1.1692 |
| 5208323020 | 1.1455 | 1.1692 |
| 5208323040 | 1.1455 | 1.1692 |
| 5208323090 | 1.1455 | 1.1692 |
| 5208324020 | 1.1455 | 1.1692 |
| 5208324040 | 1.1455 | 1.1692 |
| 5208325020 | 1.1455 | 1.1692 |
| 5208330000 | 1.1455 | 1.1692 |
| 5208392020 | 1.1455 | 1.1692 |
| 5208392090 | 1.1455 | 1.1692 |
| 5208394090 | 1.1455 | 1.1692 |
| 5208396090 | 1.1455 | 1.1692 |
| 5208398020 | 1.1455 | 1.1692 |
| 5208412000 | 1.1455 | 1.1692 |
| 5208416000 | 1.1455 | 1.1692 |
| 5208418000 | 1.1455 | 1.1692 |
| 5208421000 | 1.1455 | 1.1692 |
| 5208423000 | 1.1455 | 1.1692 |
| 5208424000 | 1.1455 | 1.1692 |
| 5208425000 | 1.1455 | 1.1692 |
| 5208430000 | 1.1455 | 1.1692 |
| 5208492000 | 1.1455 | 1.1692 |
| 5208494020 | 1.1455 | 1.1692 |
| 5208494090 | 1.1455 | 1.1692 |
| 5208496010 | 1.1455 | 1.1692 |
| 5208496090 | 1.1455 | 1.1692 |
| 5208498090 | 1.1455 | 1.1692 |
| *5208512000 | 1.1455 | 1.1692 |
| 5208516060 | 1.1455 | 1.1692 |
| 5208518090 | 1.1455 | 1.1692 |
| 5208523020 | 1.1455 | 1.1692 |
| 5208523040 | 1.1455 | 1.1692 |
| 5208523090 | 1.1455 | 1.1692 |
| 5208524020 | 1.1455 | 1.1692 |
| 5208524040 | 1.1455 | 1.1692 |
| 5208524060 | 1.1455 | 1.1692 |
| 5208525020 | 1.1455 | 1.1692 |
| 5208530000 | 1.1455 | 1.1692 |
| 5208592020 | 1.1455 | 1.1692 |
| 5208592090 | 1.1455 | 1.1692 |
| 5208594090 | 1.1455 | 1.1692 |
| 5208596090 | 1.1455 | 1.1692 |
| 5209110020 | 1.1455 | 1.1692 |
| 5209110030 | 1.1455 | 1.1692 |
| 5209110090 | 1.1455 | 1.1692 |
| 5209120020 | 1.1455 | 1.1692 |
| 5209120040 | 1.1455 | 1.1692 |
| 5209190020 | 1.1455 | 1.1692 |
| 5209190040 | 1.1455 | 1.1692 |
| 5209190060 | 1.1455 | 1.1692 |
| 5209190090 | 1.1455 | 1.1692 |
| 5209210090 | 1.1455 | 1.1692 |
| 5209220020 | 1.1455 | 1.1692 |
| *5209220040 | 1.1455 | 1.1692 |
| 5209290040 | 1.1455 | 1.1692 |
| 5209290090 | 1.1455 | 1.1692 |
| 5209313000 | 1.1455 | 1.1692 |
| *5209316020 | 1.1455 | 1.1692 |
| 5209316030 | 1.1455 | 1.1692 |
| 5209316050 | 1.1455 | 1.1692 |
| 5209316090 | 1.1455 | 1.1692 |
| 5209320020 | 1.1455 | 1.1692 |
| 5209320040 | 1.1455 | 1.1692 |
| 5209390020 | 1.1455 | 1.1692 |
| 5209390040 | 1.1455 | 1.1692 |
| 5209390060 | 1.1455 | 1.1692 |
| 5209390080 | 1.1455 | 1.1692 |
| 5209390090 | 1.1455 | 1.1692 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 5209413000 | 1.1455 | 1.1692 |
| 5209416020 | 1.1455 | 1.1692 |
| *5209416040 | 1.1455 | 1.1692 |
| 5209420020 | 1.0309 | 1.0522 |
| 5209420040 | 1.0309 | 1.0522 |
| 5209430020 | 1.1455 | 1.1692 |
| 5209430040 | 1.1455 | 1.1692 |
| 5209490020 | 1.1455 | 1.1692 |
| 5209490090 | 1.1455 | 1.1692 |
| 5209516030 | 1.1455 | 1.1692 |
| 5209516050 | 1.1455 | 1.1692 |
| 5209520020 | 1.1455 | 1.1692 |
| 5209590020 | 1.1455 | 1.1692 |
| 5209590040 | 1.1455 | 1.1692 |
| 5209590090 | 1.1455 | 1.1692 |
| 5210114020 | .6873 | .7015 |
| 5210114040 | .6873 | .7015 |
| 5210116020 | .6873 | .7015 |
| 5210116040 | .6873 | .7015 |
| 5210116060 | .6873 | .7015 |
| *5210118020 | .6873 | .7015 |
| 5210120000 | .6873 | .7015 |
| 5210192090 | .6873 | .7015 |
| 5210214040 | .6873 | .7015 |
| 5210216020 | .6873 | .7015 |
| 5210216060 | .6873 | .7015 |
| *5210218020 | .6873 | .7015 |
| 5210314020 | .6873 | .7015 |
| 5210314040 | .6873 | .7015 |
| 5210316020 | .6873 | .7015 |
| 5210318020 | .6873 | .7015 |
| 5210414000 | .6873 | .7015 |
| 5210416000 | .6873 | .7015 |
| 5210418000 | .6873 | .7015 |
| 5210498090 | .6873 | .7015 |
| 5210514040 | .6873 | .7015 |
| 5210516020 | .6873 | .7015 |
| 5210516040 | .6873 | .7015 |
| 5210516060 | .6873 | .7015 |
| *5211110090 | .6873 | .7015 |
| 5211120020 | .6873 | .7015 |
| 5211190020 | .6873 | .7015 |
| 5211190060 | .6873 | .7015 |
| 5211210030 | .4165 | .4251 |
| *5211210050 | .6873 | .7015 |
| 5211290090 | .6873 | .7015 |
| 5211320020 | .6873 | .7015 |
| 5211390040 | .6873 | .7015 |
| 5211390060 | .6873 | .7015 |
| 5211490020 | .6873 | .7015 |
| 5211490090 | .6873 | .7015 |
| 5211590020 | .6873 | .7015 |
| 5212146090 | .9164 | .9354 |
| *5212156020 | .9164 | .9354 |
| 5212216090 | .9164 | .9354 |
| *5309214010 | .2864 | .2923 |
| *5309214090 | .2864 | .2923 |
| *5309294010 | .2864 | .2923 |
| *5311004000 | .9164 | .9354 |
| *5407810010 | .5727 | .5846 |
| *5407810030 | .5727 | .5846 |
| *5407912020 | .4009 | .4092 |
| *5408312020 | .4009 | .4092 |
| *5408329020 | .4009 | .4092 |
| *5408349020 | .4009 | .4092 |
| *5408349090 | .4009 | .4092 |
| *5509530030 | .5556 | .5671 |
| *5509530060 | .5556 | .5671 |
| *5513110020 | .4009 | .4092 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| *5513110040 | .4009 | .4092 |
| *5513110060 | .4009 | .4092 |
| *5513110090 | .4009 | .4092 |
| *5513120000 | .4009 | .4092 |
| *5513130020 | .4009 | .4092 |
| *5513210020 | .4009 | .4092 |
| *5513310000 | .4009 | .4092 |
| *5514120020 | .4009 | .4092 |
| *5516420060 | .4009 | .4092 |
| *5516910060 | .4009 | .4092 |
| *5516930090 | .4009 | .4092 |
| 5601210010 | 1.1455 | 1.1692 |
| 5601210090 | 1.1455 | 1.1692 |
| 5601300000 | 1.1455 | 1.1692 |
| 5602109090 | .5727 | .5846 |
| 5602290000 | 1.1455 | 1.1692 |
| 5602906000 | .5260 | .5369 |
| 5604900000 | .5556 | .5671 |
| 5607902000 | .8889 | .9073 |
| 5608901000 | 1.1111 | 1.1341 |
| *5608902300 | 1.1111 | 1.1341 |
| *5609001000 | 1.1111 | 1.1341 |
| 5609004000 | .5556 | .5671 |
| 5701102010 | .0556 | .0568 |
| 5701102090 | .1111 | .1134 |
| 5701901010 | 1.0444 | 1.0660 |
| 5702109020 | 1.1000 | 1.1228 |
| 5702312000 | .0778 | .0794 |
| 5702411000 | .0722 | .0737 |
| 5702412000 | .0778 | .0794 |
| 5702421000 | .0778 | .0794 |
| 5702422090 | .0778 | .0794 |
| 5702491010 | 1.0333 | 1.0547 |
| 5702491090 | 1.0333 | 1.0547 |
| 5702913000 | .0889 | .0907 |
| 5702991010 | 1.1111 | 1.1341 |
| 5702991090 | 1.1111 | 1.1341 |
| 5703900000 | .4489 | .4582 |
| 5801220000 | 1.1455 | 1.1692 |
| 5801230000 | 1.1455 | 1.1692 |
| 5801250010 | 1.1455 | 1.1692 |
| 5801250020 | 1.1455 | 1.1692 |
| 5801260020 | 1.1455 | 1.1692 |
| 5802190000 | 1.1455 | 1.1692 |
| 5802300030 | .5727 | .5846 |
| 5804290020 | 1.1455 | 1.1692 |
| 5806200000 | .3534 | .3607 |
| 5806310000 | 1.1455 | 1.1692 |
| 5806400000 | .4296 | .4385 |
| 5808103010 | .5727 | .5846 |
| 5808900010 | .5727 | .5846 |
| 5811002000 | 1.1455 | 1.1692 |
| *6001106000 | 1.1455 | 1.1692 |
| 6001210000 | .8591 | .8769 |
| 6001220000 | .2864 | .2923 |
| 6001910010 | .8591 | .8769 |
| 6001910020 | .8591 | .8769 |
| 6001920020 | .2864 | .2923 |
| 6001920030 | .2864 | .2923 |
| 6001920040 | .2864 | .2923 |
| 6002203000 | .8681 | .8861 |
| 6002206000 | .2894 | .2954 |
| 6002420000 | .8681 | .8861 |
| 6002430010 | .2894 | .2954 |
| 6002430080 | .2894 | .2954 |
| 6002920000 | 1.1574 | 1.1814 |
| 6002930040 | .1157 | .1181 |
| 6002930080 | .1157 | .1181 |
| 6101200010 | 1.0094 | 1.0303 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 6101200020 | 1.0094 | 1.0303 |
| 6102200010 | 1.0094 | 1.0303 |
| *6102200020 | 1.0094 | 1.0303 |
| 6103421020 | .8806 | .8988 |
| 6103421040 | .8806 | .8988 |
| 6103421050 | .8806 | .8988 |
| 6103421070 | .8806 | .8988 |
| 6103431520 | .2516 | .2568 |
| 6103431540 | .2516 | .2568 |
| 6103431550 | .2516 | .2568 |
| *6103431570 | .2516 | .2568 |
| 6104220040 | .9002 | .9188 |
| 6104220060 | .9002 | .9188 |
| 6104320000 | .9207 | .9398 |
| 6104420010 | .9002 | .9186 |
| 6104420020 | .9002 | .9188 |
| 6104520010 | .9312 | .9505 |
| 6104520020 | .9312 | .9505 |
| 6104622010 | .8806 | .8988 |
| 6104622015 | .8806 | .8988 |
| 6104622025 | .8806 | .8988 |
| 6104622030 | .8806 | .8988 |
| 6104622060 | .8806 | .8988 |
| 6104632010 | .3774 | .3852 |
| 6104632025 | .3774 | .3852 |
| 6104632030 | .3774 | .3852 |
| 6104632060 | .3774 | .3852 |
| *6104692030 | .3858 | .3938 |
| 6105100010 | .9850 | 1.0054 |
| 6105100020 | .9850 | 1.0054 |
| 6105100030 | .9850 | 1.0054 |
| 6105202010 | .3078 | .3142 |
| 6105202030 | .3078 | .3142 |
| 6106100010 | .9850 | 1.0054 |
| 6106100020 | .9850 | 1.0054 |
| 6106100030 | .9850 | 1.0054 |
| 6106202010 | .3078 | .3142 |
| 6106202030 | .3078 | .3142 |
| 6107110010 | 1.1322 | 1.1556 |
| 6107110020 | 1.1322 | 1.1556 |
| 6107120010 | .5032 | .5136 |
| 6107210010 | .8806 | .8988 |
| *6107220015 | .3774 | .3852 |
| 6107220025 | .3774 | .3852 |
| 6107910040 | 1.2581 | 1.2841 |
| 6108210010 | 1.2445 | 1.2703 |
| 6108210020 | 1.2445 | 1.2703 |
| 6108310010 | 1.1201 | 1.1433 |
| *6108310020 | 1.1201 | 1.1433 |
| 6108320010 | .2489 | .2541 |
| 6108320015 | .2489 | .2541 |
| 6108320025 | .2489 | .2541 |
| *6108910005 | 1.2445 | 1.2703 |
| 6108910015 | 1.2445 | 1.2703 |
| 6108910025 | 1.2445 | 1.2703 |
| 6108910030 | 1.2445 | 1.2703 |
| 6108920030 | .2489 | .2541 |
| 6109100005 | .9956 | 1.0162 |
| 6109100007 | .9956 | 1.0162 |
| 6109100009 | .9956 | 1.0162 |
| 6109100012 | .9956 | 1.0162 |
| 6109100014 | .9956 | 1.0162 |
| 6109100018 | .9956 | 1.0162 |
| 6109100023 | .9956 | 1.0162 |
| 6109100027 | .9956 | 1.0162 |
| 6109100037 | .9956 | 1.0162 |
| 6109100040 | .9956 | 1.0162 |
| 6109100045 | .9956 | 1.0162 |
| 6109100060 | .9956 | 1.0162 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 6109100065 | .9956 | 1.0162 |
| 6109100070 | .9956 | 1.0162 |
| 6109901007 | .3111 | .3175 |
| 6109901009 | .3111 | .3175 |
| 6109901049 | .3111 | .3175 |
| 6109901050 | .3111 | .3175 |
| 6109901060 | .3111 | .3175 |
| 6109901065 | .3111 | .3175 |
| 6109901090 | .3111 | .3175 |
| 6110202005 | 1.1837 | 1.2082 |
| 6110202010 | 1.1837 | 1.2082 |
| 6110202015 | 1.1837 | 1.2082 |
| 6110202020 | 1.1837 | 1.2082 |
| 6110202025 | 1.1837 | 1.2082 |
| 6110202030 | 1.1837 | 1.2082 |
| 6110202035 | 1.1837 | 1.2082 |
| 6110202040 | 1.1574 | 1.1814 |
| 6110202045 | 1.1574 | 1.1814 |
| 6110202065 | 1.1574 | 1.1814 |
| 6110202075 | 1.1574 | 1.1814 |
| 6110900022 | .2630 | .2684 |
| 6110900024 | .2630 | .2684 |
| *6110900030 | .3946 | .4028 |
| 6110900040 | .2630 | .2684 |
| 6110900042 | .2630 | .2684 |
| 6111201000 | 1.2581 | 1.2841 |
| 6111202000 | 1.2581 | 1.2841 |
| 6111203000 | 1.0064 | 1.0272 |
| 6111205000 | 1.0064 | 1.0272 |
| 6111206010 | 1.0064 | 1.0272 |
| 6111206020 | 1.0064 | 1.0272 |
| 6111206030 | 1.0064 | 1.0272 |
| 6111206040 | 1.0064 | 1.0272 |
| 6111305020 | .2516 | .2568 |
| 6111305040 | .2516 | .2568 |
| 6112110050 | .7548 | .7704 |
| 6112120010 | .2516 | .2568 |
| 6112120030 | .2516 | .2568 |
| 6112120040 | .2516 | .2568 |
| 6112120050 | .2516 | .2568 |
| 6112120060 | .2516 | .2568 |
| 6112390010 | 1.1322 | 1.1556 |
| 6112490010 | .9435 | .9630 |
| 6114200005 | .9002 | .9188 |
| 6114200010 | .9002 | .9188 |
| 6114200015 | .9002 | .9188 |
| 6114200020 | 1.2860 | 1.3126 |
| 6114200040 | .9002 | .9188 |
| *6114200046 | .9002 | .9188 |
| 6114200052 | .9002 | .9188 |
| 6114200060 | .9002 | .9188 |
| 6114301010 | .2572 | .2625 |
| 6114301020 | .2572 | .2625 |
| 6114303030 | .2572 | .2625 |
| 6115190010 | 1.0417 | 1.0633 |
| 6115922000 | 1.0417 | 1.0633 |
| 6115932020 | .2315 | .2363 |
| *6116101300 | .3655 | .3731 |
| *6116101720 | .8528 | .8705 |
| *6116926420 | 1.0965 | 1.1192 |
| *6116926430 | 1.2183 | 1.2435 |
| *6116926440 | 1.0965 | 1.1192 |
| *6116928800 | 1.0965 | 1.1192 |
| *6116939010 | .1218 | .1243 |
| 6117800010 | .9747 | .9949 |
| 6117800035 | .3655 | .3731 |
| 6201121000 | .948 | .9676 |
| 6201122010 | .8953 | .9138 |
| 6201122050 | .6847 | .6989 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 6201122060 | .6847 | .6989 |
| 6201134030 | .2633 | .2688 |
| 6201921000 | .9267 | .9459 |
| 6201921500 | 1.1583 | 1.1823 |
| 6201922010 | 1.0296 | 1.0509 |
| *6201922021 | 1.2871 | 1.3137 |
| *6201922031 | 1.2871 | 1.3137 |
| *6201922041 | 1.2871 | 1.3137 |
| *6201922051 | 1.0296 | 1.0509 |
| *6201922061 | 1.0296 | 1.0509 |
| 6201931000 | .3089 | .3153 |
| *6201933511 | .2574 | .2627 |
| *6201933521 | .2574 | .2627 |
| *6201990061 | .2574 | .2627 |
| 6202121000 | .9372 | .9566 |
| 6202122010 | 1.1064 | 1.1293 |
| 6202122025 | 1.3017 | 1.3286 |
| 6202122050 | .8461 | .8636 |
| 6202122060 | .8461 | .8636 |
| 6202134005 | .2664 | .2719 |
| 6202134020 | .3330 | .3399 |
| 6202921000 | 1.0413 | 1.0629 |
| 6202921500 | 1.0413 | 1.0629 |
| *6202922026 | 1.3017 | 1.3286 |
| *6202922061 | 1.0413 | 1.0629 |
| *6202922071 | 1.0413 | 1.0629 |
| 6202931000 | .3124 | .3189 |
| *6202935011 | .2603 | .2657 |
| *6202935021 | .2603 | .2657 |
| 6203122010 | .1302 | .1329 |
| 6203221000 | 1.3017 | 1.3286 |
| 6203322010 | 1.2366 | 1.2622 |
| 6203322040 | 1.2366 | 1.2622 |
| 6203332010 | .1302 | .1329 |
| 6203392010 | 1.1715 | 1.1958 |
| 6203394060 | .2603 | .2657 |
| 6203422010 | .9961 | 1.0167 |
| 6203422025 | .9961 | 1.0167 |
| 6203422050 | .9961 | 1.0167 |
| 6203422090 | .9961 | 1.0167 |
| 6203424005 | 1.2451 | 1.2709 |
| 6203424010 | 1.2451 | 1.2709 |
| 6203424015 | .9961 | 1.0167 |
| 6203424020 | 1.2451 | 1.2709 |
| 6203424025 | 1.2451 | 1.2709 |
| 6203424030 | 1.2451 | 1.2709 |
| 6203424035 | 1.2451 | 1.2709 |
| 6203424040 | .9961 | 1.0167 |
| 6203424045 | .9961 | 1.0167 |
| 6203424050 | .9238 | .9429 |
| 6203424055 | .9238 | .9429 |
| 6203424060 | .9238 | .9429 |
| 6203431500 | .1245 | .1271 |
| 6203434010 | .1232 | .1258 |
| 6203434020 | .1232 | .1258 |
| 6203434030 | .1232 | .1258 |
| 6203434040 | .1232 | .1258 |
| 6203492010 | .1245 | .1271 |
| 6203493045 | .2490 | .2542 |
| 6204132010 | .1302 | .1329 |
| 6204192000 | .1302 | .1329 |
| 6204193090 | .2603 | .2657 |
| 6204221000 | 1.3017 | 1.3286 |
| 6204223030 | 1.0413 | 1.0629 |
| 6204223040 | 1.0413 | 1.0629 |
| 6204223050 | 1.0413 | 1.0629 |
| 6204223060 | 1.0413 | 1.0629 |
| 6204223065 | 1.0413 | 1.0629 |
| 6204292040 | .3254 | .3321 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 6204322010 | 1.2366 | 1.2622 |
| 6204322030 | 1.0413 | 1.0629 |
| 6204322040 | 1.0413 | 1.0629 |
| 6204423010 | 1.2728 | 1.2991 |
| 6204423030 | .9546 | .9744 |
| 6204423040 | .9546 | .9744 |
| 6204423050 | .9546 | .9744 |
| 6204423060 | .9546 | .9744 |
| 6204522010 | 1.2654 | 1.2916 |
| 6204522030 | 1.2654 | 1.2916 |
| 6204522040 | 1.2654 | 1.2916 |
| 6204522070 | 1.0656 | 1.0877 |
| 6204522080 | 1.0656 | 1.0877 |
| 6204533010 | .2664 | .2719 |
| 6204594060 | .2664 | .2719 |
| 6204622010 | .9961 | 1.0167 |
| 6204622025 | .9961 | 1.0167 |
| 6204622050 | .9961 | 1.0167 |
| 6204624005 | 1.2451 | 1.2709 |
| 6204624010 | 1.2451 | 1.2709 |
| 6204624020 | .9961 | 1.0167 |
| 6204624025 | 1.2451 | 1.2709 |
| 6204624030 | 1.2451 | 1.2709 |
| 6204624035 | 1.2451 | 1.2709 |
| 6204624040 | 1.2451 | 1.2709 |
| 6204624045 | .9961 | 1.0167 |
| 6204624050 | .9961 | 1.0167 |
| 6204624055 | .9854 | 1.0058 |
| 6204624060 | .9854 | 1.0058 |
| 6204624065 | .9854 | 1.0058 |
| 6204633510 | .2546 | .2599 |
| 6204633530 | .2546 | .2599 |
| 6204633532 | .2437 | .2487 |
| 6204633540 | .2437 | .2487 |
| 6204692510 | .2490 | .2542 |
| 6204692540 | .2437 | .2487 |
| 6204699044 | .2490 | .2542 |
| *6204699046 | .2490 | .2542 |
| *6204699050 | .2490 | .2542 |
| 6205202015 | .9961 | 1.0167 |
| 6205202020 | .9961 | 1.0167 |
| 6205202025 | .9961 | 1.0167 |
| 6205202030 | .9961 | 1.0167 |
| 6205202035 | 1.1206 | 1.1438 |
| 6205202046 | .9961 | 1.0167 |
| *6205202050 | .9961 | 1.0167 |
| 6205202060 | .9961 | 1.0167 |
| 6205202065 | .9961 | 1.0167 |
| 6205202070 | .9961 | 1.0167 |
| 6205202075 | .9961 | 1.0167 |
| 6205302010 | .3113 | .3177 |
| 6205302030 | .3113 | .3177 |
| 6205302040 | .3113 | .3177 |
| 6205302050 | .3113 | .3177 |
| 6205302070 | .3113 | .3177 |
| 6205302080 | .3113 | .3177 |
| 6205902040 | .1245 | .1271 |
| 6206100040 | .1245 | .1271 |
| 6206303010 | .9961 | 1.0167 |
| 6206303020 | .9961 | 1.0167 |
| 6206303030 | .9961 | 1.0167 |
| 6206303040 | .9961 | 1.0167 |
| 6206303050 | .9961 | 1.0167 |
| 6206303060 | .9961 | 1.0167 |
| 6206403010 | .3113 | .3177 |
| 6206403030 | .3113 | .3177 |
| 6206900040 | .2490 | .2542 |
| 6207110000 | 1.0852 | 1.1077 |
| 6207190010 | .3617 | .3692 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 6207210010 | 1.1085 | 1.1314 |
| 6207210030 | 1.1085 | 1.1314 |
| 6207220000 | .3695 | .3771 |
| 6207911000 | 1.1455 | 1.1692 |
| *6207913010 | 1.1455 | 1.1692 |
| 6207913020 | 1.1455 | 1.1692 |
| 6208210010 | 1.0583 | 1.0802 |
| 6208210020 | 1.0583 | 1.0802 |
| 6208220000 | .1245 | .1271 |
| 6208911010 | 1.1455 | 1.1692 |
| *6208911020 | 1.1455 | 1.1692 |
| 6208913010 | 1.1455 | 1.1692 |
| 6208920010 | .1273 | .1299 |
| 6208920030 | .1273 | .1299 |
| 6209201000 | 1.1577 | 1.1817 |
| 6209203000 | .9749 | .9951 |
| 6209205030 | .9749 | .9951 |
| 6209205035 | .9749 | .9951 |
| 6209205040 | 1.2186 | 1.2438 |
| 6209205045 | .9749 | .9951 |
| 6209205050 | .9749 | .9951 |
| 6209303020 | .2463 | .2514 |
| 6209303040 | .2463 | .2514 |
| 6210104015 | .2291 | .2338 |
| 6210401010 | .0391 | .0399 |
| 6210401020 | .4556 | .465 |
| 6211111010 | .1273 | .1299 |
| 6211111020 | .1273 | .1299 |
| 6211112010 | 1.1455 | 1.1692 |
| 6211112020 | 1.1455 | 1.1692 |
| 6211320007 | .8461 | .8636 |
| 6211320010 | 1.0413 | 1.0629 |
| 6211320015 | 1.0413 | 1.0629 |
| 6211320030 | .9763 | .9965 |
| 6211320060 | .9763 | .9965 |
| 6211320070 | .9763 | .9965 |
| 6211320080 | .9763 | .9965 |
| 6211330010 | .3254 | .3321 |
| 6211330030 | .3905 | .3986 |
| 6211330035 | .3905 | .3986 |
| 6211330040 | .3905 | .3986 |
| 6211420010 | 1.0413 | 1.0629 |
| 6211420020 | 1.0413 | 1.0629 |
| 6211420025 | 1.1715 | 1.1958 |
| 6211420050 | 1.1715 | 1.1958 |
| 6211420060 | 1.0413 | 1.0629 |
| 6211420070 | 1.1715 | 1.1958 |
| 6211420080 | 1.1715 | 1.1958 |
| 6211430010 | .2603 | .2657 |
| 6211430030 | .2603 | .2657 |
| *6211430040 | .2603 | .2657 |
| 6211430050 | .2603 | .2657 |
| 6211430060 | .2603 | .2657 |
| *6211430066 | .2603 | .2657 |
| 6211430090 | .2603 | .2657 |
| 6212101020 | .2412 | .2462 |
| 6212102010 | .9646 | .9846 |
| 6212102020 | .2412 | .2462 |
| 6212200020 | .3014 | .3076 |
| 6212900030 | .1929 | .1969 |
| 6213201000 | 1.1809 | 1.2053 |
| 6213202000 | 1.0628 | 1.0848 |
| 6213901000 | .4724 | .4822 |
| 6214900010 | .9043 | .9230 |
| *6216000800 | .2351 | .2400 |
| *6216001220 | .6752 | .6892 |
| *6216001720 | .6752 | .6892 |
| *6216003800 | 1.2058 | 1.2308 |
| 6216003910 | 1.2058 | 1.2308 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 6216003920 | 1.2058 | 1.2308 |
| *6216004100 | 1.2058 | 1.2308 |
| 6217100010 | 1.0182 | 1.0393 |
| 6217100030 | .2546 | .2599 |
| 6301300010 | .8766 | .8947 |
| 6301300020 | .8766 | .8947 |
| 6302100010 | 1.1689 | 1.1931 |
| 6302211020 | .8182 | .8351 |
| 6302211040 | .8182 | .8351 |
| 6302212010 | 1.1689 | 1.1931 |
| 6302212020 | .8182 | .8351 |
| 6302212030 | 1.1689 | 1.1931 |
| 6302212040 | .8182 | .8351 |
| 6302212090 | .8182 | .8351 |
| 6302222010 | .4091 | .4176 |
| 6302222020 | .4091 | .4176 |
| *6302311020 | .8182 | .8351 |
| 6302311090 | .8182 | .8351 |
| 6302312010 | 1.1689 | 1.1931 |
| 6302312020 | .8182 | .8351 |
| 6302312030 | 1.1689 | 1.1931 |
| 6302312040 | .8182 | .8351 |
| 6302312055 | .8182 | .8351 |
| 6302312090 | .8182 | .8351 |
| 6302322020 | .4091 | .4176 |
| 6302322040 | .4091 | .4176 |
| 6302402010 | .9935 | 1.0141 |
| 6302511000 | .5844 | .5965 |
| 6302512000 | .8766 | .8947 |
| 6302513000 | .5844 | .5965 |
| 6302514000 | .8182 | .8351 |
| 6302600010 | 1.1689 | 1.1931 |
| 6302600020 | 1.0520 | 1.0738 |
| 6302600030 | 1.0520 | 1.0738 |
| 6302910005 | 1.0520 | 1.0738 |
| 6302910015 | 1.1689 | 1.1931 |
| 6302910025 | 1.0520 | 1.0738 |
| 6302910035 | 1.0520 | 1.0738 |
| 6302910045 | 1.0520 | 1.0738 |
| 6302910050 | 1.0520 | 1.0738 |
| 6302910060 | 1.0520 | 1.0738 |
| 6303110000 | .9448 | .9644 |
| 6303910000 | .6429 | .6562 |
| 6303920000 | .2922 | .2982 |
| 6304111000 | 1.0629 | 1.0849 |
| 6304190500 | 1.0520 | 1.0738 |
| 6304191000 | 1.1689 | 1.1931 |
| 6304191500 | .4091 | .4176 |
| 6304192000 | .4091 | .4176 |
| 6304910020 | .9351 | .9545 |
| 6304920000 | .9351 | .9545 |
| *6505901540 | 1.1810 | 1.2054 |
| *6505902060 | .9935 | 1.0141 |
| *6505902545 | .5844 | .5965 |

* * * * *

Dated: June 3, 1993.

**L.P. Massaro,**

*Acting Administrator.*

[FR Doc. 93–13504 Filed 6–7–93; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 613, 614, 620, 621, and 627

RIN 3052–AB32

**Organization; Eligibility and Scope of Financing; Loan Policies and Operations; Disclosure to Shareholders; Accounting and Reporting Requirements; Title V Conservators and Receivers**

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) proposes amended regulations to update its accounting and reporting requirements, promote consistency with industry practices pertaining to problem loan accounting and reporting issues, and ensure that the regulations on accounting and reporting requirements are consistent with generally accepted accounting practices. Among other changes, the FCA proposes to revise the existing loan performance categories to eliminate the term "nonperforming" and the categories of "other high risk loans" and "other restructured and reduced rate loans." The definitions of the proposed revised loan performance categories clarify the required reporting treatment of problem loans to improve the utility of disclosures to shareholders and the FCA and obviate potential conflicting interpretations of problem loan classification among reporting institutions. Technical and conforming changes are proposed throughout the agency's regulations. FCA expects to publish final regulations in 4th quarter 1993, to be effective as of December 31, 1993.

DATES: Comments should be received on or before July 8, 1993.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all comments received will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Linda C. Sherman, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444.

or

William L. Larsen, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

## I. Background

On March 13, 1986, the FCA adopted its current regulations on Accounting and Reporting Requirements, 12 CFR part 621 (See 51 FR 8661). These regulations were developed in large part to set requirements and standards for institutions to use in accounting for high risk assets and disclosing loan performance characteristics. Part 621 includes specific standards and reporting requirements for nonperforming loan categories, which include nonaccrual, formally restructured, other restructured and reduced rate, and other high risk loans.

The impetus for using the nonperforming designation and various nonperforming categories came from guidelines issued by the Securities and Exchange Commission (SEC). In the early 1980's, the SEC's Industry Guide 3, "Statistical Disclosure by Bank Holding Companies" used the term "nonperforming" to mean: (1) Nonaccrual loans; (2) renegotiated loans that provide a reduction or deferral of interest or principal because of a deterioration in the financial position of the borrower; (3) accrual loans that are past due 90 days or more; and (4) loans that are current but about which there are serious doubts as to the ability of the borrower to comply with present loan repayment terms. The SEC subsequently revised Guide 3 to include a requirement for the disclosure of risk elements, which include substantially all assets that previously would have been referred to as "nonperforming" assets plus other types of identified risk, such as potential problem loans, foreign loans outstanding, and loan concentrations.

In issuing final regulations, the FCA adopted the terms "nonperforming loans" (nonaccrual, formally restructured, other restructured and reduced rate, and other high risk loans) and "nonperforming assets" (nonperforming loans and acquired property) in recognition of their wide usage by the financial services industry, and to promote consistency in reporting and financial disclosures.

## II. Issues Prompting Need for Changes

Since the regulations were issued in 1986, the FCA has developed interpretive guidance in the area of problem loan accounting. However, the term "nonperforming loans" and its components have been subject to varying interpretations and differences in institutional interpretations of problem loan classifications continue to exist. There are also diverse practices within the financial services industry and its regulators.

The term "nonperforming loans" is not widely used by other financial regulators in their official releases and published guidelines. Instead, depository institutions are required to disclose nonaccrual loans, accrual loans past due 90 days or more, and restructured loans in their regulatory call reports. In addition, institutions subject to SEC rules are required to disclose such loans, as well as potential problem loans, in their published financial statements as outlined in the SEC's Guide 3. Even though the SEC has adopted terminology using "Risk Elements" (versus "nonperforming assets") for disclosure purposes, the terms "nonperforming loans" and "nonperforming assets" are still used in the financial services industry and the financial press. In a review of the published financial statements of thirty of the largest United States bank holding companies, approximately 85 percent of those surveyed used one or both of these categories, and most used the term "nonperforming loans" to describe nonaccrual and restructured loans. In addition, the term "nonperforming assets" typically consisted of nonperforming loans and other real estate owned. Accruing loans past due 90 days or more were also disclosed, but not as a component of nonperforming loans. In the financial press, the term "nonperforming loans" is frequently used along with corresponding dollar amounts and ratios. However, this usage is seldom accompanied by a definition of nonperforming, which makes comparison of data more difficult.

The FCA believes there is a need to promote comparability of financial disclosures of problem loans by System institutions with similar disclosures by other financial institutions. In consideration of these factors, the FCA proposes to amend part 621 as it pertains to performance categories and related issues.

Questions have arisen regarding how performance categories should be applied to System assets. While the FCA and the System have provided guidance on these issues, there is a need for regulatory clarification that can be consistently applied throughout the System. For example, the use of the term "other high risk" has caused confusion over the perceived

relationship between performance classifications and credit classifications, even though a direct correlation between these two classification systems was never intended. The proposed regulations attempt to provide a clear distinction between accounting treatment of an asset and the classification of credit risk.

Some institutions have also requested clarification of the criteria for placing loans in nonaccrual, and expressed concern that existing criteria are not consistently applied to restructures or reamortizations, loans which are in-substance delinquencies, and loans in bankruptcy or foreclosure. In some cases they claim that inconsistent application of the concept "in process of collection" has resulted in current loans being placed in nonaccrual because of the lack of an effective collection effort. The proposed regulations attempt to link performance classifications more closely to evidence of repayment capacity.

Clarification has also been requested regarding interpretation of the rule of aggregation. Issues of concern include: (1) Whether all loans to a single borrower should be automatically aggregated, regardless of credit risk; and (2) whether the rule of aggregation should apply to all nonperforming categories, or only to individual performance categories. Applying the criteria without considering independent credit risk could result in loans being placed inappropriately in nonaccrual and distorting the financial position of an institution.

Other issues clarified in the proposed regulations include application of payments on nonaccrual loans, criteria for returning loans to accrual status, and accounting for the allowance for loan losses.

## III. Advanced Notice of Proposed Rulemaking

Prior to developing a revised approach to problem loan accounting in part 621, the FCA sought comment from the System and the public through an advance notice of proposed rulemaking (ANPRM). See 57 FR 58997 (December 14, 1992). In the ANPRM, the FCA posed several questions regarding financial disclosures of problem loans by System institutions. The FCA received 22 comment letters, 17 of which were from agricultural credit associations (ACAs), three from Farm Credit banks (FCBs), and one each from the Farm Credit Council (FCC) and the American Institute of Certified Public Accountants (AICPA).

In general, all the commenters supported FCA's efforts to update and revise the accounting and reporting requirements relating to reporting and disclosure of problem loan assets. The commenters stated their belief that appropriate revisions would lower costs, increase comparability with other financial institutions, and eliminate confusing disclosures. The commenters unanimously supported eliminating the problem loan classifications of "other high risk loans" and "other restructured and reduced rate loans." Most commenters believed little would be gained by disclosing credit classifications in the Management Discussion and Analysis (MD&A) section of the annual report. Finally, most commenters expressed the opinion that the rule of aggregation should not be automatically applied to every situation, but that each situation should be evaluated on the basis of whether loans constitute independent credit risks.

The AICPA commented on existing diversity among financial institutions with regard to income recognition on impaired loans. They stated that the Financial Accounting Standards Board (FASB) has issued an exposure draft on this subject, and expects to issue a final pronouncement in 1993. If available and applicable, the FCA will consider any final FASB pronouncements prior to promulgation of a final regulation.

## IV. Section-by-Section Analysis

### *A. Subpart A—Purpose and Definitions*

Proposed § 621.1 articulates the FCA's purpose for the regulation. Specifically, these regulations promote the preparation of accurate and reliable financial information in accordance with appropriate accounting and FCA requirements, thus enhancing accountability of management and directors to stockholders. The accounting requirements also provide a uniform foundation for generating and disclosing material financial information to all persons having or contemplating business transactions with System institutions, including investors in consolidated Systemwide bonds.

The proposed § 621.2 on definitions removes certain outdated terms from the current regulation. To improve clarity, other current definitions are incorporated into the relevant provisions of the proposed regulation. Sections of the current subpart A that relate to the identification, accounting and reporting of loan performance would now be included in proposed subpart C, which addresses loan performance and valuation assessment. The terms "adequately secured," "in process of collection," "nonaccrual," and "other property owned" are discussed in § 621.6. The terms "bankruptcy" and "foreclosure" are discussed in § 621.7. A definition of net realizable value, which would quantify the expected net amount to be realized by an institution from the liquidation of collateral, is proposed to be added to subpart A.

### *B. Subpart B—General Rules*

Proposed subpart B sets forth general requirements for accounting and audits of System institutions. Proposed § 621.3, Application of generally accepted accounting principles, combines the general requirements of current § 621.3 (Application of generally accepted accounting principles) and the requirement for using the accrual basis of accounting of current § 621.4. Current § 621.9, Audits by qualified public accountant, is renumbered as § 621.4.

### *C. Subpart C—Loan Performance and Valuation Assessment*

The proposed subpart C focuses on the specific identification, accounting and reporting requirements for loan performance and criteria for assessment of asset values. This subpart revises or eliminates definitions and terms previously found in subpart A, which were used to define high risk assets or problem loans.

#### 1. Section 621.5—Accounting for the Allowance for Loan Losses and Chargeoffs

This section establishes accounting requirements for the allowance for loan losses and the recognition of chargeoffs. Essentially, proposed § 621.5 combines current § 621.6, Uncollectible interest on loans and similar assets—general rules; 621.7, Chargeoff of losses on loans; and 621.8, Adjustments to book value of assets. The proposed regulation in § 621.5 clarifies the format and content of the existing regulations.

#### 2. Section 621.6—Performance Categories and Other Property Owned

Proposed § 621.6 establishes performance categories for nonaccrual loans, formally restructured loans, and loans 90 days past due still accruing interest. In conjunction with establishing these performance categories, the FCA proposes to eliminate the "other restructured and reduced rate" and "other high risk" categories contained in the current regulations. The proposed regulation includes other property owned (formerly referred to as "acquired property") in this section because of the need for institutions to monitor and report on such non-interest earning

assets. Other property owned includes real or personal property acquired through foreclosure or deed in lieu of foreclosure and loans which are in-substance foreclosed. Monitoring and reporting on other property owned in this fashion is consistent with the approach used by most financial institutions in disclosing problem assets.

In proposing § 621.6, the FCA eliminates the terms "nonperforming loans" and "nonperforming assets" from the current regulations. Instead, the proposed regulation redirects the focus of this part to individual performance characteristics of certain segments of the loan portfolio without attempting to further categorize such loans and assets. The FCA believes that this will allow the System to achieve consistency with accounting classification practices of the financial services industry, while at the same time not compromising the FCA's ability to effectively monitor the risk that exists in the loan portfolio. Institutions that continue to use the terminology "nonperforming loans" and "nonperforming assets" in their published financial statements or other reports must clearly disclose the components contained within these broad categories of loans and loan-related assets. Technical changes will be made concurrently to other parts of the FCA regulations as appropriate to implement this change in performance categories.

a. *Nonaccrual loans.*—The first performance category established in § 621.6 is nonaccrual loans. The concepts and conditions for placing loans in nonaccrual status remain largely unchanged from the current regulation. However, § 621.6 incorporates language previously located in the definition provisions. Under the proposed regulation, a loan shall be considered nonaccrual if it meets any of the following conditions: (1) Payment of any amount of outstanding principal and interest accruals, considered over the full term of the asset, is not expected; (2) any portion of the loan has been charged off as a result of periodic credit evaluations; or (3) the loan is 90 days past due and is not both adequately secured and in process of collection. This language is consistent with the definition of nonaccrual loans used by the financial services industry.

The third condition for placing a loan in nonaccrual status requires a determination as to whether the loan is adequately secured and in process of collection. While this requirement is contained in the current regulations, the proposed regulation clarifies what FCA means by "in process of collection." In order for a loan to be considered in process of collection, there must be documented evidence that collection in full of amounts due and unpaid will occur within a reasonable time period, not to exceed 90 days. This means that the maximum collection period cannot exceed a total of 180 days from the date the note was due.

The proposed regulation emphasizes that the commencement of collection efforts, plans to liquidate collateral, ongoing workouts, restructurings, reamortizations, foreclosures, bankruptcy plans, or settlements do not automatically satisfy the criteria for in process of collection. The institution should also demonstrate and document that (1) Such activities are expected to result in prompt repayment of any past due principal and interest as described above; and (2) future collectibility of either interest or principal is no longer in doubt.

Some commenters expressed concern that the regulatory criteria are not being consistently applied to restructures or reamortizations, loans which are in-substance delinquencies, and loans in bankruptcy or foreclosure. It was claimed that loans were being placed in nonaccrual because of the lack of an effective collection effort, even when such loans were current as to principal and interest.

The proposed regulations address this issue by linking performance classifications to evidence of repayment capacity. Poor credit administration may result in restructured or reamortized loans being placed in nonaccrual when the criteria for in process of collection are not met. For example, loans which have capitalized interest through renewal without documented evidence of repayment capacity should not be categorized as an earning asset, and should be transferred to nonaccrual. Conversely, loans may remain in accrual status, even if such loans have been renewed including the capitalization of interest into the new loan amount, if, based on documented evidence supporting repayment of all past due amounts in a timely fashion, there is no doubt concerning future collectibility of either interest or principal.

Bankruptcy does not fulfill the criteria for in process of collection, unless the court terminates jurisdiction or grants relief from the automatic stay that permits collection to proceed fully. A detailed analysis of the loan must support a reclassification to another performance category. If monetary concessions are granted as part of a debt adjustment plan confirmed by the court, the loan may be reclassified as "formally restructured."

Foreclosure actions will rarely satisfy the criteria for in process of collection, unless the institution has documented evidence that the proceedings will result in prompt repayment of all principal and interest within 90 days. If the institution has received notice that a third party has initiated foreclosure proceedings under State law or deed of trust to terminate the borrower's right in any property in which the institution has a security interest, the institution must promptly review the potential impact of the third party actions on current performance classifications.

The FCA believes that these additional criteria will assist institutions and FCA examiners in achieving more consistent application of the definition of "in process of collection," and therefore result in a more accurate identification and disclosure of the System's nonaccrual assets and more meaningful financial statements.

b. *Formally Restructured Loans.* The second performance category established in § 621.6 is "formally restructured loans." As with nonaccrual loans, the criteria established for placing a loan in the formally restructured category remain largely unchanged from the current regulation. The criteria continue to reflect the accounting and disclosure requirements of Statement of Financial Accounting Standards (SFAS) No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructuring. The current regulation, however, divides renegotiated troubled debt into two categories: formally restructured and other restructured and reduced rate loans. The other restructured and reduced rate loan category was intended to have the same meaning as formally restructured loans except that the concessions granted to the borrower are not incorporated into the contractual terms and conditions of the loan. In addition, interest income on some of these loans was recognized on a cash basis. A review of call report data has shown that, since the regulation became effective in 1986, very few loans have been categorized as other restructured and reduced rate. Because this category is not frequently used, and it is a standard industry practice to reflect cash basis loans as nonaccrual, the FCA believes that a separate performance category is not warranted for such loans. Accordingly, the proposed regulation eliminates the "other restructured and reduced rate" loan category.

c. *Loans 90 Days Past Due Still Accruing Interest.* The third

performance category established in § 621.6 is "loans 90 days past due still accruing interest." This category of loans is equivalent to a similar risk element in the SEC's Guide 3. Establishing a category of loans 90 days past due still accruing interest is intended to make the disclosure of performance categories used by the FCA consistent with the financial statement disclosures of such loans by the financial services industry.

The category of loans 90 days past due still accruing interest is a subset, albeit small, of those loans previously placed in the other high risk category. The remainder of loans currently classified "other high risk" includes loans in bankruptcy, foreclosure, severe default, or loans where management has information that causes serious doubt as to the borrower's willingness or ability to perform in accordance with the terms and conditions of the loan agreement. While loan assets meeting these other criteria are considered significant, the FCA believes the risk in these assets can be appropriately identified and monitored through the use of the nonaccrual performance classification or adverse credit classifications, depending on the circumstances. Instead of individually identifying and reporting on these loans, the proposed regulation requires System institutions to disclose, on a portfolio basis, the nature and extent of potential problem loans, similar to what is required by the SEC's Guide 3. The FCA believes this will ensure that all System institutions properly identify their level of problem loan assets, while decreasing costs to institutions by eliminating the need for duplicate reporting requirements.

d. *Other property owned.* Finally, § 621.6 of the proposed regulation separately identifies as a fourth category "other property owned," which is referred to in the current regulation as "acquired property." Other property owned represents real or personal property that was acquired by the institution through foreclosure or deed in lieu of foreclosure, or that meets the criteria for in-substance foreclosure, and represents non-earning assets related to the institution's lending practices. The proposed regulation uses the terminology "other property owned" in place of "acquired property" to promote greater consistency with industry practices. The definition used for this category has also been updated to reflect current generally accepted accounting principles as they pertain to in-substance foreclosures.

3. Section 621.7—Rule of Aggregation

The FCA proposes to modify the rule of aggregation, previously located in § 621.5(b)(2) to clarify the criteria to be used in applying the rule, and to provide guidance on the issue of independent credit risk. The primary purpose of the rule of aggregation is to ensure that when a borrower's loan is placed in nonaccrual status, an institution immediately evaluates whether or not other loans to the same borrower, or loans for which the same borrower is responsible for repayment, should also be placed in nonaccrual. All loans to a single borrower, or loans for which that borrower is primarily obligated, should be classified as nonaccrual unless the institution can support a determination that the borrower's other loans represent an independent credit risk. If full collection of all principal and interest on the other loans can be reasonably projected and supported, and if the circumstances which caused the first loan to be classified nonaccrual do not impact the other loans, then those other loans may remain in their current performance category.

The proposed regulation clarifies the FCA's position that only the nonaccrual performance category must be considered in applying the rule of aggregation. The FCA believes that it is inappropriate to automatically aggregate loans that are in the past due or formally restructured categories. The purpose of identifying loans in various performance categories is to provide a mechanism for monitoring, reporting, and disclosing to shareholders those loans for which repayment and/or income is either not expected or unlikely to be realized in the next reporting cycle. Past due and formally restructured loans exhibit unique legal or structural characteristics that are not easily transferable to other loans, and which could mislead the reader of an institution's financial statements as to the nature and extent of such loans.

The rule of aggregation, as currently proposed, states that when an institution becomes aware that a borrower has a loan that has been classified "nonaccrual" by any other lender, the institution must re-evaluate the credit risk in its loan to the borrower and then determine if an independent credit risk exists. While the primary thrust of this regulation focuses on an individual borrower's risk to the reporting institution, an assessment of a loan's credit quality and the borrower's ability to repay should consider all outstanding obligations of the borrower, regardless of whether the debts are with one or multiple lenders. Credit risk exists whether the borrower's loans are held at a single institution or separate institutions. The proposed regulation requires the institution to determine the extent to which its loans may be adversely impacted, and whether such loans constitute a separate credit risk.

4. Section 621.8—Application of Payments and Income Recognition on Nonaccrual Loans

This proposed section is intended to provide for uniform accounting and reporting of cash payments received on nonaccrual loans. It describes how a loan should progress from nonaccrual to accrual status, and the steps which must be taken to make this transition.

When there is doubt that the principal can be collected in full, the payments should be applied to the principal only. Payments may be applied to both the principal and interest on a cash basis only after this doubt has been removed. In addition to the removal of such doubt as to collectibility in full, the institution must demonstrate that: (1) The loan is not past due more than 90 days; (2) the loan (except for an SFAS–15 restructured loan) does not have an unrecovered prior chargeoff; (3) evidence indicates full repayment will occur; and, (4) a repayment pattern is established that demonstrates repayment capacity and continued performance.

5. Section 621.9—Reinstatement to Accrual Status

This proposed section is intended to provide minimum criteria for determining when loans in nonaccrual status may be reinstated to accrual status. The criteria are intended to clarify current practices, and to ensure that there is consistency in practice regarding the reinstatement to accrual status, so that the financial condition of the institution is properly stated. The concept guiding the reinstatement of nonaccrual loans to accrual status should be the elimination of the factors causing the loan to have been transferred to nonaccrual status. Once these factors have been eliminated, it is no longer necessary or prudent to keep the loan in either nonaccrual or cash basis nonaccrual. In developing the minimum regulatory criteria, the FCA considered current criteria used by other financial regulators and industry practices. Reinstatement should be supported by a period of sustained performance in accordance with the contractual terms of the note and/or loan agreement. Sustained performance will generally be demonstrated by 6 consecutive monthly payments, 4

consecutive quarterly payments, 3 consecutive semiannual payments, or 2 consecutive annual payments.

6. Section 621.10—Monitoring of Performance Categories and Other Property Owned

The FCA believes monitoring and reporting requirements are needed to provide a uniform foundation for generating and disclosing accurate and reliable information on an institution's portfolio performance and level of risk. The FCA believes that the development, adoption, and application of policies governing these accounting and reporting requirements are also needed. In their comment letters responding to the ANPRM, respondents felt little would be gained by disclosing credit classifications in the Management Discussion and Analysis section of the annual report, and unanimously requested that the disclosure requirements to be followed by System institutions be comparable to the disclosure requirements for other financial institutions. The FCA is responding to this request by proposing disclosure requirements consistent with the SEC's Guideline for disclosure of risk elements and potential problem loans.

The proposed regulation requires System institutions to: (1) Report those loans identified under the performance categories and other property owned; and (2) to disclose the nature and extent of significant potential credit risks within the loan portfolio through a discussion in the Management Discussion and Analysis section of institution's annual report. This discussion can be accomplished through an overview of the credit quality of the loan portfolio, the use of applicable credit quality statistics, or a discussion of other such characteristics that cause management concern. This requirement is intended to provide a link to the prior reporting of other high risk loans, to provide continuity of prior reporting, and to make System disclosures more meaningful to shareholders and investors and, where appropriate, more comparable to the disclosures of other financial institutions.

*D. Subpart D—Report of Condition and Performance*

No changes were made to this subpart of the regulation, other than to renumber the sections.

*E. Subpart E—Reports on Securities Activities of the Federal Agricultural Mortgage Corporation (Farmer Mac)*

Subpart C of part 621 currently prescribes the content of Farmer Mac's annual report of condition. The FCA now proposes to describe the contents of Farmer Mac's annual report of condition in § 620.40. The FCA, therefore, proposes to eliminate the definition of the Farmer Mac annual report of condition from part 621 and redefine part 621 to cover FCA filings that Farmer Mac must make on its securities activities. Proposed part 621 would:

(1) Require Farmer Mac to file concurrently with the FCA the same information that it is required to file with the SEC under the Securities Act of 1933 and the Securities Exchange Act of 1934;

(2) Require Farmer Mac to file with the FCA information on its securities activities that are exempt from registration requirements; and

(3) Delete existing requirements that Farmer Mac and certified facilities complete registration and reporting requirements even when the SEC requires no filings.

Farmer Mac is the only government-sponsored enterprise whose guaranteed securities have been explicitly denied exemption from the Federal securities laws. The FCA, therefore, believes that the Congress expected that general purposes of investor and shareholder disclosure would be served by Farmer Mac's compliance with the Securities Act of 1933 and the Securities Exchange Act of 1934. In order to avoid undue regulatory burden, the FCA proposes that the SEC filings related to Farmer Mac or Farmer Mac securities be made concurrently with the FCA. The FCA believes that when the Federal securities regulations permit an exemption to Farmer Mac, the FCA can still collect information through its examinations and through quarterly reports. As a result, the FCA proposes to delete its existing requirements that Farmer Mac and certified facilities complete registration and reporting requirements when not required to do so by the SEC. Reports filed with the SEC are generally available to the public, so the FCA proposes no additional requirement for public dissemination of reports filed with the SEC.

**V. Changes to Other FCA Regulations**

The proposed changes to part 621 of the regulations also affect other parts of the FCA regulations. Conforming changes are proposed for part 620, Disclosure to Shareholders, and various other parts where technical corrections may be necessary. Three of the changes to part 620 are material in their impact on an institution's disclosure requirements.

First, current § 620.5(g)(1)(iv)(A) requires disclosure in the annual report of an analysis of nonperforming assets in accordance with current § 621.2. This section has been modified to require: (1) An analysis of nonaccrual loans, formally restructured loans, and loans 90 days past due still accruing interest; and (2) an evaluation and disclosure of the nature and extent of potential credit risks within the loan portfolio as required by proposed § 621.10(a)(2).

Secondly, current §§ 620.5(j)(3)(ii) and 620.31(d)(2) require the institution to state that "no loan to a senior officer or director (or director candidate), or to any organization affiliated with such person * * * involved more than normal risk of collectibility * * *," and normal risk of collectibility is defined in current § 620.1(i) as "the ordinary risk inherent in the lending operation. Loans that are deemed to have more than a normal risk of collectibility include * * * any loans properly identified as "nonperforming" as defined in § 621.2(a)(17) of this chapter." Current §§ 621.5(j)(3)(iii)(G) and 621.31(d)(3)(vii) further require the institution to state "the reason the loan is deemed to have more than a normal risk of collectibility." The proposed regulation modifies the definition of normal risk of collectibility in § 620.1(i) by replacing the phrase "loans properly identified as nonperforming, as defined in § 621.2(a)(17) of this chapter" with the phrase "adversely classified loans." The proposed regulation, as amended, defines loans that are deemed to have more than a normal risk of collectibility to include, but not be limited to, any adversely classified loans. FCA believes that linking director disclosure of their loan quality to credit quality instead of performance categories provides accurate and more easily understood criteria that will result in substantially the same disclosures as are currently required.

Finally, the FCA proposes minor changes to existing § 620.40, which requires that Farmer Mac's disclosure to shareholders be based on standards set by the SEC for the financial industry. The proposed regulation also extends the deadline for filing the annual report of condition from 90 days to 120 days.

FCA proposes that Farmer Mac's annual report of condition be the same as the annual report required by section 14 of the Securities Exchange Act of 1934. The proposed regulation would be amended to clarify that the FCA's statutory requirement for Farmer Mac to prepare and publish an annual report of condition can be met by the annual report sent to shareholders by Farmer Mac under SEC regulations. The FCA

believes that reports of condition prepared under SEC regulations provide sufficient information to satisfy statutory requirements imposed by Congress, and that it is prudent to coordinate our efforts and rely on information that has already been prepared, reported, and disclosed in accordance with SEC regulations.

In August 1992, senior management of Farmer Mac requested that the FCA amend existing part 620 of the regulation to permit the distribution of Farmer Mac's annual report within 120 days after the close of its fiscal year, instead of the 90 days required by the existing regulation. The additional 30 days for distribution of Farmer Mac's annual report to shareholders would allow Farmer Mac the maximum time the SEC permits firms to file proxy materials and then incorporate those proxy filings by reference in their annual reports. Firms filing proxy materials after this 120-day deadline may not incorporate proxy material by reference. Farmer Mac incorporates proxy materials by reference in its annual 10–K filings, and would prefer to be afforded the full 120-day time period to distribute the annual report to shareholders. The FCA believes this request to be reasonable, and proposes to amend the regulation to change the deadline from 90 to 120 days after Farmer Mac's fiscal year end.

## VI. Regulatory Impact

The FCA intends that the proposed changes will update its accounting and reporting requirements, promote consistency with industry practices pertaining to problem loan accounting and reporting issues, and ensure that the regulatory requirements and standards of 12 CFR part 621 are consistent with those of generally accepted accounting practices. The proposed changes will benefit System institutions, their shareholders, the public, and the FCA by improving the clarity and comparability of problem loan disclosure and reducing duplicative reporting requirements. In particular, System institutions will benefit from the cost savings generated by elimination of the current overlap between the credit, accounting, and reporting systems. In response to the ANPRM, one System institution estimated its general cost savings in this area could be $150,000.

## List of Subjects

*12 CFR Part 611*

Agriculture, Banks, banking, Rural areas.

*12 CFR Part 613*

Aged, Agriculture, Banks, banking, Civil rights, Credit, Fair housing, Marital status discrimination, Religious discrimination, Rural areas, Sex discrimination, Signs and symbols.

*12 CFR Part 614*

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

*12 CFR Part 620*

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

*12 CFR Part 621*

Accounting, Agriculture, Banks, banking, Penalties, Reporting and recordkeeping requirements, Rural areas.

*12 CFR Part 627*

Agriculture, Banks, banking, Claims, Rural areas.

For the reasons stated in the preamble, parts 611, 613, 614, 620, 621, and 627 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

1. Part 621 is revised to read as follows:

# PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

**Subpart A—Purpose and Definitions**

Sec.

621.1 Purpose and applicability.
621.2 Definitions.

**Subpart B—General Rules**

621.3 Application of generally accepted accounting principles.
621.4 Audit by qualified public accountant.

**Subpart C—Loan Performance and Valuation Assessment**

621.5 Accounting for the allowance for loan losses and chargeoffs.
621.6 Performance categories and other property owned.
621.7 Rule of aggregation.
621.8 Application of payments and income recognition on nonaccrual loans.
621.9 Reinstatement to accrual status.
621.10 Monitoring of performance categories and other property owned.

**Subpart D—Report of Condition and Performance**

621.11 Applicability and general instructions.
621.12 Content and standards—general rules.
621.13 Certification of correctness.

**Subpart E—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation**

621.20 Form and content.

**Authority:** Secs. 5.17, 8.11 of the Farm Credit Act; 12 U.S.C. 2252, 2279aa–11.

## Subpart A—Purpose and Definitions

### § 621.1 Purpose and applicability.

This part sets forth accounting and reporting requirements to be followed by all banks, associations, and service organizations chartered under the Act, the Farm Credit System Funding Corporation, and where specifically indicated, the Federal Agricultural Mortgage Corporation (Farmer Mac). The requirements set forth in this part are of both general and specific applicability. Certain requirements focus on areas of financial condition and operating performance that are of special importance for generating, presenting, and disclosing accurate and reliable information.

### § 621.2 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Accrual basis of acccounting* means the accounting method in which expenses are recorded when incurred, whether paid or unpaid, and income is reported when earned, whether received or not received.

(b) *Borrowing entity* means the individual(s), partnership, joint venture, trust, corporation, or other business entity, or any combination thereof, which is primarily obligated on the loan instrument.

(c) *Generally accepted accounting principles* means that body of conventions, rules, and procedures necessary to define accepted accounting practice at a particular time, as promulgated by the Financial Accounting Standards Board (FASB) and other authoritative sources recognized as setting standards for the accounting profession in the United States. Generally accepted accounting principles include not only broad guidelines of general application but also detailed practices and procedures that constitute standards by which financial presentations are evaluated.

(d) *Generally accepted auditing standards* means the standards and guidelines adopted by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) to govern the overall quality of audit performance.

(e) *Institution* means any bank, association, or service organization chartered under the Act, the Farm Credit System Funding Corporation, and where specifically noted, Farmer Mac.

(f) *Loan* means any extension of credit or lease that is recorded as an asset of a reporting institution, whether made

directly or purchased from another lender. The term "loan" includes, but is not limited to:

(1) Loans originated through direct negotiations between the reporting institution and a borrower;

(2) Purchased loans or interests in loans, including participation interests, retained subordinated participation interests in loans sold, and interests in pools of subordinated participation interests that are held in lieu of retaining a subordinated participation interest in loans sold;

(3) Contracts of sale; notes receivable; and

(4) Other similar obligations and lease financing.

(g) *Material* means that the information required to be provided regarding any subject is limited to those matters as to which there is a substantial likelihood that a reasonable person would attach importance in making shareholder decisions or determining the financial condition of the institution.

(h) *Net realizable value* means the net amount the lender would expect to be realized from the acquisition and subsequent sale or disposition of a loan's underlying collateral. Generally, net realizable value would be equal to the estimated selling price, in the ordinary course of business, less estimated costs of acquisition, completion, holding and disposal.

(i) *Qualified public accountant* means a person who:

(1) Holds a valid and unrevoked certificate, issued to such person by a legally constituted State authority, identifying such person as a certified public accountant;

(2) Is licensed to practice as a public accountant by an appropriate regulatory authority of a State or other political subdivision of the United States;

(3) Is in good standing as a certified and licensed public accountant under the laws of the State or other political subdivision of the United States in which is located the home office or corporate office of the institution that is to be audited;

(4) Is not suspended or otherwise barred from practice as an accountant or public accountant before the Securities and Exchange Commission (SEC) or any other appropriate Federal or State regulatory authority; and

(5) Is independent of the institution that is to be audited. For the purposes of this definition the term "independent" shall have the same meaning as under the rules and interpretations of the American Institute of Certified Public Accountants (AICPA).

## Subpart B—General Rules

### § 621.3 Application of generally accepted accounting principles.

Each institution shall:

(a) Prepare and maintain on an accrual basis, accurate and complete records of its business transactions as necessary to prepare financial statements and reports, including reports to the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements;

(b) Prepare its financial statements and reports, including reports to the shareholders, investors, boards of directors, institution management and the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements; and

(c) Prepare and maintain its books and records in such a manner as to facilitate reconciliation with financial statements and reports prepared from them.

### § 621.4 Audit by qualified public accountant.

(a) Each institution shall, at least annually, have its financial statements audited by a qualified public accountant in accordance with generally accepted auditing standards.

(b) The qualified public accountant's opinion of each institution's financial statements shall be included as a part of each annual report to shareholders.

(c) If an institution disagrees with the opinion of a qualified public accountant required by paragraph (b) of this section, the following actions shall be taken immediately:

(1) The institution shall prepare a brief but thorough written description of the scope and content of the disagreement, noting each point of disagreement and citing, in all cases, the specific provisions of generally accepted accounting principles and generally accepted auditing standards upon which the institution's position in the disagreement is based;

(2) A copy of the institution's final description of the disagreement shall be given to the accountant who provided the opinion with which the institution disagrees;

(3) The accountant shall have 10 business days to develop and provide a brief but thorough final response to the institution's description of the disagreement, including all items believed to be incorrect or incomplete, and citing, in all cases, the specific provisions of generally accepted accounting principles and generally accepted auditing standards upon which the accountant's position in the disagreement is based;

(4) Both the institution's final description of the disagreement and the accountant's final response to it shall be included in the institution's annual report to shareholders directly following the accountant's opinion of the institution's financial statements; and

(5) The institution shall immediately notify the Chief Examiner, Farm Credit Administration, of any disagreement with its accountant and shall furnish the Farm Credit Administration the written documentation required by paragraphs (c) (1) through (4) of this section.

(d) If an institution selects a qualified public accountant to audit its financial statements and provide an opinion thereon for its annual report who is different from the accountant whose opinion appeared in the institution's most recent annual report, the following items shall be sent to the Farm Credit Administration no later than 15 days after the end of the month in which the change took place and shall be included in the institution's annual meeting information statement and annual report to shareholders for the year in which the change of accountants took place:

(1) The name and address of the accountant whose opinion appeared in the institution's most recent annual report to shareholders;

(2) A brief but thorough statement of the reasons the accountant selected for the most recent annual report was not selected for the current annual report. If the change resulted from a disagreement with the accountant, the statement shall describe the institution's disagreement with the accountant's opinion and the accountant's final response to the institution's disagreement prepared pursuant to paragraph (c) of this section; and

(3) The identification of the highest ranking officer, committee of officers, or board of directors, as appropriate, that recommended, approved, or otherwise made the decision to change qualified public accountants.

## Subpart C—Loan Performance and Valuation Assessment

### § 621.5 Accounting for the allowance for loan losses and chargeoffs.

Each institution shall:

(a) Maintain at all times an allowance for loan losses that is adequate to absorb all probable and estimable losses that may reasonably be expected to exist in the loan portfolio.

(b) Develop, adopt, and consistently apply policies and procedures

governing the establishment and maintenance of the allowance for loan losses which, at a minimum, conform to the rules, definitions, and standards set forth in this part and any other applicable requirements.

(c) Charge off loans, wholly or partially as appropriate, at the time they are determined to be uncollectible.

(d) Employ the following practices with respect to earned but uncollected interest income on loans, leases, contracts, and similar assets that are determined not to be fully collectible:

(1) Earned but uncollected interest income that was accrued in the current fiscal year and is determined to be uncollectible shall be reversed from interest income.

(2) Earned but uncollected interest income that was accrued in prior fiscal years and is determined to be uncollectible shall be charged off against the allowance for loan losses.

(e) Ensure that when an institution or the Farm Credit Administration determines that the value of a loan or other asset recorded on its books and records exceeds the amount that can be reasonably expected to be collectible, or when the documentation supporting the recorded asset value is inadequate, the institution shall immediately charge off the asset in the amount determined to be uncollectible. If the amount determined to be uncollectible by the institution is different from the amount determined to be uncollectible by the Farm Credit Administration, the institution shall charge off such amount as the Farm Credit Administration shall direct.

**§ 621.6 Performance categories and other property owned.**

Each institution shall employ the following practices with respect to categorizing loans and loan-related assets. No loan shall be put into more than one performance category. At a minimum, loans meeting the criteria for both nonaccrual and another performance category shall be classified as nonaccrual.

(a) *Nonaccrual loans.* A loan is considered nonaccrual if it meets any of the following conditions:

(1) Payment of any amount of outstanding principal and interest accruals, considered over the full term of the asset, is not expected; or

(2) Any portion of the loan has been charged off as a result of periodic credit evaluations; or

(3) The loan is 90 days past due and is not both adequately secured and in process of collection.

(i) A loan shall be considered adequately secured only if:

(A) It is secured by real or personal property having a net realizable value sufficient to discharge the debt in full; or

(B) It is guaranteed by a financially responsible party in an amount sufficient to discharge the debt in full.

(ii) A loan shall be considered in process of collection only if collection efforts are proceeding in due course, and based on a probable and specific event, are expected to result in the prompt repayment of the debt or its restoration to current status. There must be documented evidence that collection in full of amounts due and unpaid is expected to occur within a reasonable time period, not to exceed 90 days, or a maximum of 180 days from the date that payment was due. The commencement of collection efforts through legal action, including bankruptcy or foreclosure, or through collection efforts not involving legal action, including ongoing workouts and reamortizations, do not, in and of themselves, provide sufficient cause to keep a loan out of nonaccrual status. If full collection of the debt or its restoration to current status is dependent upon completion of any action by the borrower, the institution must obtain the borrower's written agreement to complete all such actions by the specific dates set forth in agreement.

(b) *Formally restructured loans.* A loan shall be considered formally restructured if it meets the "troubled debt restructuring" definition set forth in Statement of Financial Accounting Standards No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructurings, as promulgated by the FASB.

(c) *Loans 90 days past due still accruing interest.*

(1) Loans 90 days past due still accruing interest shall include loans that are 90 days or more contractually past due, and that are both adequately secured and in process of collection, as defined in this section.

(2) A loan shall be considered contractually past due if any principal repayment or interest payment required by the loan instrument is not received on or before the due date. A loan shall remain contractually past due until it is formally restructured or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of past due status, is collected or otherwise discharged in full.

(d) *Other property owned* shall include:

(1) Any real or personal property, other than an interest earning asset, that has been acquired through foreclosure or deed in lieu of foreclosure, as a result of full or partial liquidation of a loan, and

(2) Loans transferred to other property owned as a result of a determination that the collateral securing the loan has been in-substance foreclosed, as defined by generally accepted accounting principles.

**§ 621.7 Rule of aggregation.**

(a) When one loan to a borrower is placed in nonaccrual, an institution must immediately evaluate whether its other loans to the same borrower should also be placed in nonaccrual. All loans on which a borrowing entity, or a component of a borrowing entity, is primarily obligated to the reporting institution shall be considered as one loan unless a review of all pertinent facts supports a reasonable determination that a particular loan constitutes an independent credit risk and such determination is adequately documented in the loan file.

(1) A loan shall be considered an independent credit risk if the loan is fully guaranteed as to principal and interest by a government agency.

(2) Other loans shall be considered independent credit risks if and so long as:

(i) The primary sources of repayment are independent for each loan;

(ii) The loans are not cross-collateralized; and

(iii) The principal obligors are different person(s) and/or entity(ies), unless the operations of a related borrower are so financially interdependent with the borrower's operations that the economic survival of the borrower's operations will materially affect the economic survival of the related borrower's operations, as is defined in § 614.4358(a)(2) of this chapter.

(b) If the evaluation required by paragraph (a) of this section results in a determination that the borrower's other loans with the institution do not represent an independent credit risk, and full collection of such loans is not expected, then all of the borrower's loans must be aggregated and classified as nonaccrual. If such other loans represent an independent credit risk and are fully collectible, then they may remain in their current performance category.

(c) When an institution becomes aware that a borrower has a loan that has been classified nonaccrual by any other lender, the institution must re-evaluate the credit risk in its loan to the borrower and then determine if an independent credit risk exists.

**§ 621.8 Application of payments and income recognition on nonaccrual loans.**

Each institution shall employ the following practices with respect to application of cash payments on nonaccrual loans:

(a) If the ultimate collectibility of principal, in whole or in part, is in doubt, any payment received on such loan shall be applied to reduce principal to the extent necessary to eliminate such doubt.

(b) Once the ultimate collectibility of the principal is no longer in doubt, payments received in cash on such loan may qualify for recognition as interest income if all of the following characteristics are met at the time the payment is received:

(1) The loan does not have a remaining unrecovered prior chargeoff associated with it, except in cases where the prior chargeoff was taken as part of a formal restructure of the loan;

(2) The payment received has come from a source of repayment detailed in the plan of collection;

(3) The loan, after considering the payment, is not contractually past due more than 90 days, and is not expected to become 90 days past due; and

(4) A repayment pattern has been established that reasonably demonstrates future repayment capacity.

**§ 621.9 Reinstatement to accrual status.**

When the factors that caused a loan to be transferred to nonaccrual status no longer exist, the loan may be reinstated to accrual status, provided that each of the following criteria is met:

(a) All contractual principal and interest due on the loan is paid and the loan is current;

(b) No reasonable doubt remains regarding the ability of the borrower to perform in accordance with the contractual terms of the loan agreement; and

(c) Reinstatement is supported by a period of sustained performance in accordance with the contractual terms of the note and/or loan agreement. Sustained performance will generally be demonstrated by 6 consecutive monthly payments, 4 consecutive quarterly payments, 3 consecutive semi-annual payments, or 2 consecutive annual payments.

**§ 621.10 Monitoring of performance categories and other property owned.**

(a) Each institution shall:

(1) Account for, report, and disclose to shareholders, investors, boards of directors, and the Farm Credit Administration all material items with respect to performance categories and other property owned in accordance with the rules and definitions set forth in this part and any other applicable requirements;

(2) In accordance with § 620.5(g)(1)(iv)(A) of this chapter, disclose to shareholders, investors, boards of directors and the Farm Credit Administration, the nature and extent of significant potential credit risks within the loan portfolio, or other information that could adversely impact performance of the loan portfolio in the near future;

(3) Develop, adopt, and consistently apply policies and procedures governing performance categories and other property owned, which, at a minimum, conform to the definitions, rules, and standards set forth in this part and such other requirements and procedures as may be required by the Farm Credit Administration;

(4) Review at least quarterly all loans to determine whether they have been assigned the appropriate performance category; and

(5) Review at least quarterly all loans to determine the collectibility of accrued but uncollected income, if any.

(b) Measures taken to enhance the collectibility of a loan shall not be deemed to relieve an institution of the requirement to monitor and evaluate the loan for the purpose of determining its performance status.

## Subpart D—Report of Condition and Performance

**§ 621.11 Applicability and general instructions.**

(a) Each institution, and Farmer Mac, shall prepare and file such reports of condition and performance as may be required by the Farm Credit Administration.

(b) Reports of condition and performance shall be filed four times each year, and at such other times as the Farm Credit Administration may require. The reports shall be prepared on the accrual basis of accounting and shall fairly represent the financial condition and performance of each institution at the end of, and over the period of, each calendar quarter, provided that such additional reports as may be necessary to ensure timely, complete, and accurate monitoring and evaluation of the affairs, condition, and performance of Farm Credit institutions may be required, as determined by the Chief Examiner, Farm Credit Administration.

(c) All reports of condition and performance shall be filed with the Farm Credit Administration, Office of Examination, 1501 Farm Credit Drive, McLean, Virginia, 22102–5090.

**§ 621.12 Content and standards—general rules.**

Each institution, and Farmer Mac, shall prepare reports of condition and performance:

(a) In accordance with all applicable laws, regulations, standards, and such instructions and specifications and on such media as may be prescribed by the Farm Credit Administration;

(b) In accordance with generally accepted accounting principles and such other accounting requirements, standards, and procedures as may be prescribed by the Farm Credit Administration; and

(c) In such manner as to facilitate their reconciliation with the books and records of reporting institutions.

**§ 621.13 Certification of correctness.**

Each report of financial condition and performance filed with the Farm Credit Administration shall be certified as having been prepared in accordance with all applicable regulations and instructions and to be a true and accurate representation of the financial condition and performance of the institution to which it applies. The reports shall be certified by the officer of the reporting institution named for that purpose by action of the reporting institution's board of directors. If the board of directors of the institution has not acted to name an officer to certify the correctness of its reports of condition and performance, then the reports shall be certified by the president or chief executive officer of the reporting institution.

## Subpart E—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

**§ 621.20 Form and content.**

(a) Farmer Mac shall provide the Office of Secondary Market Oversight with three copies of any filings made with the SEC pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934. Such copies shall be filed with the FCA contemporaneously with any SEC filing.

(b) For any security not required to be registered under the Securities Act of 1933, Farmer Mac shall provide the Office of Secondary Market Oversight with three copies of any offering circular or other information statement prepared by Farmer Mac in connection with the securities being offered at or before the time of the offering.

(c) Farmer Mac shall file with the Office of Secondary Market Oversight copies of all correspondence to and

from the Securities and Exchange Commission and the Department of Treasury. Such correspondence should be filed no later than the call report filing date for the calendar quarter in which the correspondence was received or sent.

(d) Farmer Mac shall promptly notify the Office of Secondary Market Oversight if it becomes exempt or claim exemption from the filing requirements of the Securities and Exchange Act of 1934.

## PART 611—ORGANIZATION

2. The authority citation for part 611 continues to read as follows:

**Authority:** Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003 and 1004.

### Subpart E—Transfer of Authorities

**§ 611.515 [Amended]**

3. Section 611.515 is amended by removing the words "nonperforming loans and related assets," and adding, in their place, the words "nonaccrual loans, formally restructured loans, loans 90 days past due still accruing interest, other property owned," in paragraph (b)(6)(ii)(E).

### Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

4. Section 611.1122 is amended by removing the words "nonperforming loans and related assets" and adding, in their place, the words "nonaccrual loans, formally restructured loans, loans 90 days past due still accruing interest, other property owned," in the second sentence of paragraph (e)(6)(iii); and by revising paragraph (e)(9) to read as follows:

**§ 611.1122 Requirements for mergers or consolidations.**

* * * * *

(e) * * *

(9) A presentation for each constituent association regarding its policy on accounting for loan performance, together with the number and dollar amount of loans in all performance categories, including all loans classified as nonaccrual, formally restructured, and 90 days past due still accruing interest.

* * * * *

### Subpart H—Rules for Inter-System Fund Transfers

**§ 611.1130 [Amended]**

5. Section 611.1130 is amended by removing the words "acquired property," and adding, in their place, the words "other property owned," in paragraph (b)(4)(iii).

### Subpart N—Conservators and Conservatorships of Banks and Associations

**§ 611.1182 [Amended]**

6. Section 611.1182 is amended by removing the reference "§ 621.12" and adding in its place "§ 621.13" in the second sentence of paragraph (c).

### Subpart O—Special Reconsideration of Mergers

**§ 611.1197 [Amended]**

7. Section 611.1197 is amended by removing the words "nonperforming loans and related assets," and adding, in their place, the words "nonaccrual loans, formally restructured loans, loans 90 days past due still accruing interest, other property owned," in paragraph (b)(6)(ii)(E).

### Subpart P—Termination of Farm Credit Status—Associations

**§ 611.1225 [Amended]**

8. Section 611.1225 is amended by removing the words "nonperforming loans and related assets" and adding, in their place, the words "nonaccrual loans, formally restructured loans, loans 90 days past due still accruing interest, other property owned," in paragraph (t)(2).

**§ 611.1240 [Amended]**

9. Section 611.1240 is amended by removing the reference "§ 621.2(a)(21)," and adding in its place "§ 621.2(i)," in the second sentence of paragraph (c).

## PART 613—ELIGIBILITY AND SCOPE OF FINANCING

10. The authority citation for part 613 continues to read as follows:

**Authority:** Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 5.9, 5.17 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2243, 2252; 42 U.S.C. 3601 *et seq.*; 15 U.S.C. 1691 *et seq.*; 12 CFR 202, 24 CFR 100, 109, and 110.

### Subpart B—Eligibility To Borrow From Farm Credit Banks, Agricultural Credit Banks, Production Credit Association, Agricultural Credit Associations and Federal Land Credit Associations

**§ 613.3045 [Amended]**

11. Section 613.3045 is amended by removing the words "performing loans" and adding, in their place, the words "loans which are current as to both principal and interest which are" in paragraph (c)(3)(i).

## PART 614—LOAN POLICIES AND OPERATIONS

12. The authority citation for part 614 continues to read as follows:

**Authority:** Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

### Subpart C—Bank/Association Lending Relationship

**§ 614.4130 [Amended]**

13. Section 614.4130(a) is amended by removing the words "(as defined in 12 CFR 621.2(a)(20))".

### Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

**§ 614.4512 [Amended]**

14. Section 614.4512 is amended by removing the words "a loan as a nonperforming asset;" and adding, in their place, the words "loans classified as nonaccrual, formally restructured, 90 days past due still accruing interest, and other property owned;" in paragraph (c)(2).

**§ 614.4522 [Amended]**

15. Section 614.4522 is amended by removing the words *"Acquired property"* and adding, in their place, the words *"Acquired real estate"* in paragraph (a)(1); by removing the words "acquired property" and adding, in their place, the words "acquired real estate" in paragraph (b), the first sentence of paragraphs (c)(3) introductory text and (c)(4) and paragraph (e) introductory text; and by removing the words "acquired property,

or any portion of such real estate," and adding, in their place, the words "acquired real estate, or any portion of such property" in the introductory text of paragraphs (c) and (d).

## PART 620—DISCLOSURE TO SHAREHOLDERS

16. The authority citation for part 620 is revised to read as follows:

**Authority:** Secs. 5.17, 5.19, 8.11 of the Farm Credit Act; 12 U.S.C. 2252, 2254, 2279aa–11; sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

### Subpart A—General

**§ 620.1 [Amended]**

17. Section 620.1 is amended by removing the words "loans properly identifiable as "nonperforming" as defined in § 621.2(a)(17) of this chapter." and adding, in their place, the words "adversely classified loans." in the second sentence of paragraph (i).

**§ 620.2 [Amended]**

18. Section 620.2 is amended by removing the reference "§ 621.12" and adding in its place "§ 621.13" in paragraph (b)(1).

### Subpart B—Annual Report to Shareholders

19. Section 620.5 is amended by removing the reference "§ 621.9 (c) and (d)" and adding in its place "§ 621.4 (c) and (d)" in paragraph (l); by removing the reference "§ 621.2(a)(21)" and adding in its place "§ 621.2(i)" in paragraph (m)(1); and by revising paragraphs (f)(1)(i)(F) and (g)(1)(iv)(A) to read as follows:

**§ 620.5 Contents of the annual report to shareholders.**

* * * * *

(f) * * *

(1) * * *

(i) * * *

(F) Other property owned.

* * * * *

(g) * * *

(1) * * *

(iv) * * *

(A) An analysis of performance categories in accordance with § 621.6 of this chapter.

* * * * *

### Subpart C—Quarterly Report to Shareholders

**§ 620.10 [Amended]**

20. Section 620.10 is amended by removing the reference "§ 621.12" and adding in its place "§ 621.13" in paragraph (e)(1).

### Subpart D—Association Annual Meeting Information Statement

**§ 620.21 [Amended]**

21. Section 620.21 is amended by removing the reference "§ 621.9 (c) and (d)" and adding in its place "§ 621.4 (c) and (d)" in paragraph (f).

22. Subpart F is revised to read as follows:

### Subpart F—Annual Report of Condition of the Federal Agricultural Mortgage Corporation

**§ 620.40 Content, timing, and distribution of Federal Agricultural Mortgage Corporation's annual report of condition.**

(a) Farmer Mac shall prepare and publish an annual report of its condition that is equivalent in content to the annual report to shareholders required by section 14 of the Securities Exchange Act of 1934.

(b) Farmer Mac shall distribute the annual report of condition to its shareholders within 120 days of its fiscal year end.

(c) Upon receiving a request for an annual report of condition, Farmer Mac shall promptly mail or otherwise furnish to the requestor a copy of the most recent annual report described in this section.

(d) Farmer Mac shall file three copies of the annual report of condition with the Farm Credit Administration's Office of Secondary Market Oversight within 120 days of its fiscal year end.

## PART 627—TITLE V CONSERVATORS AND RECEIVERS

23. The authority citation for part 627 continues to read as follows:

**Authority:** Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58 of the Farm Credit Act; 12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a-7.

### Subpart C—Conservators and Conservatorships

**§ 627.2785 [Amended]**

24. Section 627.2785 is amended by removing the reference "§ 621.12" and adding in its place "§ 621.13" in the second sentence of paragraph (c).

Dated: June 2, 1993

**Curtis Anderson,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 93–13357 Filed 6–7–93; 8:45 am]

BILLING CODE 6705–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OH27–1–5394, OH09–1–5168; FRL–4664–7]

### Approval and Promulgation of Implementation Plans, Ohio

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Proposed rule.

**SUMMARY:** USEPA is proposing to disapprove two requests for site-specific revisions to Ohio's ozone State Implementation Plan (SIP) for the Lincoln Electric Company and for the Steel City Corporation. Both SIP revision requests are for alternative emission control plans (bubbles). The Lincoln Electric Company is located in Cuyahoga County, Ohio, an area designated as moderate nonattainment for ozone under the Clean Air Act as amended in 1990 (CAA). The Steel City Corporation is located in Mahoning County, which is designated as marginal nonattainment for ozone under the CAA. USEPA is proposing to disapprove the requested revisions because they are not in compliance with the requirements of USEPA's Emission Trading Policy Statement (ETPS) and other USEPA policy, and in the case of Lincoln Electric, the revision is not adequate to protect the daily ambient air ozone standard and it does not ensure enforceability.

USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act.

**DATES:** Comments on this requested revision and on the proposed USEPA action must be received by July 8, 1993.

**ADDRESSES:** Copies of the SIP revision request and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Bonnie Bush at (312) 353–6684 before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to:

William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Bush, Air Enforcement Branch, Regulation Development Section (AE–17J), U.S. Environmental Protection

Agency, Region 5, Chicago, Illinois 60604, (312) 353–6684.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Ohio Environmental Protection Agency (OEPA) submitted to USEPA the following site-specific SIP revision requests:

*1. Lincoln Electric Company*

On August 18, 1989, the Ohio Environmental Protection Agency (OEPA) submitted to USEPA a request for a site-specific SIP revision to its ozone SIP for the Lincoln Electric Company. The Lincoln Electric Company is a facility which contains operations that paint welder parts and other miscellaneous metal parts, using extreme performance coatings. The facility is located in Cuyahoga County, Ohio. Cuyahoga County is part of the Cleveland Consolidated Metropolitan Statistical Area and is designated as moderate nonattainment for ozone under the Clean Air Act as amended in 1990 (CAA). This SIP revision request consists of a bubble over 14 paint dip and 19 paint spray lines, with a volatile organic compound (VOC) content limit on the coatings used on each line and an annual production limit for each line. The Lincoln Electric Company applied for this bubble on July 30, 1987.

Current Ozone SIP in Cuyahoga County

Prior to May 1988, Cuyahoga County was designated nonattainment for ozone and had an approved Part D SIP. On May 26, 1988, USEPA sent a SIP call letter to the Governor of Ohio, calling for revisions to the ozone SIP for areas including Cuyahoga County. Under the CAA, Cuyahoga County was designated moderate nonattainment for ozone, effective November 15, 1990 (56 FR 56694), and is currently lacking a demonstration of attainment. While previously approved portions of the ozone SIP remain federally enforceable, Cuyahoga County's ozone SIP is considered to be inadequate to attain and maintain the ozone National Ambient Air Quality Standard (NAAQS).

Under the federally approved SIP, the Lincoln Electric paint spray and paint dip lines are subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U) for surface coating of miscellaneous metal parts and products. OAC Rule 3745–21–09(U)(1)(a)(iii) limits the VOC content of extreme performance coatings to 3.5 pounds of VOC per gallon of coating minus water. USEPA approved this rule as meeting the reasonably achievable control technology (RACT) requirement of the Clean Air Act on October 31, 1980, (45 FR 72122), and June 29, 1982 (47 FR 28097). At the time of Lincoln Electric's application for the bubble, all of the coatings used in the paint spray and paint dip lines were in compliance with this rule.

*2. Steel City Corporation*

On May 31, 1990, the OEPA submitted to USEPA a request for a site-specific revision to its ozone SIP for the miscellaneous metal coating lines at the Steel City Corporation facility located in Youngstown, Ohio. Steel City is a steel products manufacturer specializing in small consumer products such as mailboxes, fence posts, metal shelves and storage parts. Steel City paints these products using three surface coating lines: A brown coat dip tank, a green coat dip tank, and an electrostatic spray booth (the mailbox line). These three lines are the lines for which the bubble is requested. The facility is located in Mahoning County, which is designated as marginal nonattainment for ozone under the CAA. The Steel City Corporation applied to the OEPA for this bubble on March 31, 1989.

Current Ozone SIP in Mahoning County

Prior to November 1989, Mahoning County was designated nonattainment for ozone and had an approved Part D SIP. On November 8, 1989, USEPA issued a SIP Call letter to the Governor of Ohio, calling for revisions to the SIP for Mahoning County, among other areas. The requirement for revisions to Mahoning County's ozone SIP was based on post-1987 ozone standard violations monitored in nearby Farrell, Pennsylvania. Under the 1990 amendments to the Clean Air Act, Mahoning County was designated as marginal nonattainment for ozone (56 FR 56694). As in Cuyahoga County, though previously approved portions of the ozone SIP remain federally enforceable, USEPA considers Mahoning County's ozone SIP to be inadequate. Under the federally approved SIP, the 2 dip tanks and the mailbox line are subject to OAC 3745–21–09(U)(1)(a)(iii), regulating extreme performance coatings for miscellaneous parts and products. At the time of application for the bubble, the dip tank lines were in compliance with this limit, using a maximum VOC content of 2.2 pounds of VOC per gallon of coating, excluding water. However, Steel City has been unsuccessful in developing compliant coatings for the mailbox line.

## II. Applicable USEPA Policies

*USEPA's Bubble Policy*

On April 7, 1982 (47 FR 15076), USEPA proposed the ETPS which sets forth general principles for the creation, banking, and use of emission reduction credits. As indicated in the ETPS, it is the policy of USEPA to encourage emissions trades to achieve more flexible, rapid, and efficient attainment of the NAAQS. It describes emissions trading, sets out general principles that USEPA uses to evaluate emissions trades under the Clean Air Act, and expands opportunities for States and industry to use these less costly control approaches.

On December 4, 1986 (51 FR 43814), USEPA issued the final ETPS, containing the criteria by which emission trades are now evaluated. A source may secure emission reduction credits by meeting each of the applicable requirements of the final ETPS. Generally, only reductions which are surplus, enforceable, permanent, and quantifiable can qualify as emission reduction credits. A bubble lets a facility generate emission reduction credits at one or more emission sources to offset increased emissions from other sources. To be approvable, a bubble must produce results which are equivalent to or better than the baseline emission levels in terms of ambient impact and enforceability. Specific baseline requirements applicable to each requested revision are detailed in the Analysis section of this notice.

*USEPA's Long Term Averaging Time Policy*

USEPA's January 20, 1984, policy memorandum on "Averaging Times for Compliance with VOC Emissions Limits" is relevant to all nonattainment areas. It states:

1. A demonstration must be made that the use of long-term averaging (greater than 24-hour averaging) will not jeopardize either ambient standards attainment or the reasonable further progress (RFP) plan for the area. This must be accomplished by showing that the maximum daily increase in emissions associated with long-term averaging is consistent with the approved ozone SIP for the area.

2. Averaging periods must be as short as practicable and in no case longer than 30 days.

3. Sources in areas lacking approved SIPs or in areas with approved SIPs but showing measured violations cannot be considered for longer term averages until the SIP has been revised demonstrating ambient standards attainment and maintenance of RFP (reflecting the maximum daily emissions from the source with long-term averaging).

*USEPA's Cross-Line Averaging Policy*

An April 7, 1989, USEPA policy memorandum from John Calcagni entitled "Baseline for Cross-Line Averaging" describes the procedure for calculating the baseline emissions for bubbles which limit emissions by averaging the VOC content of coatings applied over two or more coating lines. Under this policy, historical production, i.e., capacity utilization and hours of operation, is not considered, because credit is generated and used within a 24 hour period, and allowable emissions will vary from day to day, depending on current production levels on each line. In addition, cross-line averaging employs VOC equivalency calculations, which must be done on a pounds VOC per gallon of solids applied basis (May 5, 1980, memorandum by Richard Rhoads entitled "Procedures to Calculate Equivalency with the CTG Recommendations for Surface Coating").

## III. Analysis

*1. Lincoln Electric*

There are 33 VOC sources at the Lincoln Electric facility which have been included in the proposed bubble, 25 of which are offset sources and eight of which are variance sources. The adopted variances exempt the variant sources from OAC Rule 3745–21–09 and become effective upon USEPA approval.

Lincoln Electric has proposed to use xylene instead of 1,1,1-trichloroethane (TCE) as a solvent used in coatings on eight of the paint dip lines (the variance sources). TCE is defined by the OEPA and USEPA as an exempt compound, and the VOC content of coatings containing TCE is compliant with the OAC 3745–21–09(U) limit of 3.5 lb VOC per gallon of coating minus water. Substitution of xylene for TCE as the solvent will bring the VOC content of these coatings to 4.87 lb VOC per gallon minus water. To generate credit to offset the increased VOC content and emissions from the eight variance lines, Lincoln Electric has proposed to either shut down or convert to powder coatings on the 25 offset lines. The OEPA has included in the submittal two adopted permits-to-operate for three powder coating booths, restricting the VOC content of the powder coatings to 0.1 lb VOC per gallon of coating minus water. Each of the 8 adopted variances includes a maximum VOC content limit of 4.87 lb VOC per gallon of coating minus water and an annual limit on coating usage in gallons per year. Three of the variances require daily recordkeeping; the remaining 5 require monthly recordkeeping. The baseline VOC emissions were calculated by the OEPA to be 60.45 tons per year (TPY) based on actual production values and actual VOC coating content values during the years 1985 and 1986. Under the proposed bubble, annual VOC emissions were calculated by the OEPA to be 39.87 TPY, which is a 34.1 percent reduction below the baseline. The OEPA's annual bubble emissions calculation does not include emissions from the powder booths. The proposed allowable VOC emissions from the powder coating booths are 1 TPY; calculated as part of the proposed bubble, the reduction below the OEPA baseline is 32.4 percent.

The proposed bubble conforms to the ETPS in that the emission credits generated by the proposed bubble are surplus, permanent, and quantifiable. The requirement for a minimum 20% reduction below baseline has been satisfied, given the baseline as calculated by the OEPA. In nonattainment areas lacking an approved demonstration of attainment, e.g. Cuyahoga County, a source must use the lowest of actual, RACT allowable, or SIP allowable emissions baseline. The three factors used to calculate the baseline are emission rate (VOC content), capacity utilization (production rate), and hours of operation. The emission rate is based on the actual emission rate, the SIP emission limit or the RACT emission limit, whichever is lowest, as of the time of the source's application for the bubble. The capacity utilization and hours of operation are based on the lower of actual or allowable values for those factors, based upon the source's average historical values for the 2-year period preceding the source's application for the bubble. To produce a substantial net reduction in actual emissions, an additional 20% must be deducted to calculate the baseline for a bubble in a nonattainment area lacking a demonstration of attainment.

The bubble request states that all the data used by the OEPA to calculate the baseline emissions are actual values. However the data included in the submittal contains no documentation of the VOC content of the coatings used at the time of application for the bubble. This does not conform to the ETPS, because there is no way to verify that the actual values of VOC content are the lowest of actual VOC content, SIP-allowable emission limit, or RACT-allowable emission limit, as required by the ETPS. The submittal must include complete data including actual VOC coating content, and RACT and SIP allowable values of VOC content for all coatings used at the time of application. This is the only way to sufficiently demonstrate that the baseline emissions and the reductions below baseline have been calculated correctly.

In addition, the proposed bubble does not conform to the averaging time policy requirements. The proposed variances require an annual limit on coating usage, which, along with the maximum limit on VOC content, is equivalent to an annual emissions cap. The State has not demonstrated that this is adequate to maintain a daily ambient air standard. The ETPS also requires "averaging periods consistent with the relevant NAAQS * * *". Even if the annual emissions totals satisfied the emission reduction requirements of the ETPS, the limits in the variances must be written as a daily average of the annual limit in order to ensure daily protection of ambient air quality. Writing the limits in this way would conform to the averaging time policy's general requirement for emission control that is consistent with protecting the short-term ozone standard and the more specific requirements described above for areas which lack approved, adequate SIPs.

The proposed emission reductions are not sufficiently enforceable. To ensure enforceability and compliance with a daily standard, daily recordkeeping must be required in the 5 proposed variances which currently have monthly recordkeeping requirements. Daily recordkeeping must be required for each source in the bubble in order to conform to the enforceability requirements of the ETPS and of section 110(a)(2)(A) of the CAA. The State also must document that the shutdown sources have actually been dismantled, or if not dismantled, are permitted for zero VOC emissions.

Additional enforceability deficiencies in the proposed bubble are as follows:

1. The annual emission cap makes it impossible to prove a continuing violation until an entire year passes. In addition, the definition of "year" is unclear; it should be stated whether the annual emission cap is based on the calendar year, the date of issuance of the variance, or some other definition of "year."

2. There is no test method specified to determine the solids content or water content of the coatings used. (Because the variances entirely exempt the applicable sources from the entire OAC Rule 3745–21–09, the test methods referred to in Rule 09(U) would no longer apply to these sources.)

Finally, to be consistent with, and in the case of a bubble, equivalent to RACT as defined by USEPA, the VOC content limitations must be expressed in terms

of lb VOC per gallon of coating minus water and exempt solvents.

*2. Steel City*

The OEPA requested this bubble for Steel City because the source does not have compliant coatings for its mailbox line. The submitted variance and permits-to-operate exempt the applicable sources from OAC rules 3745–21–09(B) and 3745–21–09(U)(1)(a)(iii). The proposed bubble would allow Steel City to offset excess emissions from the mailbox line with surplus emission reductions from the green coating and brown coating dip tanks. The proposed bubble would allow Steel City to meet the VOC content limit of OAC Rule 3745–21–09(U) on a daily, volume-weighted average across all three lines. The VOC content of the coatings used in the dip tanks would not be allowed to exceed 2.2 pounds of VOC per gallon of coating applied, excluding water. The VOC content of the coatings used in the electrostatic spray booth would not be allowed to exceed 4.1 pounds of VOC per gallon of coating applied, excluding water. The daily, volume-weighted average VOC content of all coatings applied in the three sources would not exceed 3.5 lb. VOC per gallon of coating applied, excluding water. The submitted variance becomes effective with USEPA approval.

The ETPS describes bubble requirements for areas that are classified for ozone as attainment, nonattainment with an approved demonstration of attainment, and nonattainment lacking a demonstration of attainment. As a marginal nonattainment area for ozone, Mahoning County is not currently subject to a CAA requirement for a demonstration of attainment. While the SIP for Mahoning County contains a demonstration of attainment that has been federally approved, that demonstration has been considered inadequate since the November 1989 SIP Call. Pursuant to a USEPA policy decision, marginal nonattainment areas are currently required to satisfy the ETPS requirements for nonattainment areas with an approved demonstration. In this case, to be consistent with the ETPS, daily actual emissions must be equal to or lower than allowable emissions (the baseline) where allowable emissions are based on lower of actual or allowable VOC coating content and current production for each source in the bubble, and actual VOC content is based on the historical average value for the two years preceding application for the bubble. An exception can be made to the use of lower of actual or allowable, if actual values are lower than allowable values and allowable values have been used in the approved demonstration of attainment, in which case allowable values may be used to calculate the baseline. Therefore, the submittal must include the actual and allowable values of the VOC content and clearly document how the baseline has been calculated. There is no clear documentation in this submittal of the values of VOC coating content used for Steel City in the approved attainment demonstration for Mahoning County. Without such documentation, the baseline must be calculated using the lower of actual or allowable for each source in the bubble.

In addition, the proposed bubble is a cross-line average, and the baseline calculation must also conform to the cross-line averaging memorandum discussed above. Allowable emissions must vary from day to day, depending on current production levels on each line; therefore, the fixed emission limitations in the permits-to-operate and variances are unacceptable. Also, the VOC equivalency calculations must be done on a pounds VOC per gallon of solids applied basis per the May 5, 1980, policy memorandum cited above. Finally, as with Lincoln Electric, VOC content limitations must be expressed as lb VOC per gallon of coating minus water and exempt solvents to be consistent with RACT as defined by USEPA.

**IV. Proposed Rulemaking Action**

*1. Lincoln Electric*

USEPA is proposing to disapprove the bubble for the Lincoln Electric Company for the following reasons:

1. The OEPA has not documented that the emissions baseline is based on the lowest of actual or allowable factors, which also may invalidate the adequacy of the required reductions below the baseline.

2. An annual emissions cap is not adequate to protect the daily ambient air ozone standard or to ensure continuous enforceability.

3. Monthly recordkeeping is not adequate to ensure compliance with a daily ambient air quality standard.

4. There is no test method for determination of solids or water content of the coatings used.

5. The expressed terms of the VOC content limits are not consistent with or equivalent to RACT as defined by USEPA.

*2. Steel City*

USEPA is proposing to disapprove this bubble for the Steel City Corporation for the following reasons:

1. The revision does not establish an emissions baseline in a manner consistent with the ETPS.

2. Daily allowable emissions are not based on current production and lowest of actual or allowable emission rate.

3. VOC equivalency calculations were not done on a solids basis.

4. The expressed terms of the VOC content limits are not consistent with or equivalent to RACT as defined by USEPA.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the Clean Air Act Amendments of 1990 enacted on November 15, 1990. The Agency has determined that a portion of this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's disapproval of the State request under section 110 and subchapter I, Part D of the CAA does not

affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

Public comments are solicited on the requested SIP revisions and on USEPA's proposal to disapprove. Public comments received by July 8, 1993, will be considered in the development of USEPA's final rulemaking action.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671(q).

Dated: May 13, 1993.

**Dale S. Bryson,**

*Acting Regional Administrator.*

[FR Doc. 93–13451 Filed 6–7–93; 8:45 am]

BILLING CODE 6560–50–P

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 515 and 538

**[GSAR Notice 5–348D]**

### General Services Administration Acquisition Regulation; Multiple Award Schedules Program

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Proposed rule.

**SUMMARY:** This notice invites written comments on a proposed rule that would cancel the Multiple Award Schedule (MAS) Policy Statement of October 1, 1982 (47 FR 50242, November 5, 1982); amend the General Services Administration Acquisition Regulation (GSAR) to prescribe a format for the Discount Schedule and Marketing Data (DSMD), which is used for collecting information from offerors regarding their commercial sales and marketing practices; and prescribe a process through which contracting officers will establish MAS price negotiation objectives and determine fair and reasonable prices.

**DATES:** Comments are due in writing on or before July 8, 1993.

**ADDRESSES:** Comments should be addressed to the Office of Information and Regulatory Affairs of OMB, Attn: Desk Officer for GSA, room 3235, NEOB, Washington DC 20503 and Marjorie Ashby, Office of GSA Acquisition Policy, 18th and F Streets, NW, room 4006, Washington DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Les Davison, Office of GSA Acquisition Policy (202) 501–4768.

**Supplementary Information:**

**A. Background**

The 1982 MAS Policy Statement describes the current method used by the General Services Administration (GSA) to solicit and evaluate MAS offers. Contracting Officers evaluate offers by comparing the discounts which a firm offers the Government with discounts that a firm gives to its commercial customers. The current policy requires MAS offerors to disclose information on their commercial pricing practices in a specific format known as Discount Schedule and Marketing Data (DSMD) sheets. MAS contracts are awarded and priced as discounts from an offeror's established catalog prices. Contracting officers use the DSMD to determine whether to grant an exemption from cost or pricing data based on catalog price; to establish price negotiation objectives; and to determine if prices offered to the Government are fair and reasonable.

GSA initiated a MAS Improvement Project in October 1990. The project's purpose is to ensure uniformity in the conduct of the MAS program to the extent practicable within GSA and to address recurring issues of concern to GSA, customer agencies and MAS contractors. Among the most significant concerns are the statements of GSA's negotiation objectives and the data collection requirements contained in the 1982 MAS Policy Statement.

GSAR Acquisition Circular AC–92–1, dated February 12, 1992, (57 FR 5862, February 18, 1992), authorized GSA to test a restatement of the MAS price negotiation objectives and a revised DSMD format. The test was conducted to clarify the MAS pricing policy, and to clarify, simplify and reduce data submission requirements. Survey results indicate that vendors which participated in the test procurements found the revised DSMD to be more clear, concise and logical than the current format. A majority of vendors also preferred the test solicitation documents over the current MAS documents.

In view of the test results, GSA proposes to adopt the documents prescribed by AC–92–1 for use in all MAS solicitations. Some changes have been made to accommodate comments received during the course of the test, however. Significant changes to the test processes are described below:

1. AC–92–1, paragraph 2(c), described the process which MAS contracting officers use to establish negotiation objectives and evaluate prices. Some industry associations commented that it precluded contracting officers from considering the terms and conditions of commercial agreements when evaluating offers, unless the commercial customer acquired the same quantity as the Government. The provision has been rewritten to clarify that GSA's contracting officers will consider all relevant terms and conditions of commercial agreements when establishing negotiation objectives and evaluating contract prices.

2. The term "customer" in the Guide for Completion of Discount Schedule and Marketing Data (Guide) has been revised to generally exclude any entity located outside of the United States from the scope of the definition. Foreign entities will be considered to be a "customer" and therefore, subject to disclosure in the DSMD, only if the offeror uses sales to such entities to establish that the prices offered under the MAS solicitation have an established catalog price.

3. Some vendors questioned whether there is a specific time period limitation over which the Government required discount information to be disclosed in Part B of the test DSMD. Part B did not specify a timeframe for disclosure of discounts. The Guide will be revised to clarify that the Discount Chart should show a vendor's actual sales and discount practices on the date the offer is submitted (see par. 4, below). During the course of negotiations, offerors must update the information contained in the DSMD by disclosing any changes to its discounts and pricing practices which occur after the offer is submitted.

4. In view of the need to gather and compile data, it may be impractical for some companies to certify data as of the date the offer is submitted. Consequently, the Guide has been revised to alleviate this problem. The Government will now consider DSMD information current, accurate and complete as of the date the offer is submitted, if the data is current, accurate and complete within 14 calendar days prior to the solicitation's closing date.

5. Miscellaneous editorial changes also have been made to clarify various provisions of the DSMD and the Guide.

**B. Executive Order 12291**

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

**C. Regulatory Flexibility Act**

An initial regulatory flexibility analysis has been prepared and submitted to the Acting Chief Counsel for Advocacy of the Small Business Administration. Copies of the initial regulatory flexibility analysis are available from the GSA office identified above. The initial analysis indicates that the proposed rule will affect contractors, including small businesses, that submit offers under the MAS program. Over the years, approximately seventy percent of the MAS contractors have been small businesses. Based on the number of offers received during fiscal year 1992, it is estimated that 2,772 small businesses, will be impacted by the new rule.

**D. Paperwork Reduction Act**

The DSMD is an information collection as defined in the Paperwork Reduction Act, 44 U.S.C. 3501 *et sequentia*, and has been submitted to the OMB for approval under the Act. Comments on the information collection requirements may be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503. The title of the information collection is "Discount Schedule and Marketing Data for MAS program." The DSMD require disclosure of certain pricing information on a sampling of items which have an established catalog price, and on all items that do not have an established catalog price. Information required to be submitted on the DSMD includes: sales to Government and non-Government customers, the highest discounts for various commercial customers, and information on an offeror's marketing practices. Under the MAS program, offerors responding to a MAS solicitation are requested to provide DSMD in a specific format. The DSMD is used to determine whether to grant an exemption from cost or pricing data based on catalog price, to establish the Government's negotiation objectives, and to determine price reasonableness. The estimated annual burden for the DSMD is 118,830 hours. This is based on an estimated average burden per response of 10 hours, a frequency of three responses per respondent, and an estimated number of likely respondents of 3,961.

**List of Subjects in 48 CFR Parts 515 and 538**

Government procurement.

Accordingly, it is proposed that 48 CFR parts 515 and 538 be amended as follows:

**PARTS 515 AND 538—[AMENDED]**

1. The authority citation for 48 CFR Parts 515 and 538 continues to read as follows:

**Authority:** 40 U.S.C. 486(c).

2. Section 515.804–3 is amended by revising paragraph (c) to read as follows:

**515.804–3 Exemption from or waiver of submission of certified cost or pricing data.**

* * * * *

(c) The Discount Schedule and Marketing Data (DSMD) format at 538.203–70 shall be used instead of the Standard Form (SF) 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, in multiple award schedule solicitations unless the offeror requests that SF 1412 be used for its data disclosure. Each solicitation will require that DSMD's (or SF 1412, at the offeror's option) be completed for each special item number in the solicitation and be submitted as a part of the offeror's proposal.

3. Section 538.203–70 is added to read as follows:

**538.203–70 Submission of Discount Schedule and Marketing Data (DSMD)**

(a) *Format.* The contracting officer shall insert the following format for collecting the Discount Schedule and Marketing Data in all multiple award schedule (MAS) solicitations:

**Discount Schedule and Marketing Data Format**

Instructions necessary to complete the Discount Schedule and Marketing Data (DSMD) format are contained in the Guide for Completion of Discount Schedule and Marketing Data (Guide). The Guide is included in this solicitation for your convenience.

The Government will treat all information submitted on the DSMD as proprietary in accordance with applicable law and regulation.

The Government may reject an offer if you fail to disclose accurate, complete and current data in the DSMD. If the Government discovers subsequent to contract award that information in the DSMD was not accurate, complete or current, the Government may seek refunds and other relief pursuant to the defective pricing provisions of the contract.

*Contents*

Part A. Offer to the Government

Sections I and II ask for specific information about the terms of your offer to the Government.

Part B. Discount and Marketing Practices

Sections I and II ask for information about your discount and marketing practices to all customers (other than Federal agencies) acquiring the same products or services offered under this solicitation.

Part C. Sales Information

Sections I through II ask for information about your sales volume to Government and non-Government customers, respectively.

Part D. Certification

Requires you to certify to the accuracy, currency and completeness of information submitted in Parts A–C.

Name of Offeror _____

SIN _____

Part A. Offer to the Government

(See Guide, Section III)

Part A asks for specific information about the terms of your offer to the Government.

(All discounts which you offer the Government must be based on delivery FOB *[contracting officer fill in blank]*.)

1. Identify the Price List From Which You Offer Discounts to the Government. Specify the type or title and date of the price list; attach a copy of the price list.

_____

_____

_____

2. What Discount(s) Do You Offer the Government Under This Solicitation?

_____

_____

_____

3. Do You Offer Any of the Following Additional Discounts?

Yes_____No_____. If "Yes" enter the amount in the appropriate blanks. These discounts will be taken by the Government, in addition to the discounts offered in response to Question 2.

a. Prompt payment discount? (See GSAR Provision 552.232–8 and FAR Clause 52.232–25)

_____

_____

_____

b. Quantity dollar volume discounts?

_____

_____

_____

(i) Can models/products be combined

within this SIN in order to earn these discounts? Yes_____ No_____. If "Yes", provide details:

(ii) Can SIN's be combined in order to earn the quantity discounts? Yes_____No_____. If "Yes", provide details:

(c. Blanket purchase agreements discounts?

d. Purchase option credits?

e. Other discounts?

**Section II**

1. Do You Offer the Government Concessions Which You Do Not Grant to Other Customers? Yes_____No_____(If "Yes", provide details below.)
   a. Extended Warranty? Yes_____No_____(See GSAR clause 552.246–17). Attach a copy of your standard commercial warranty or specify where it is found in your catalog or price list included with this offer.
   b. Return/exchange goods policy? Yes_____No_____
   c. Enhanced or Additional services? Yes_____No_____
   d. Any other concession? Yes_____No_____

Provide Details About Concessions Offered Above

2. *Respond if the Offeror is a Dealer or Distributor.* Will the Offeror, if Awarded a Contract Pursuant to This Solicitation, Perform Any Function Listed Below? Yes_____No_____(If "Yes", provide details below.)
   a. Operate a warehouse in which items covered by this solicitation are stocked? Yes_____No_____
   b. Process purchase orders? Yes_____No_____
   c. Provide training? Yes_____No_____
   e. Other? (Please specify) Yes_____No_____

3. *Respond if the Offeror Will Use Dealers to Perform Any Aspect of a Contract Awarded Pursuant to This Solicitation?* Will The Dealers Perform Any Function Listed Below? Yes _____No _____(If "Yes" provide details below.)
   a. Operate a warehouse in which items covered by the contract are stocked? Yes _____No _____
   b. Process purchase orders? Yes _____No _____
   c. Provide training? Yes _____No _____
   d. Provide installation? Yes _____No _____
   e. Other? (Please specify) Yes _____ No _____

4. Do You Offer Any Items Identical to Those Contained in This Offer to GSA Under Any Other Schedule Contract? Yes _____No _____. (If "Yes", identify the item, contract, and schedule.)

5. How Many Models/Types or Catalog Numbers Do You Offer Under This SIN? _____.

6. What Are the Total Estimated Sales for a GSA Contract Under This Schedule (If one is awarded) for all Models/Types or Catalog Numbers Offered Under This SIN? $_____.

Part B. Discount and Marketing Practices

(See Guide for Completion of DSMD, section IV)

Part B seeks information about your discount and marketing practices to customers (other than Federal agencies) acquiring the same items offered under this solicitation.

**Section I**

1. Are the discounts which you offer the Government equal to or better than your best discount to any customer, regardless of quantity or terms and conditions? Yes _____No _____.
2. If you responded "No" to Question 1, complete the chart below for all customers or customer categories (1) to which you sell at a discount which equals or exceeds the discounts offered to the Government or (2) with which you have an agreement to sell at a discount which equals or exceeds the discounts offered to the Government.

If you responded "Yes" to Question 1, complete the chart below with respect to the non-Federal customer which receives your best discount.
   a. Column 1—Identify the customer or category of customer. (Use a separate line for each customer or category of customer).
   b. Column 2—Indicate the best discount at which you sell, regardless of quantity, to the customer or category of customer identified in Column 1.
   c. Column 3—Insert the quantity or sales volume which the identified customer or category of customer must purchase/order to earn the discount.
   d. Column 4—Indicate the FOB delivery term for each identified customer or category of customer. (See FAR Subpart 47.3 for an explanation of FOB delivery terms).

DISCOUNT CHART

| Column 1, customer | Column 2, discount | Column 3, quantity/volume | Column 4, FOB term |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

3. Identify the price lists which are the basis for the discounts given to the customers identified in the chart above. Specify the type or title and date of each price list.

4. If the discounts extended to the Government in this offer are less than the discounts shown in the chart above, explain the reasons for any differences.

Note: The contracting officer may require submission of copies of some or all of the contracts/agreements with the customers identified in this section.

**Section II—Additional Discounts and Concessions**

1. Do You Offer Any Customer Identified in Part B, Section I, a Discount Which Would Further Reduce Their Price, and Which Has Not Previously Been Disclosed? Yes _____ No _____ If "Yes," in the space below, disclose the circumstances under which these discounts are given and the range of discounts given. (See Guide Section, IV, 5.)

2. Do You Grant Any Customer Identified in Part B, Section I, Any Concessions Which Are Not Herein Offered to the Government? Yes _____ No _____. If "Yes," indicate the type of concessions below and provide details.

a. Extended warranty? Yes _____ No _____

b. Return/Exchange goods policy? Yes _____ No _____

c. Bonus Goods? Yes _____ No _____

d. Free or additional training, installation, or other services? Yes _____ No _____

e. Any other concessions? Yes _____ No _____

Part C. Sales Information

(See Guide, Section V)

The contracting officer will use the information in this PART C to determine whether the items offered qualify for an exemption from the requirement to submit cost or pricing data. Items which have an "established catalog price," as defined by FAR 15.804–3 (c) and (f), will be exempted from the general requirement to submit cost or pricing data. Items which meet the FAR definition are regarded as commercial items.

Sales information is given for the period _____ through _____, inclusive (insert dates).

1. Total Sales to the U.S. Government for All Models/Types or Catalog Numbers Offered Under This SIN Were $_____.

2. Total Sales to All Entities (including the Government) With Whom You Did Business for All Models/Types or Catalog Numbers Offered Under This SIN Were: $_____.

3. Line 1 is _____ Percent (%) of Line 2.

4. List Below All Models/Types or Catalog Numbers Offered Under This SIN Which do not Have an "Established Catalog Price" as Defined by FAR 15.804–3 (c) and (f), (for example, Government sales are 45% or more of total sales):

5. List Below the [*contracting officer insert number*] Models/Types or Catalog Numbers Offered Under This SIN With the Largest Dollar Volume Sales To

The U.S. Government. Do not include any models listed in response to Question (4), above. If you have not made sales to the U.S. Government, list your top selling models to non-Government customers.

6. Complete the Chart Below for Each Model Listed in Question 5:

Column O—Model Type or Catalog Number.

Column A—Total Sales to the U.S. Government.

Column B—Total Sales to non-Government customers at catalog price (minus any published or established discounts).

Column C—Total sales to non-Government customers at other than catalog price.

Column D—Total sales (D=A+B+C).

Column E—Percentage of sales to non-Government customers at other than catalog price (minus any published discounts).

$$E = \frac{C}{(B+C)}$$

Column F—Percentage of total sales to the U.S. Government.

$$F = \frac{A}{D}$$

SALES INFORMATION

[Commercial items]

| Column O model # | Column A U.S. Gov't sales | Column B non-Gov't sales, (catalog) | Column C non-Gov't sales (other than catalog) | Column D total sales | Column E percent other than catalog sales | Column F percent Gov't sales |
|---|---|---|---|---|---|---|
| (1) | | | | | | |
| (2) | | | | | | |
| (3) | | | | | | |
| (4) | | | | | | |
| (5) | | | | | | |
| (6) | | | | | | |
| (7) | | | | | | |
| (8) | | | | | | |
| (9) | | | | | | |
| (10) | | | | | | |

7. Current MAS contractors—Total sales *under your current GSA contract for this schedule* for all models/types or catalog numbers offered under this SIN were $_____

Part D. Certification

(See Guide, Section VI)

The offeror certifies that, to the best of its knowledge and belief.

(1) All of the data (including sales data submitted with this offer) are accurate, complete, and current representations of actual transactions as of the date of this certification;

(2) Substantial quantities of all items offered have been sold to the general public; and

(3) Except for models identified in Part C, Paragraph 4, the price(s) quoted in this offer is (are) based on "established catalog prices," as defined in FAR 15.804–3(c), of commercial items sold in substantial quantities to the general public.

Name and Title of Person Authorized To Sign on Behalf of the Offeror. (Type or Print).

Name: _____

Title: _____

Signature: _____

Offeror: _____

Date of Execution _____

(End of DSMD format)

(b) *Guide for Completion of DSMD.* The contracting officer shall insert the following Guide for Completion of Discount Schedule and Marketing Data in all MAS solicitations immediately preceeding the DSMD. For contract pricing proposals submitted in response to MAS solicitations, the DSMD format prescribed in paragraph (a), above, must be prepared in accordance with the instructions in this Guide.

Guide for Completion of Discount Schedule and Marketing Data

This Guide contains instructions and information needed to complete the Discount Schedule and Marketing Data (DSMD) portion of Multiple Award Schedule (MAS) solicitations.

**I. Explanations**

Terms included in this section have the meanings set forth below when used in the DSMD. The explanations are in addition to any definitions and/or guidance contained in the Federal Acquisition Regulation (FAR) or elsewhere in the General Service Administration Acquisition Regulation (GSAR).

1. Customer

(a) A "customer" is any entity, except the Federal Government, which acquires goods or services from the offeror. The term customer includes, but is not limited to, original equipment manufacturers, value added resellers, state and local governments, distributors, educational institutions, dealers, and national accounts.

(b) "Customer" excludes any entity located outside of the United States, unless the offeror uses sales to such entities to establish that prices offered under the MAS solicitation have an established catalog price. See DSMD Part C.

(c) In any instance where the offeror is asked to disclose information for a "customer," you may disclose information by category of customer if the offeror's discount policies are the same for all customers in the category. Disclosure of a range of discounts for customer categories is acceptable.

2. Concession

A "concession" is a benefit, enhancement or privilege (other than a discount), which either reduces the overall cost of a customer's acquisition or encourages a customer to consummate a purchase. Concessions include, but are not limited to, free training, free installation, and bonus goods.

3. Discount

(a) A "discount" is a reduction to catalog prices (published or unpublished) applicable to any customer. Discounts include, but are not limited to, rebates, quantity discounts, purchase option credits, and any other terms or conditions which reduce the amount of money a customer ultimately pays for goods or services ordered or received.

(b) Best Discounts—if your best (lowest) price is a combination of discounts, identify each type of discount used. (For example, 1 to 99—20% regular discount; 100+—25% quantity discount; 2% aggregate discount on sales exceeding $50,000; 1% prompt payment discount.)

4. Educational Institution

An "educational institution" is an elementary, junior high, or degree granting school which maintains a regular faculty, an established curriculum and an organized body of students. Offerors shall disclose discounts govern to educational institutions when required by PART C. Discounts to educational institutions will not serve as a negotiation objective unless the offeror has no other significant category of customer. The Government will, however, negotiate for such discounts for use by comparable Federal educational institutions. Examples of Federal educational institutions include: the Service academies, Department of Defense dependent schools, and Bureau of Indian Affairs Schools.

5. Established Catalog Price

An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is published or otherwise available for inspection by customers, and states prices at which sales are currently or were last made to a significant number of buyers constituting the general public. FAR Sections 15.804–3 (c) and (f) provide specific information as to what constitutes an established catalog price.

6. Item

An "item" is a product or service which is separately priced and offered to a customer for sale, lease or rental.

7. U.S. Government Sales

U.S. Government sales include all Federal Government sales, regardless of whether the orders were placed against a GSA Schedule contract.

**II. General Instructions**

1. The DSMD is composed of four Parts, A through D, which solicit information about your discount and marketing practices and the offer to the Government.

2. Complete Parts A through C for each Special Item Number (SIN) included in your offer. Respond to each question. You may make a single submission of each Part, covering more than one SIN, if the information disclosed is the same for all products under each SIN. Complete Part D once for the entire offer.

3. Respond to all questions. Use of the term "not applicable" (N/A) is not acceptable.

4. The Government will use information which you disclose to establish negotiation goals, to determine if the prices offered are reasonable, and to determine whether the items offered qualify for an exemption from the Federal Acquisition Regulation requirement to submit cost or pricing data.

5. If you do not disclose accurate, complete and current data, the Government may reject the offer or, if a contract has been awarded, seek refunds and other relief pursuant to the defective pricing clause in the MAS contract.

6. The Government will treat all information which you submit on the DSMD as proprietary. The information

will be withheld from disclosure in accordance with section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423) and the Freedom of Information Act. The identity of items actually awarded and contract prices, however, are public information which will be disclosed by the Government.

7. You may reproduce the DSMD as necessary. If any section of the DSMD does not provide adequate space for a complete answer, you may continue your response by attaching pages. Attached pages should clearly reference the section of the DSMD to which they are applicable.

8. Contracting officers may request documentation in addition to that specified in the DSMD if such documentation is necessary to determine that discounts, terms and conditions offered the Government result in fair and reasonable prices.

**III. Instructions for Completing Part A**

Section I asks for information concerning discounts which you offer the Government under the MAS solicitation. Section II asks for information about the offer.

1. If you do not offer a discount specified in PART A, enter zero.

2. You may offer discounts and concessions which vary by model or product line. If you offer varying discounts, you must either: (a) annotate the price list to show discounts applicable to each model or product line, or (b) complete a supplemental sheet in the format shown at the end of this Guide.

**IV. Instructions for Completing Part B**

1. If your discount practices vary by model or product line, give discount information by model or product line.

2. Disclose discounts (a) at which you sell, (b) discounts contained in agreements (written or oral) which are in effect on the date your offer is submitted and (c) discounts which are published or contained in agreements (written or oral), with an effective date during the MAS contract period.

The Discount Chart contained in Part B of the DSMD should reveal your actual selling and discounting practices as of the date your offer is submitted.

The Government will consider information submitted in the Discount Chart to be current, accurate and complete as of the date the offer is submitted, if the data is current, accurate and complete within 14 calendar days prior to the solicitation closing date.

Prior to the close of negotiation, you must also disclose any changes to discounts and discounts policies which occur after the original submission.

3. Disclose discounts to current customers without regard to the terms and conditions of the agreements under which the discounts are given, and without regard to whether such agreements are written or oral.

4. In some instances, a vendor may sell to a customer at a price which is calculated based on some method other than a discount from a price list (for example, a competitive price). Vendors may also sell the same products based on different price lists (for example, Dealer and National Accounts). Where such circumstances apply, the Government asks that you make a mathematical conversion in order to facilitate the comparison of discounts.

Specifically, if a customer disclosed in the Discount Chart receives:

(a) A discount from a price list *other than* the price list which was the basis of the offer to the government, or

(b) A price calculated based on some method other than as a discount from a price list convert the price into a discount from the price list which is the basis of the offer to the government.

5. Section I, Question 4. The explanation should include a description of any special circumstances which the offeror believes justifies offering the government a discount less than that offered to any customer identified in the Discount Chart.

6. Section II, Question 1. The government requires that you identify in the Discount Chart (DSMD) Part B, Section I), all customers or categories of customers which receive discounts that equal or exceed the discounts offered to the government. Further, the government contemplates that you will disclose in the Discount Chart the best discount which give to each customer identified. If, however, you offer a customer identified in the Discount Chart a particularly high discount, on a one-time basis, or under circumstances so unique as to not constitute a part of your normal practices, you may disclose that special discount in response to DSMD Part B, Section II, Question 1. You must disclose special discounts in either the Discount Chart or in response to Section II, Question 1. To constitute a current, accurate, and complete disclosure, Part B of the DSMD, when read as a whole, must reveal (1) all customers or categories of customers which receive discounts which equal or exceed the discounts you offer to the government under the MAS solicitation, and (2) the best discount that you give to all customers or categories of customers identified.

**V. Instructions for Completing Part C**

1. Complete a separate PART C for each Special Item Number (SIN) included in the MAS offer. Fill in all blank spaces.

2. Complete the chart entitled "Sales Information (Commercial Items)" for each model listed in response to Question 5.

3. *Applicable to Questions 1 through 6.* Submit all requested sales information for a consecutive 12-month period. The submitter may choose any 12-month period for which it has reliable sales information, provided that the period may not begin prior to the beginning of your most recently completed fiscal or tax year.

4. Established or published discounts are discounts which are regularly given in the normal course of business.

**VI. Instructions for Completing Part D**

1. The offeror must certify, at the time its initial proposal is submitted, that all information included with the proposal is current, accurate and complete as of the date the proposal is submitted. The government will consider these conditions met if the date is current, accurate, and complete within 14 calendar days prior to the solicitations closing date.

2. At the conclusion of negotiations, the offeror must again certify that all information, including any additional information provided to the Government during the negotiation process, is current, accurate, and complete as of the close of negotiations

Supplemental Sheet

(Ref. Guide, III, 2, b)

Column 1—Model Number
Column 2—Discount From Pricelist
Column 3—Price List and Date

(End of Guide)

4. Section 538.270 is added to read as follows:

**538.270 Evaluation of Multiple Award Schedule (MAS) offers.**

(a) The Government will seek to obtain an offeror's best discounts recognizing, however, that there are circumstances, such as where the contractual relationships are not comparable, when the best discount may not be achieved.

(b) Subject to the requirements of paragraphs (c) through (f) of this section, the contracting officer is solely responsible for establishing negotiation objectives and determining price reasonableness.

(c) The contracting officer will establish negotiation objectives based on a review of all relevant data, including

information provided by the offeror and other information reasonably available to the Government.

(d) When establishing negotiation objectives and determining price reasonableness, contracting officers will compare the terms and conditions of the MAS solicitation with the terms and conditions of the offeror's agreements (written or oral) with customers other than the U.S. Government. The contracting officer will consider each of the following factors to determine whether the Government's price negotiation objectives will be equal to, less than or greater than discounts/prices which an offeror gives to its commercial customers:

(1) Aggregate volume of anticipated purchases;

(2) The nature of a commitment to purchase any quantity;

(3) Discounts/prices offered to commercial customers;

(4) Length of the contract period;

(5) Warranties, training, maintenance and the nature of other functions performed and services provided;

(6) Ordering and deliver practices; and

(7) Any other relevant information.

Any offeror may assert that differences between the MAS solicitation, and commercial terms and conditions, warrant a difference between the discounts offered to the Government and the discount offered to other customers. In such cases, the offeror is initially responsible for identifying, substantiating and valuating any asserted differences.

(e) The contracting officer may not award a contract containing a discount which is less than the best discount the offeror extends to any non-Federal customer purchasing under circumstances comparable to the Government, unless he/she makes a written determination that (1) the prices offered to the Government are fair and reasonable, even though comparable discounts were not negotiated, and (2) award of a contract is otherwise in the best interest of the Government.

(f) Unless the requirement is waived or an individual or class exemption is authorized, the contracting officer will request cost or pricing data, in accordance with FAR subpart 15.8 and the terms of the solicitation, from offerors which do not qualify for an exemption from submission of such data. The contracting officer will evaluate all cost and/or pricing data received and negotiate a price that is determined to be fair and reasonable.

5. Section 538.271 is added to read as follows:

**538.271 MAS contract awards.**

(a) MAS prices will, to the maximum extent practicable, be negotiated as a discount from established catalog prices of commercial items sold in substantial quantities to the general public.

(b) Before awarding any MAS contract, the contracting officer will determine whether offered prices are fair and reasonable in accordance with FAR subparts 15.8 and 15.9 and 538.270, Evaluation of MAS offers.

Dated: April 16, 1993.

**Richard H. Hopf, III,**

*Associate Administrator for Acquisition Policy.*

[FR Doc. 93–13443 Filed 6–7–93; 8:45 am]

BILLING CODE 6820–61–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 555

**[Docket 93–40; Notice 1]**

**RIN 2127–AE88**

### Temporary Exemption From Motor Vehicle Safety Standards

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes that the certification label of a vehicle temporarily exempted from compliance with the Federal motor vehicle safety standards be amended to include a certification of compliance with the Theft Prevention standard. This action is taken to conform the certification requirements for exempted vehicles with those that apply to nonexempted vehicles.

**DATES:** Comments must be received not later than July 8, 1993. The effective date of the final rule would be 6 months after publication of the final rule in the Federal Register.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

**SUPPLEMENTARY INFORMATION:** 49 CFR part 567 establishes the general certification requirements for motor vehicles. On October 24, 1985, § 567.4(g)(5) was revised, effective April 24, 1986, to require the expression "safety, bumper, and theft prevention" to be substituted for "safety" in the manufacturer's certification of compliance of passenger cars to all applicable Federal standards (50 FR 43166).

49 CFR § 555.9(c) establishes the certification requirements for motor vehicles that have been temporarily exempted from compliance with one or more of the Federal motor vehicle safety standards. Section 555.9(c)(1) states that "[i]nstead of the statement required by § 567.4(g)(5) of this chapter, the following statement shall appear:" The statement that follows is one of conformance only to "Safety (and Bumper) Standards". Due to an oversight, part 555 was not amended with part 567 in 1985 to add the Theft Prevention Standard to the certification statement required for exempted vehicles. Therefore, the agency is proposing that 49 CFR 555.9(c)(1) be revised to require certification to "Safety (and, if a passenger car), Bumper and Theft Prevention Standards" to conform the requirements of part 555 with those of part 567.

#### Proposed Effective Date

Because the final rule may require a change in the certification labels used by manufacturers producing vehicles under exemptions still in effect, the agency is proposing an effective date that will be 6 months after publication of the final rule.

This proposed rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

This proposed rule is not considered significant. It does not involve a matter of substantial public interest or controversy. Nor does it have an impact on other agencies or programs of the Department of Transportation.

#### Comments

Interested persons are invited to submit comments on the proposal. It is

requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**Rulemaking Analyses**

*Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

NHTSA has considered the impacts of this rulemaking action and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation," nor is it significant under Department of Transportation regulatory policies and procedures. The rulemaking will not have an effect upon the economy in excess of $100 million a year. Manufacturers subject to the final rule will simply substitute one label for another. Therefore, a full Regulatory Evaluation has not been prepared.

*Regulatory Flexibility Act*

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Although manufacturers who receive temporary exemptions are generally small businesses within the meaning of the Regulatory Flexibility Act, the agency estimates that the cost to conform to the final rule will be minimal, given the existing requirement that a certification label be provided. Further, small organizations and governmental jurisdictions would not be significantly affected as the price of new passenger cars would not be more than minimally impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

*Executive Order 12612 (Federalism)*

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

*National Environmental Policy Act*

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The proposed rule will not have a significant effect upon the environment. Manufacturers subject to this regulation must already provide a certification label for their vehicles. The proposed rule would not have an effect upon fuel consumption.

**List of Subjects in 49 CFR Part 555**

Imports, Motor vehicle safety, Motor vehicles.

## PART 555—TEMPORARY EXEMPTIONS FROM MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR part 555 be amended as follows:

1. The authority citation for part 555 would continue to read as follows:

**Authority:** 15 U.S.C. 1410(a); delegation of authority at 49 CFR 1.50.

2. Section 555.9 would be amended by revising paragraph (c)(1) to read as follows:

**§ 555.9 Temporary exemption labels.**

* * * * *

(c) * * *

(1) Instead of the statement required by § 567.4(g)(5) of this chapter, the following statement shall appear:

This vehicle conforms to all applicable Federal motor vehicle safety (and, if a passenger car), bumper and theft prevention standards in effect on the date of manufacture shown above except for standards Nos. (listing the standards by number and title for which an exemption has been granted) Exempted Pursuant to NHTSA Exemption No. _____.

* * * * *

Issued on June 3, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93–13471 Filed 6–7–93; 8:45 am]

BILLING CODE 4910–59–M

# Notices

Federal Register
Vol. 58, No. 108
Tuesday, June 8, 1993

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.

## DEPARTMENT OF AGRICULTURE

### Alternative Agricultural Research and Commercialization (AARC) Center; AARC Center Request for Proposals

**AGENCY:** Alternative Agricultural Research and Commercialization (AARC) Center.

**ACTION:** AARC Center request for proposals.

### Program Description

*Purpose*

The Alternative Agricultural Research and Commercialization (AARC) Center is requesting proposals under the AARC Center research and development and commercialization assistance provisions using the Cooperative Agreements Program (Program) to assist emerging industrial products/processes involving the use of agricultural (traditional and new crops, animal by-products or forestry) materials. The authority for the Program is contained in sections 1660 and 1661 of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101–624, 7 U.S.C. 5904. The Board reserves the right to use only certain types of assistance. Successful projects are expected to repay the AARC Center Revolving Fund through negotiated arrangements. The Program is administered by the AARC Center, which is an independent entity within the U.S. Department of Agriculture.

The objectives of the AARC Center are:

* To search for new non-food, non-feed, nontraditional/fiber products that may be produced from agricultural commodities and for processes to produce such products.
* To conduct product and co-product/process development and demonstration projects, as well as provide commercialization assistance for industrial products from agricultural and forestry materials.
* To encourage cooperative development and marketing efforts among manufacturers, private and government laboratories, universities, and financiers to assist in bridging the gap between research results and marketable, competitive products and processes.
* To collect and disseminate information about commercialization projects that use agricultural or forestry materials and industrial products derived therefrom.

Under the Program, the AARC Center will award competitive cooperative agreements to support primarily pre-commercial tasks but also targeted research and development of new industrial products or processes derived from agricultural or forestry materials. All other things equal, the nearer to commercialization a product or process is the higher the likelihood of funding by the AARC Center.

The AARC Center will accept either pre-proposals or full proposals. Pre-proposals will be evaluated to determine if an idea has sufficient merit to warrant a full proposal including if it meets the AARC Center's mission and to provide suggestions for improvement. Full proposals will require more time to complete and will be evaluated to determine if they warrant funding. The AARC Center may ask applicants submitting either pre-proposals or full proposals to make an oral presentation. All proposals will be evaluated by external reviewers, as well as by the AARC Center staff, before the proposals along with review comments are provided to the Board of Directors. The Board makes final funding decisions.

*Available Funding*

This request for proposals is being announced subject to funding from Congress for fiscal year 1994. The President has requested $20 million for the AARC Center for fiscal year 1994.

The AARC Center Board expects applicants to at minimum match the dollars requested from the AARC Center. A preference may be given to projects for which the ratio of AARC Center funds to non-Center funds would be the lowest.

*Eligibility*

Proposals are invited from any private firm, individual, public or private educational or research institution or organization, Federal agency, cooperative, or non-profit organization. Cooperative projects involving combinations of the above organizations, especially with private sector leadership, are strongly encouraged.

*Program Emphasis*

As determined by the AARC Center Board from a series of public hearings, Congressional Hearings, workshops, and experience from the initial round of proposals, each proposal should focus on products/processes using the following agricultural or forestry material categories:

Starch/Carbohydrates
Fats and Oils
Fibers
Forest Materials
Animal By-Products
Other Plant Materials used as pharmaceuticals, fine chemicals, encapsulation agents, etc.

The AARC Center Board is in the process of funding about 20 projects from the request for pre-proposals that appeared in the **Federal Register** on August 17, 1992. These included use of 13 different agricultural or forestry materials. Examples of products included: Biodegradable lubricants (from Canola, industrial rapeseed, crambe, and lesquerella), biodegradable starch polymers to substitute for plastics in utensils and bags, composting, ethanol and other intermediate chemicals from lignocellulosic materials, biodiesel (from vegetable oil and animal fat), polyol chemicals from starch, composite building materials, pulp for paper (from straw and hesperaloe), windshield washer fluid based on ethanol, products from kenaf fibers, and starch encapsulated pesticides.

*Evaluation Criteria*

The AARC Center's primary interest, in this request for pre-proposals/proposals, is in providing assistance in pre-commercial activities to move new industrial products from agricultural and forestry materials into the marketplace. The AARC Center Board seeks projects that will have market impact expanding use of agricultural or forestry materials in industrial products especially those that have rural development, environmental, conservation, and trade benefits. Special

emphasis will be given to those proposals whose products are closest to commercialization and to products from new crops. Proposals that request funds for research may be considered; however, such requests are much more likely to receive serious consideration if they include an overall development plan that clearly identifies potential markets, development costs, as well as leadership and financial commitment from industry. Proposals should demonstrate that they are market driven, have a high probability of near-term commercial success, have private sector leadership, and incorporate adequate sharing of financial (cash) resources and risk.

Proposals and pre-proposals will be evaluated on four primary criteria: management team capability, business and marketing soundness, technical factors, and expected time and magnitude of impacts if successful. Examples of types of information that will enter the decision process on each of the primary categories of criteria include:

*Management:* Capability of the management team.
Leadership commitment to the product.
Amount of matching funds (cash) committed.
Awareness of the financial resources needed to successfully market the product.
Reasonableness of the proposed effort.
Clear identification of project milestones.
Private sector leadership to commercialize the product or process.
Strengths and capabilities of the management team, their experience, and the facilities and equipment to successfully complete the project.
Participation by others especially if not submitted by a private (for-profit) firm.
*Business:* Goals of project agree with proposing organization's overall mission and goals.
Potential profitability.
Clear identification of customers.
Characterization of market size.
Estimate of market share product can achieve.
Market trends.
Competitive advantage and position.
Structure of the market in terms of size, number, leading competitors, and reaction of competitors to a new product.
Amount and nature of the value added to the agricultural or forestry material.
Product positioning—premium or discount.
Mode of product distribution.
Make or break factors of the new business or product.
Ability to replicate in other parts of the country.
Key issues and government policies or regulations that might impact success.
Applicant's ability and willingness to repay the AARC Center for the risk investment made by the American taxpayers.
*Technical:* Volume of agricultural or forestry material to be used.
Basic science—type of process, reactions, pathways, materials and energy balances, etc.
Relation to previous work in literature and by applicant.
Innovative techniques and patents.
Major technical hindrances.
Technical requirements of the product—industry standards or guidelines.
Technical and market testing needed.
Government approvals or permits required.
Product characteristics relative to market desires.
Ability to achieve technical claims.
Present stage of development.
*Impacts:* Proposed product's implications for helping improve farm income, especially the family farm.
Volume of product marketable—high or low value and quantity of agricultural or forestry material used.
Number and quality of jobs (especially in distressed rural areas) expected to be created—type, rural/urban, timeframe.
Potential positive and negative environmental impacts from crop production to consumer disposal of product.
Resource conservation effects such as replacement of stock resources, trade impacts, crop diversification, soil erosion, water use, etc.
Expected impact on agricultural programs such as commodity subsidies, rural development, etc.
Impacts on consumers and taxpayer benefits.
Length of time to commercial impact.

*Other Considerations*

With respect to projects carried out with private researchers or commercial companies, the enabling legislative provides that information submitted by applicants incident thereto will be kept confidential. Project information including applications is specifically excluded from release under the Freedom of Information Act, except with the approval of the person providing the information or in a judicial or administrative proceeding in which such information is subject to protective order. However, the information will be reviewed by three selected outside reviewers who will be held to confidentiality. Board members are required to excluded themselves from consideration of a proposal where a conflict of interest exists.

Intellectual property rights, such as patents and licenses, shall remain with the owner unless other arrangements are negotiated as part of the agreement. Inventions made under an award under this Program shall be owned by the awardee in accordance with 35 U.S.C. 200–204 and 37 CFR 401.

No grant or cooperative agreement may be entered into under the program for the acquisition or construction of a building or facility.

All applicants must file a declaration of compliance with 31 U.S.C. 1352 regarding limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions either prior to or simultaneous with the submission.

Due to limited funds, the AARC Center may not be able to fund all projects meriting support and awards will be based on merit using the review evaluations and the Board's judgement.

Applicants who submitted a proposal or pre-proposal last year must reapply to be considered for fiscal year 1994 fufiding.

*Future Proposals*

In the future and until further notice, the AARC Center Board will accept proposals or pre-proposals at any time on AARC Center forms. The Board will meet at least twice a year to select proposals for funding.

*Submissions*

To be eligible for the next round of AARC Center Board decisions, both pre-proposals and full proposals must be received at the AARC Center office by 3 p.m. on August 31, 1993. One of the following addresses should be used, as applicable:

*Regular U.S. Mail*
USDA AARC Center, Cotton Annex, 2nd Fl Mez, 14th & Independence Ave, SW., Washington, DC 20250–0400.
*Overnight Delivery*
USDA AARC Center, Cotton Annex, room 2M07, 12th & C St., SW., Washington, DC 20250–0400.

*For More Information*

Proposals must be submitted on forms provided by the AARC Center—either pre-proposals or full proposals. Contact the AARC Center by letter using the addresses above or FAX number 202–401–6068 to receive a packet containing the instructions and forms.

Specific questions (but not requests for forms) should be directed to Patricia Dunn: Phone 202–401–4173.

Done at Washington, DC, on June 2, 1993.
**Paul F. O'Connell,**
*Director, AARC Center.*
[FR Doc. 93–13420 Filed 6–7–93; 8:45 am]
BILLING CODE 3410–2B–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee will be convened at 3:30 p.m. and adjourn at 7 p.m. on Monday, June 28, 1993, in the Adirondack Room of the Conference Center at the Econo Lodge, 1076 Williston Road, South Burlington 05403. The purposes of the meeting are to discuss the status of "Campus Tensions in Vermont: Searching for Solutions in the Nineties," a draft report on campus tensions based on a February 10, 1991, factfinding meeting that had mainly involved speakers from the University of Vermont and Middlebury College, and the selection of a new project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Samuel B. Hand, 802–656–3180, 4489, or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 1, 1993.
**Carol-Lee Hurley,**
*Chief, Regional Programs Coordination Unit.*
[FR Doc. 93–13368 Filed 6–7–93; 8:45 am]
BILLING CODE 6335–01–P

### Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will be held from 10:30 a.m. until 1 p.m. on Saturday, June 26, 1993, at the Days Inn Motel, 400 W. F Street, Casper, Wyoming 82601. The purpose of the meeting is to discuss current issues, review the Committee's current project, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Oralia G. Mercado or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 1, 1993.
**Carol-Lee Hurley,**
*Chief, Regional Programs Coordination Unit.*
[FR Doc. 93–13367 Filed 6–7–93; 8:45 am]
BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–504]**

### Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On November 29, 1991, the Department of Commerce published in the **Federal Register** (56 FR 60967) the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico. The review covers two manufacturers/exporters of this merchandise to the United States and the period December 1, 1988 through November 30, 1989.

Based on our analysis of the comments received and the corrections of certain clerical and computer program errors, we have changed the preliminary results. The final margins are listed below in the section "Final Results of Review."

**EFFECTIVE DATE:** June 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lorenza Olivas or Rick Herring, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

#### Background

On November 29, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 60967) the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico for the period December 1, 1988 through November 30, 1989 (52 FR 43415; December 2, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

#### Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the forgoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7323.94.00. Kitchenware currently entering under HTS item number 7323.94.00.30 is not subject to the order. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers two manufacturers/exporters, Acero Porcelanizado, S.A. de C.V. (APSA), and CINSA, S.A. de C.V. (respondents), of Mexican porcelain-on-steel cooking ware.

#### Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of both respondents and petitioner, we held a hearing on January 13, 1992. We received comments and rebuttals from both respondents and petitioner, General Housewares Corporation (GHC).

*Comment 1:* GHC notes that the preliminary results of this review erroneously state that "[k]itchenware currently entering under HTS item number 7323.94.00.10 is not subject to the order." GHC points out that HTS item number 7323.94.00.10 covers "teakettles," which are within the scope of the order. It is HTS item number 7323.94.00.30 which covers "kitchen ware," the merchandise outside the scope of the order. GHC requests that the Department either omit any mention of kitchenware in the scope of the final results or list the appropriate HTS number corresponding to kitchenware.

*Department's Position:* We agree with petitioner and have revised our scope section to reflect the fact that

kitchenware currently entering under HTS item number 7323.94.00.30 is not subject to the order.

*Comment 2:* GHC objects to the Department's dismissal of its earlier fictitious sales allegation and renews its assertion that both respondents have made fictitious sales in the home market within the meaning of section 773(a)(1) and (5) of the Act. In support of its allegation, GHC has resubmitted an analysis alleging that some home market sales of certain items also sold in the United States were either made at prices below their cost of production (COP) or at prices where the average gross returns (e.g., the net price to cost ratio) during the review period was significantly lower than the average gross return of items not sold in the United States.

According to GHC, these differences demonstrate that the pricing structure in the home market for items which are sold in the United States is different from the pricing structure for the items which are not sold in the United States.

GHC contends that it has satisfied the requirements of section 773(a)(5) of the Act; that in its initial fictitious market allegation, GHC submitted information on price movements using data from its 1985 petition. While the products from the petition are not the principal items now sold in the United States, GHC claims they do provide evidence of a movement in prices since the original investigation. GHC contends that it is unreasonable for the Department to require it to provide additional data because GHC is prohibited from using proprietary data that it has received under protective order during the prior review periods.

GHC further maintains that if the Department determines that the information submitted by GHC does not establish that respondents made fictitious market sales, the Department should conduct its own price movement analysis since it has data from the original investigation through the third administrative review to conduct a more detailed analysis of respondents' pricing of home market and United States sales.

Alternatively, if the Department determines that respondents have not created a fictitious market within the meaning of section 773(a)(5), GHC contends that the Department should nonetheless determine that respondents have created a fictitious market pursuant to section 773(a)(1), which authorizes the Department to disregard home market sales if any sale or offer for sale influences the creation of a fictitious market. Petitioner cites *PQ Corp.* v. *United States*, 11 CIT 53, 57, 652 F. Supp. 724, 729 (1987), where the court recognized that pursuant to section 773(a)(1), "[t]he fictitious market analysis prevents parties from manipulating dumping margins by * * * offering merchandise at a price that does not reflect its actual market price."

Respondents, on the other hand, contend that the Department properly rejected petitioner's fictitious market allegation because petitioner failed to provide adequate evidence of different price movements in conjunction with section 773(a)(5). Petitioner's allegation was limited to an analysis of the value of certain identical merchandise sold in both the U.S. and home markets, and a cost analysis comparing this merchandise with non-identical merchandise sold in high volumes in the home market. Respondents further allege that petitioner did not address the pricing activity which is necessary to establish evidence of a fictitious market; petitioner merely submitted a comparison of prices of certain home market items referenced in the 1985 petition, now low-volume items in the United States, with the 1989 sales prices of the same items. This information, which respondents maintain should be disregarded, fails to demonstrate divergent price movements that may evidence establishment of a fictitious market as required by statute.

Respondents further contend that there is no basis for the Department to determine that respondents created a fictitious market pursuant to section 773(a)(1), which authorizes the Department to disregard pretended sales or offers for sale intended to establish a fictitious market. Respondents point out that in *PQ Corp.*, cited by GHC, the court explained that the fictitious market provision "* * * prevents parties from manipulating dumping margins by either setting up pretended sales or offering merchandise at a price that does not reflect its actual market price." Petitioner has failed to provide information that establishes that the reported sales were pretended or otherwise not *bona fide* arms length transactions pursuant to section 773(a)(1).

*Department's Position:* We disagree with petitioner's contention that the Department should accept its fictitious market allegation under section 773(a)(5). We originally rejected that allegation for the reasons stated in the preliminary results of this administrative review. We do not believe petitioner presented any evidence of price movements within the meaning of the law that create reasonable suspicion that fictitious sales may have occurred.

A central argument of petitioner is that the home market prices of merchandise used in the sales comparisons vary from those of similar merchandise sold in the home market that were not used in the sales comparisons. In order for price differences to serve as a basis for initiating a fictitious sales inquiry, however, the Department must have sufficient evidence to believe or suspect that there have been different movements in the prices at which different forms of the subject merchandise have been sold in the home market and that such movements appear to reduce the amount by which foreign market value (FMV) exceeds the U.S. price of the merchandise. 19 U.S.C. 1677(b)(a)(5). See Cyanuric Acid and its Chlorinated Derivatives from Japan; Final Results of Antidumping Duty Administrative Review (55 FR 1690, 1691; January 18, 1990) and Final Results of Antidumping Duty Administrative Review; Tubeless Steel Disc Wheels from Brazil (56 FR 14033; April 5, 1991). In this case, however, petitioner has not presented any evidence showing that prices of home market merchandise identical to the U.S. merchandise have decreased while prices of home market merchandise not sold in the United States have increased or even any basis to suggest that such price movements may have occurred. Petitioner only provided a comparison of average "gross returns" for the review period. There was no attempt to demonstrate, or even allege, that the selling prices of the two forms of merchandise changed over the period reviewed and appeared to reduce dumping margins as specified in section 773(a)(5). The only evidence furnished by petitioner in that regard merely indicated that home market sales prices corresponding to low-volume models sold in the United States have decreased between the time the petition was filed in 1985 and the present review period. This evidence does not warrant further inquiry under section 773(a)(5).

We also disagree with petitioner's assertion that we should accept the allegation by the petitioner that the home market sales or offers by APSA and CINSA were "pretended" or "intended to establish" a fictitious market within the meaning of section 773(a)(1). No information submitted by petitioner and no other information in the record provides any indication that home market sales prices were other than actual market prices.

Petitioner supports its allegation with a broad statement that almost all of the home market sales of merchandise identical to that sold in the United

States were below COP, while sales of non-identical merchandise were not. In response to that assertion, we obtained relevant cost information and have eliminated the relevant home market sales that were made below the COP. Where insufficient above-cost home market sales of identical models remained, we compared U.S. sales to constructed value, and home market sales prices were not relied upon for price-to-price comparisons. Where sufficient home market sales of identical models were at prices above the COP, we relied on them for price-to-price comparisons. Thus, to the extent that petitioner has credibly raised concerns cognizable under the law, they have been taken into account in reaching our final results.

Moreover, whether or not a sale is below COP is no indication of whether the sale is "real" or whether the sale was representative of the actual market price of the merchandise. The existence of below-cost sales does not even indicate that such sales are other than real. Petitioner has not provided any evidence indicating that the differences in gross returns between the various types of cookware sold in the home market were due to anything other than variations in prices based on normal market demand and differences in the COP for each type of merchandise. Neither has petitioner provided any evidence to suggest that the actual market prices of the subject models of cooking ware were other than as reported by respondents. *See PQ Corp.* v. *United States*, 652 F. Supp. at 729. In *PQ Corp.*, the court held that, in the absence of any evidence that the sales in question are anything less than *bona fide* arm's length transactions, the fictitious market provision does not apply. *See id.*

To the contrary, respondents point out that both companies make two general styles of the subject product: one style designed to appeal to tastes in the U.S. market, the other tailored to traditional Mexican preferences. The overwhelming majority of sales in each market is of the style preferred in that market. This unrebutted assertion is a credible explanation of the pricing differences noted by petitioner, and in no way suggests that any of the sales in question were "pretended" or "intended to establish a fictitious market." For all of the above reasons, the Department had no basis upon which to initiate a formal fictitious sales inquiry.

*Comment 3:* GHC argues that the Department should not use the weighted-average margin of all sales as the best information available (BIA) for those sales in which respondent failed to provide data. For items 10510 and 11294, CINSA provided no home market sales, COP, constructed value (CV), or similar merchandise and variable cost data. GHC contends that even if CINSA had no home market sales of these two items during the review period, the appropriate BIA is the highest margin calculated for this review period. To support its argument for using an adverse BIA, petitioner cites Certain Stainless Steel Cooking Ware From the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 38114–15; August 12, 1991), where the Department used the highest margin found on any U.S. sale as BIA.

CINSA responds that petitioner's argument should be rejected for two reasons. First, item 10510, which was inadvertently included in its report of sales to the United States, is outside the scope of the review. Second, item 11294 is a two-piece set. While CINSA did not sell that identical set in the home market, respondent provided in its questionnaire response both sales and cost information on an individual basis under two different item numbers. Respondent's failure to specifically identify the items that should be used for comparison does not warrant the suggested BIA.

*Department's Position:* We disagree with petitioner. CINSA responded to all requests for supplemental information made by the Department. However, the Department sometimes encounters a situation where a respondent, through no fault of its own, has not provided the Department with certain information needed to calculate accurate dumping margins. Where such an error creates a very minor gap in the administrative record, the Department uses "other information" as a reasonable surrogate to bridge this minor gap. Not to be confused with "best information available," the Department derives the authority to use surrogate information under such circumstances from its own inherent authority to administer the U.S. antidumping law in a fair and equitable manner. The Department considers the weighted-average margin derived from this vast pool of sales to be a reasonable rate to apply to the unmatched sales. Therefore, to bridge this minor gap in this case, we are applying the weighted-average margin for item 11294. As for item 10510, since we established from the evidence on the record prior to the preliminary results that it is not within the scope of the review (See Department's position on Comment 8), the question of BIA is moot.

*Comment 4:* GHC objects to the Department's use of related party sales made at prices below the average net prices of the unrelated home market sales in calculating FMV. Citing *Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany* (56 FR 18992; May 3, 1989), GHC notes that the Department's standard practice for determining whether prices charged to related customers are "comparable" to prices charged to unrelated customers is to examine the net prices charged to both customer categories on a product-by-product basis. Using CINSA's sales reported in its questionnaire response, GHC submitted an analysis of CINSA's sales to related and unrelated parties which shows that some sales to related parties were made at net prices less than the average net price to unrelated parties for identical products.

CINSA submits that GHC's argument has no merit. CINSA notes that GHC's argument appears to have been based on a comparison of simple averages rather than weighted-averages. According to CINSA, analysis of the information contained in its sales tape using weighted-average analysis reveals that significantly more than fifty percent of CINSA's sales to related parties were made at prices higher than sales prices of the identical items to unrelated customers. Since sales to related parties are comparable to sales to unrelated parties, with the majority of sales prices to related parties being higher than sales prices to unrelated parties, CINSA submits that the Department should reject petitioner's argument.

*Department's Position:* We agree with petitioner that we incorrectly included sales to related parties without first determining whether related customers were, on average, charged prices comparable to the prices charged to unrelated customers. For purposes of determining whether sales to related parties were made at arm's length, we compared net prices of identical merchandise only charged to related and unrelated parties. These prices are net of discounts, rebates, commissions, and credit expenses. We then compared the weighted-average price to related customers to the weighted-average price to unrelated customers to determine whether prices were at arm's length. In our final results, our analysis of the prices charged by CINSA on related and unrelated party sales demonstrated that prices on sales of identical merchandise were comparable. Therefore, for CINSA, we used related and unrelated party sales in our calculation of FMV.

Although petitioner did not question the use of sales to related parties by APSA, we also conducted an arm's length test on that firm's related party sales. Our analysis of the prices charged on related and unrelated party sales demonstrated that prices were comparable. Therefore, we did not exclude related party sales.

*Comment 5:* CINSA claims that the Department improperly deducted discounts, rebates, inland insurance and freight in calculating the net home market sales price to which COP was compared. CINSA alleges that the deduction of these expenses was improper because the costs associated with such accounts were already included in CINSA's calculation of selling expenses reported for COP.

*Department's Position:* We agree that the Department inadvertently deducted rebates, invoice discounts and prompt payment discounts from the reported home market sales prices and have corrected these errors for the final results. However, we do not agree that inland freight and insurance were improperly deducted. From the information submitted, we were unable to ascertain whether such accounts were included in CINSA's calculation of selling expenses; thus, there is no clear evidence that double counting occurred.

*Comment 6:* CINSA contends that the Department's computer program does not account for interest income earned on certain U.S. sales, which CINSA claims should have been added to U.S. price. Instead, the computer program added interest income to FMV.

*Department's Position:* In comparing purchase price to FMV, we make circumstance of sales adjustment to the FMV, not to U.S. price. We do note, however, that we inadvertently added, instead of subtracted, interest income credit in calculating FMV. We have corrected this error in our final results.

*Comment 7:* CINSA contends that the Department should use the official daily exchange rates published by the Mexican Government, rather than monthly exchange rates provided by the International Monetary Fund (IMF), to convert Mexican pesos into U.S. dollars. Because the peso underwent a daily devaluation against the U.S. dollar during the review period, the Mexican government's daily exchange rates more closely reflect the actual exchange rates used by CINSA in making its pricing decisions during the review period. CINSA further contends that the use of a monthly average exchange rate unfairly increases the margins on the sales comparisons. Moreover, according to CINSA, the CIT has rejected the Department's findings of less than fair value where margins resulted solely from the use of average exchange rates when no margin would result if the Department used exchange rates prevailing at the time of the transaction in question (*citing Luciano Pisoni Fabbrica Accessori Instrumenti Musicali* v. *United States,* 10 CIT 242, 640 F.Supp. 255, 260 (1986). Therefore, the Department must adjust its methodology to prevent margins resulting solely from a factor beyond the control of the exporters (*citing Pisoni*) and *Melamine Chemical, Inc.* v. *United States,* 732 F. 2d 924, 933 (1984)).

Finally, CINSA argues that, since the exporters have no way of knowing what exchange rates will be published by the IMF after the date of sale to the United States, the Department's use of this rate unfairly punishes Mexican exporters for events beyond their control; namely, the failure of the United States Federal Reserve System to publish quarterly exchange rates for the Mexican peso.

GHC responds that the Department correctly used the average monthly exchange rates published by the IMF consistent with the previous administrative review and dismisses CINSA's claim that the use of the monthly exchange rate unfairly increases the margin in the fair value comparisons (*citing Final Results of Antidumping Duty Administrative Review; Porcelain-on-Steel Cooking Ware From Mexico,* (55 FR 21061; May 22, 1990)).

GHC also notes that CINSA's reliance on *Luciano Pisoni* is misplaced. In that case, the plaintiff demonstrated that use of quarterly rates on its home market sales was the sole cause of the dumping margin. The court held that "the purpose of the antidumping laws would be violated if Commerce found a dumping margin based on the use of quarterly rates, while no margin would result if Commerce were to use the rates prevailing at the time of transactions." 640 F. Supp. at 261.

*Department's Position:* We agree with petitioner. In the case of Mexico, we have consistently used the average monthly exchange rates published by the IMF as a reasonable surrogate for the certified Federal Reserve exchange rates because the Federal Reserve does not certify an exchange rate for Mexico. See Final Determination of Sales at Less Than Fair Value: Certain Steel Pails from Mexico (55 FR 12245; April 2, 1990), Certain Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review (55 FR 12696; April 2, 1990) and Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review (55 FR 21061; May 22, 1990).

Furthermore, CINSA's reliance on *Luciano Pisoni* and *Melamine Chemical* is misplaced because these cases involved the application of the "special rule" contained in 19 CFR 353.60(b) which is explicitly limited to application in less than fair value investigations, not administrative reviews. It is the Department's view that sufficient flexibility exists under the law in determining "fair value" in investigations to permit application of the "special rule" in the narrow circumstances therein defined, but that no discretion exists in determining "foreign market value" in reviews under section 751 of the Act to make currency conversions other than as specified in 31 U.S.C. section 5151. As a matter of policy, the Department believes that the limited flexibility set forth in the regulations is warranted in initial investigations for circumstances essentially beyond the control of exporters and importers unaccustomed to the disciplines and rules of the antidumping law. Such flexibility would be inappropriate in the administration of an antidumping duty order, under which exporters and importers are, or must be presumed to be, on notice that changes in exchange rates can and will affect their antidumping duty liability. Therefore, these parties can be expected to set their prices accordingly. See Final Results of Antidumping Duty Administrative Reviews: Portable Electric Typewriters from Japan (56 FR 56393, 56396; November 4, 1991) (citing *Toho Titanium Co.* v. *United States,* 743 F. Supp. 888 (CIT 1990)).

The Department also does not believe that changes in currency exchange rates are, or can be, an appropriate basis for adjustments for differences in circumstances of sale except in extraordinary cases, such as in hyperinflationary economies. See *Budd Co.,* v. *United States,* 746 F. Supp. 1093, 1099–1100 (CIT 1990). Unlike the situation that the Department faced in *Budd* with respect to existing hyperinflation in Brazil, the Mexican economy was not hyperinflationary during the review period.

*Comment 8:* CINSA states that it inadvertently included in its U.S. sales tape information concerning item 10510, a cream pitcher, which is outside the scope of the antidumping duty order. CINSA notes that a cream pitcher is an item of kitchenware, or tableware. This proper classification as tableware is apparent from the U.S. price lists provided in CINSA's sales response. CINSA requests that the Department

exclude item 10510 from its margin analysis.

GHC disputes CINSA's claim that item 10510 is not within the scope of the review. GHC contends that the description of item 10510 indicates that the item is a vessel that could be used to heat food, such as milk, butter, syrup, etc. GHC further claims that there is no documentation in the record showing that U.S. Customs classifies this item as kitchenware not subject to review and, therefore, there is no justification to exclude this item from the scope of the review. Petitioner, therefore, adheres to its contention that the sale of this item should be given the highest margin determined in the final calculation in this review.

*Department's Position:* We disagree with petitioner. In considering whether a particular product is within the class or kind of merchandise described in the scope of an existing order, we look primarily at the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the International Trade Commission (ITC) and the Department. 19 CFR 353.29(i)(1) (1991). When we cannot render a scope determination based upon these criteria, we evaluate four additional criteria: (1) The physical characteristics of the merchandise; (2) the expectations of the ultimate purchaser; (3) the ultimate use of the merchandise; and (4) the channels of trade in which the merchandise moves. 19 CFR 353.29(i)(2). These criteria are generally referred to as the Diversified Products criteria. See *Diversified Products* v. *United States*, 572 F. Supp. 887, 888 (CIT 1983); Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, et al.: Final Results of Antidumping Duty Administrative Review (56 FR 31692, 31696; July 11, 1991).

For this reason, we disagree with GHC that the Department should rely primarily on U.S. Customs classification documentation in reaching our scope determination. It is well established that tariff classification numbers and Customs classification rulings possess no precedential value in scope determinations rendered by the Department. See Antifriction Bearings (56 FR 31692, 31697; July 11, 1991) (*citing Royal Business Machines* v. *United States*, 507 F. Supp. 1007, 1014, n. 18 (CIT 1980), *aff'd*, 669 F. 2d 692 (Fed. Cir. 1982)). As articulated by the court in *Royal*, "[t]he court distinguishes between the authority of the Customs Service to classify according to tariff classifications (19 USC 1500) and the power of the agencies administering the antidumping law to determine a class or kind of merchandise." *Id. See also Roquette Freres* v. *United States*, 583 F. Supp. 599, 605 (CIT 1984).

In this case, we found the description of the subject merchandise contained in the relevant antidumping duty order, the final determinations of the Department and the ITC, and the petition to be dispositive. The ITC's determination provided the following product description for porcelain-on-steel cooking ware from Mexico, the People's Republic of China (PRC), and Taiwan:

> Porcelain-on-steel cooking ware are articles of porcelain-coated steel used as receptacles in the cooking and heating of food. Related items of porcelain-coated steel used only to handle or process food, *i.e.*, porcelain-on-steel kitchenware, such as mixing bowls and colanders, are not included.

Similarly, the Department's final determination and subsequent administrative review results state:

> [T]he products covered by this investigation are porcelain-on-steel cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the forgoing are constructed of steel and are enameled or glazed with vitreous glasses * * *. Kitchenware, * * * is not subject to the order * * *.

Moreover, the cream pitcher at issue in this case is illustrated in a product brochure that we have incorporated into this record, filed as Exhibit 5 in the public version of CINSA's fourth review sales response, and is listed in CINSA's price list of tableware. The list includes cream pitchers among other kitchenware items, such as sugar bowls, spoons, plates and colanders, which are products clearly excluded from the scope of the antidumping duty order.

Finally, we note that our scope determination in this case is consistent with a recent scope determination involving porcelain-on-steel cooking ware from the PRC. See Clarification of the Scope of the Antidumping Duty Order on Porcelain-on-Steel Cooking Ware from the PRC, dated January 30, 1991. In the above scope ruling, the Department determined that:

> * * * the small basin, medium basin, large basin, small colander, 8" bowl, 6" bowl, mugs, ash tray, napkin rings, utensil holder and utensils, ladle, *cream & sugar*, and mixing bowls (properly considered kitchen ware) are not within the scope of the order (emphasis added).

For the above reasons, we determine that item 10510 is not within the scope of the order and have excluded it from the review.

*Comment 9:* CINSA argues that the Department erred in calculating financial expenses based upon the consolidated financial statements of CINSA's parent company, Grupo Industrial Saltillo (GIS). CINSA maintains that, because GIS is not directly involved in any of CINSA's production or sales activities concerning the subject merchandise, attributing GIS' financial expenses to the subject merchandise would be inappropriate as such expenses are attributable to the production and sale of a wide range of products other than the class or kind of merchandise under review. CINSA states that section 773 of the Act requires that CV of merchandise subject to review be calculated in a manner that reflects the expenses attributable to the class or kind of merchandise under consideration. Since CINSA is the manufacturer, seller, shipper and exporter of the subject merchandise, CINSA maintains that only the financial expense borne directly by the company itself may be used to calculate COP and CV.

Petitioner contends that the Department correctly calculated the financial expenses for CINSA's COP and CV using the financial expenses incurred by GIS. As evidence of the Department's standard practice of calculating interest expense using the financing costs incurred for the operations of the consolidated corporate entity, petitioner cites *Final Results of Antidumping Duty Administrative Review; Television Receivers, Monochrome and Color, from Japan (Television Receivers from Japan)* (56 FR 56189, 56192; November 1, 1991) and *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Various Countries (Antifriction Bearings)* (54 FR 18992, 19074–75; May 3, 1989). Petitioner maintains that because both debt and equity of any particular subsidiary can be manipulated by its parent, it would be inappropriate to base the calculation of interest expense on the financing costs reported by an individual subsidiary.

*Department's Position:* We agree with petitioner. CINSA's argument ignores the fact that GIS owns over 50 percent of CINSA's capital stock, and thus, because of its controlling interest, has the power to decide the composition of CINSA's capital structure (*i.e.*, to what extent CINSA will be financed by debt and equity). In rejecting CINSA's claim that the Department should accept CINSA's financing expense calculation, we followed our well-established practice of deriving net financing costs

based on the borrowing experience of the consolidated group of companies. See *Antifriction Bearings* (54 FR 18992, 19074–75); *Television Receivers from Japan* (56 FR 34180, 34184; July 26, 1991); and *Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong (Sweaters)* (55 FR 30743; July 27, 1990).

*Comment 10:* CINSA argues that even if the Department continues to use GIS' data rather than CINSA's (See Comment 9), the Department must use such expenses in a manner consistent with the statute and the Department's administrative precedent. CINSA asserts that if the Department considers both short-term and long-term interest expense as related to the production of the subject merchandise then the Department must similarly offset reported interest expense with both short-term and long-term interest income. Even if the Department continues to limit the offset to interest expense with only short-term interest income, the Department must recalculate GIS' financial expense so as to take into account GIS' short-term interest income. GIS' balance sheet clearly establishes that virtually all of the reported interest income is derived from short-term assets and, therefore, should be included as an offset to interest expense. At a minimum, the Department should revise its calculation to include the same portion of the gain reported as "Financial Products" as current assets compared to long-term assets as reported in GIS' financial statements. CINSA cites *Television Receivers from Japan* (56 FR 5392, 5394; February 11, 1991) as precedent for the Department estimating the percentage of interest income earned on short-term assets. Moreover, in the public version of the verification report of the fourth administrative review in this matter, which encompassed the period December 1989–November 1990, the Department verified GIS' financial data contained in the 1988–1989 financial statement. In the verification report, the Department stated that it verified that all of GIS' reported income was short-term.

The petitioner contends that the Department has followed its standard practice of only allowing interest income earned from short-term investment of the company's working capital to offset interest expense (*citing Television Receivers from Japan* (56 FR at 56189, 56192; November 1, 1991) and *Antifriction Bearings* (54 FR at 19074–75)). Additionally, petitioner argues that it was appropriate for the Department to deny an offset for interest income because CINSA failed to provide any information from which the Department could determine whether the amounts CINSA reported for interest income included any interest income on short-term investments (citing *Antifriction Bearings* (54 FR at 19074–75) and *Final Determination of Sales at Less Than Fair Value: Certain All-Terrain Vehicles From Japan* (54 FR 4864–65; January 31, 1989)).

Finally, petitioner claims that in its preliminary results, the Department inexplicably included amounts for "products from dollar deposits" as an interest income offset to financial expenses. Petitioner asserts that there is no explanation on the record of the nature of the income that is included in "products from dollar deposits." Consistent with its practice, the Department should exclude these amounts from the calculation of the adjustment to CINSA's financial expenses.

*Department's Position:* We agree with petitioner that we should not allow long-term interest income to offset total interest expense. Consistent with the Department's past practice in deriving net financial costs, interest income earned from investments other than short-term investments of the company's working capital are not included as an offset to interest expense. The Department considers interest income earned from long-term investments to be the result of an income-producing activity that is separate from the company's manufacturing operations. See Television Receivers from Japan (56 FR 56189, 56192; November 1, 1991).

We agree with CINSA, however, that the Department should revise its calculation of GIS' net financial expenses and offset interest expense with an estimate of short-term interest income generated from the investment of working capital. Although CINSA did not provide an exact breakdown of its consolidated short- and long-term interest income, the composition of the assets reported on GIS' consolidated balance sheet indicate that a large portion of its assets involve short-term investments of working capital. As the best information available, we estimated short-term interest income by multiplying the consolidated group's total interest income by the ratio of the group's short-term invested assets, including any "dollar deposits" to the balance of its total invested assets. See Television Receivers from Japan (56 FR 34180, 34184; July 26, 1991) and Television Receivers from Japan (56 FR 5392, 5394; February 11, 1991).

*Comment 11:* APSA argues that the preliminary results grossly overstated the volume and value of home market sales made at prices less than the COP by comparing net home market prices, calculated exclusive of indirect sales taxes (IVA) in Mexico, with COP values that included IVA. Moreover, for all U.S. sales compared to CV, the Department failed to increase the U.S. price to reflect IVA as required by section 772(d)(1)(C) of the Act. For the final results, U.S. price (for both export sales price and purchase price) must be adjusted to include IVA for comparison with CV.

Petitioner claims that APSA does not provide a justification for increasing home market and U.S. prices for IVA and asserts that IVA should be treated as any other costs incurred to obtain materials to produce the subject merchandise. The record does not contain a copy of the Mexican law which requires the collection of IVA on raw material inputs, and there is also no documentation on the record that APSA was later reimbursed for the IVA paid on the raw material inputs upon the sale of the finished product. Even if the Department determines to offset home market and U.S. prices by IVA paid to produce the merchandise, APSA's proposed methodology would overstate the offset. The IVA on the raw materials used to produce each cooking ware item is obviously much lower than 15 percent of the price of the finished cooking ware item. Petitioner holds that if the Department determines that IVA included in COP and CV must be offset, a legitimate means of doing so without overstating the amount would be to add the actual amount reported in the IVA field for the COP and CV of each item to the home market price and U.S. price when making a particular comparison.

*Department Position:* We agree with APSA that the preliminary results overstated the volume and value of home market sales below cost because we compared home market prices, calculated exclusive of IVA, with COP values that included IVA. Moreover, for the purposes of the final results, we have determined that it is inappropriate to include IVA in COP because APSA has certified that such costs were reimbursed in full by the ultimate consumer of the finished product. Thus, any taxes paid on inputs would have been offset by the amount of value-added taxes received from the sale of the merchandise in the home market. Accordingly, we have compared home market sales with COP, exclusive of IVA.

Consistent with section 773(e)(1)(A), we have excluded IVA from our

calculation of CV, where there was no suitable match in the home market for sales comparison purposes. We compared U.S. price to CV, exclusive of IVA, for the purpose of these final results.

In addition, in our price-to-price comparisons for both CINSA and APSA, we have followed the March 19, 1993 decision of the United States Court of Appeals for the Federal Circuit which affirmed the decision in *Zenith Electronics Corp.* v. *United Stated (Zenith Electronics* v. *United States),* Appeals 92–1043, –1044, –1045, 1046 (Fed. Cir. March 19, 1993). The court affirmed that section 772(d)(1)(C) of the Act provides for an addition to U.S. price to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice and will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to the U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to U.S. price, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to U.S. price.

Furthermore, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated U.S. prices net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and we will begin the rulemaking process as soon as possible.

*Comment 12*: APSA argues that the Department incorrectly adjusted APSA's COP and CV by including the costs associated with the shutdown of its predecessor, TRES. APSA claims that the shutdown of the TRES operation resulted in extraordinary expenses of a one-time nature which were not related to either production or sale of the subject merchandise. These expenses, such as employee severance and seniority payments, were made only as a direct result of the cessation of production, rather than from the production of the subject merchandise.

APSA maintains that section 773(e)(1)(A) directs the Department to calculate CV in a manner that would "ordinarily permit the production of that particular merchandise in the ordinary course of business," and that section 773(b)(2) directs the Department to calculate the COP of such or similar merchandise and disregard sales that were "not made at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade."

ASPA submits that the Department's approach in the preliminary results of the review to these extraordinary expenses is contrary to its own administrative practice. According to APSA, the Department has recognized that extraordinary costs, *i.e.*, costs that are unusual in nature, infrequent in occurrence and unrelated to the production of the subject merchandise, should not be included in the calculation of COP or CV *(citing Toho Titanium Co. Ltd.* v. *United States,* 12 CIT, 758, 693 F. Supp. 1191 (1988); *Sweaters from Korea* (55 FR 32659; August 10, 1990); *Final Determination of Sales at Less Than Fair Value: Carbon Steel Structural Shapes from Norway* (50 FR 42975–76; October 23, 1985); and *Final Determination of Sales at Less Than Fair Value: Color Television Receivers from Taiwan* (49 FR 7628; March 1, 1984).

ASPA also maintains that, normally, the Department examines each expense that is claimed as an extraordinary loss on an individual basis, and decides whether to include specific items in the COP calculation based on the nature of the expense (*citing Television Receivers from Japan* (56 FR 5392; February 11, 1991)). However, in this case, the Department simply classified these expenses as a "production rationalization program" and, without any further analysis of the claimed expenses, refused to make any adjustments. APSA contends that the shutdown was infrequent in occurrence and a one-time event in the corporate history of TRES and is not an expected event for APSA's porcelain-on-steel cookware operations. Although a shutdown of operations may be an expected business occurrence within the context of a country's economy as a whole, the shutdown of the total operations of a corporate entity, as experienced by TRES, was an extraordinary event in the environment in which the company operated. Finally, the expenses associated with the shutdown of TRES were clearly unrelated to the production of the subject merchandise because the mandatory severance and seniority payments were paid upon the shutdown of the TRES operation.

Petitioner claims that APSA incorrectly characterized the closing of TRES as an event totally isolated from the activities of its parent, Grupo Vitro, and the opening of APSA. The Department correctly viewed the closing of TRES and the opening of APSA as a single continuous action taken by Grupo Vitro. The Department also correctly reasoned that Grupo Vitro's action did not constitute an extraordinary event, but rather, a common production rationalization program. The Department noted that Grupo Vitro made this same characterization in its 1989 annual report. Specifically, Grupo Vitro stated that "[N]owadays, it is essential to update production and marketing strategies in order to compete effectively in world markets. Therefore, it was considered appropriate to close TRES * * * and open APSA * * * which has the characteristics required to compete in the domestic and foreign markets." Additionally, under U.S. Generally Accepted Accounting Principles (GAAP), particularly, Accounting Principles Board (APB) Opinion No. 30 and Accounting Interpretations of APB Opinion No. 30, this type of activity is not considered unusual in nature, but rather, constitutes "customary and continuing business activities." Paragraph 17 of the Accounting Interpretations of APB Opinion No. 30 addresses the example of a textile manufacturer with only one plant that moves to another location. The company "has not relocated a plant in twenty years and has no plans to do so in the foreseeable future. Notwithstanding the infrequency of occurrence of the event as it relates to this particular company, moving from only one location to another is a consequence of customary and continuing business activities, some of which are finding more favorable labor markets, more modern facilities and proximity to customers and suppliers. Therefore, the criterion of unusual nature has not been met and the moving expenses should not be reported as an extraordinary item." Thus the Department correctly determined that the expenses incurred to close TRES must be included in APSA's COP and CV.

*Department's Position:* We agree with petitioner and have not adjusted the preliminary results with regard to TRES's shutdown costs. The Department has reviewed the submitted data relevant to the modernization of the porcelain-on-steel cooking ware manufacturing operations and has concluded that the related costs were

necessary for the continuous production of the subject merchandise during the review period.

In March 1989, Grupo Vitro's Board of Directors reported to its shareholders that it had decided to update its production strategies in order to compete effectively in international markets. To accomplish this goal as it relates to the manufacturing of porcelain-on-steel cooking ware, Grupo Vitro decided to close TRES during the month of March 1989 and open APSA. The updating entailed changing the legal name for the porcelain-on-steel manufacturing operation, adding new equipment and changing the work force. The production of the merchandise continued in the same factory with only minor interruption, using essentially the same production equipment. Even though Grupo Vitro's management decided to terminate the work force and update equipment in one action instead of over a period of time, the costs incurred for this update are considered by the Department to be costs necessary for the continuous production of the merchandise under review.

We note that even APSA and its auditors did not consider the event to be extraordinary in accordance with Mexican GAAP. Furthermore, costs incurred for an event considered to be both unusual in nature and infrequent in occurrence but which may be required for the continuous production of the merchandise would not necessarily be excluded from COP. In fact, in determining whether sales below cost exist in accordance with section 773(b)(2), the administering authority must determine whether sales "made at less than the cost of production * * * are not at prices which permit the recovery of *all costs* within a reasonable period of time in the normal course of trade. * * *" *Id.* (emphasis added). For all of the above reasons, we have not excluded the costs that APSA incurred for updating porcelain-on-steel cooking ware production capabilities from COP.

APSA misrelies on several cases in an effort to support its argument that APSA's modernization costs constitute extraordinary costs and that such costs should be excluded from COP and CV. In one of the cases cited by APSA, for example, the Department excluded prepaid expenses that, in no way, could have benefitted production during the period of investigation (*e.g.*, prepaid consumption taxes and prepaid insurance). See *Toho Titanium*, 693 F. Supp. at 1192–1193. Thus, the situation in *Toho Titanium* directly contrasts with the situation presented here, where APSA incurred the shutdown costs just to maintain continuous production during the review period. Moreover, APSA overlooks the fact that in *Toho Titanium*, the Department did include retirement benefits for officers of the corporation that were expensed during the review period in COP, along with allegedly excessive labor costs associated with the start-up of a new production facility. See *Titanium Sponge from Japan: Final Determination of Sales at Less Than Fair Value* (49 FR 38687, 38690–91; October 1, 1984).

Similarly, APSA misrelies on *Sweaters from Korea* (55 FR 32659, 32671; August 10, 1990), where the Department considered the payment of debt principal in that case to constitute a return of capital, not an expense of current operations, let alone an extraordinary expense. APSA also overlooks the fact that the Department did include the interest expense which Hanil paid during the year associated with the debt. *Id.* Also, in the same determination, the Department refused to treat the expenses incurred during a labor strike as extraordinary expenses and, therefore, included such expenses in COP. *Id.* at 32669. *Carbon Steel Structural Shapes from Norway* (50 FR 42975, 42977; October 23, 1985) is equally uninstructive here because the Department no longer follows its position in that case where the Department determined that the write-down of fixed assets is not a current cost but an "extraordinary" charge which is unrelated to assets used for the production of the product under investigation. Rather, our current practice is stated in *Titanium Sponge from Japan; Final Results of Antidumping Duty Administrative Review* (52 FR 4797, 4798; February 17, 1987), where the Department included the write-off of titanium sponge production equipment in COP because such expenses are directly related to the production of the subject merchandise and not unusual in nature, or infrequent in occurrence, despite the company's classification of such expenses as extraordinary in its income statement.

APSA's reliance on *Color Television Receivers from Taiwan* (49 FR 7628, 7635–36; March 1, 1984), likewise, is inappropriate. In that determination, the Department found that high air freight costs were not extraordinary because they occasionally occur and are not highly unusual and adjusted U.S. price accordingly. Thus, as demonstrated above, none of the cases cited by APSA warrant exclusion of the shut-down costs from COP.

Finally, APSA's claim that the Department did not examine the nature of each expense in deciding whether to include or exclude the expense is not accurate. The Department reviewed the submitted data, and, taking into account the brief explanation provided by APSA, concluded that the costs were ordinary in nature.

*Comment 13:* APSA asserts that for the final results, the Department should accept APSA's capitalization of start-up costs and amortization of such costs over a ten-year period, rather than include these costs in the current review period. APSA explains that the start-up of APSA resulted in extraordinary expenses of a one-time nature which, although related to production of the subject merchandise, benefitted both the production of merchandise in the period subject to review as well as future periods. APSA argues that it is the Department's stated policy to normalize production costs by "amortizing start-up costs over future production." APSA cites *Oil Country Tubular Goods from Canada: Final Determination of Sales At Less Than Fair Value* (51 FR 15029, 15032; (1986)); *IPSCO Inv.* v. *United States*, 12 CIT 384, 687 F. Supp. 633, 638–39 (1988); and *Toho Titanium Co., Ltd*, v. *United States*, 12 CIT 758, 693 F. Supp. 1192–3 (1988). Moreover, although the company recognized these costs in the year in which they occurred, expenses such as the purchase of new equipment, management and consulting fees, and the expenses associated with the recruitment and training of a new work force, benefit both present and future production and therefore qualify for normal amortization treatment. APSA also argues that the Department's claim that the production of porcelain-on-steel cooking ware is not a new line of business ignores the fact that APSA is a new company. Finally, APSA asserts that the Court of International Trade has reversed the Department's determinations not to amortize certain start-up costs that were incurred by ongoing concerns. (*See Daewoo Electronics Co., Ltd.* v. *United States*, 13 CIT _____, 712 F. Supp. 931, 942 (1989), *Toho Titanium Co., Ltd.* v. *United States*, 693 F. Supp. at 1193.)

Petitioner claims that the Department correctly determined that certain costs incurred by Grupo Vitro on behalf of APSA should not be amortized as start-up costs. Petitioner explains that the Department has not taken the position in this review that costs of an ongoing concern cannot be amortized, nor that start-up costs should not be amortized. Petitioner contends that the Department's position is that the costs incurred for continuing production of a pre-existing product line are not start-up costs that should be amortized.

*Department's Position:* We agree with the petitioner and have not adjusted the preliminary results pertaining to the alleged start-up costs. Concerning APSA's claim for the amortization of start-up costs, the Department does amortize start-up expenses when such costs are clearly related to start-up. In this case, APSA did not present the Department with evidence that the costs, as claimed, were related to start-up and not simply a result of low demand and/or low production.

The respondent claimed that it had incurred "extraordinary recruitment expenses related to the hiring and training of a new work force" and "also incurred extraordinary start-up costs related to the acquisition of new equipment and machinery." APSA reported that nearly all of these expenses were salaries and wages, fringe benefits, depreciation and utilities. A relatively small percentage of the costs were classified as "Other." There was no evidence, however, of expenses incurred for the acquisition of new equipment, management and consulting fees, and the expenses associated with the recruitment and training of a new work force. Additionally, any costs incurred to purchase new equipment would have been depreciated over the useful life of the machine, and, thus, not expensed in the current year. Finally, the testimony in the public hearing indicated that the company was operating in the same facility as the predecessor and that the product line remained the same. See Hearing Transcript at 67.

*Comment 14:* APSA claims that the Department incorrectly adjusted interest expenses so as to include financial expenses related solely to nonproduction-related investment activities. APSA further submits that the inclusion of interest expenses attributable solely to the consolidated entity's investment activities is improper and such an adjustment is contrary to the Department's administrative precedent. In *Sweaters from Korea* (55 FR 32659, 32662; August 10, 1990), the Department reduced total interest expense incurred by the company under investigation by the portion of interest expense attributable solely to the nonproduction investment activity of the company.

Petitioner argues that Grupo Vitro's interest expense is a general expense and does not relate to any particular line of business. Petitioner also asserts that even if the Department allocated interest expense between production and investment activities, APSA has failed to demonstrate that it had any actual investment activities. According to petitioner, APSA claims, without any supporting documentation, that the amount reported for "Share in net income of associated companies" is from investment activities.

Because Grupo Vitro shares in the net income of these associated companies, the income should be included as part of Grupo Vitro's overall operating income. Thus, the Department correctly rejected APSA's claimed interest expense allocation.

*Department's Position:* We agree with APSA and have made an adjustment to interest expense for the final results. The adjustment reduces total interest expense for that portion attributable solely to the nonproduction-related investment activity of the company. See *id.* Contrary to petitioner's assertion, Grupo Vitro's financial statements do indicate that they have actual investment activities. Grupo Vitro owns less than 50 percent of the shares of their associated companies and, as noted in the footnotes to their financial statements, these companies are considered to be permanent investments. Thus, due to the fungible nature of capital financing, the Department recognizes that the investment activity of Grupo Vitro incurs interest expense.

*Comment 15:* APSA argues that the Department's computer program used to implement the adjustments to APSA's COP for shutdown and start-up costs contains an error that overstates APSA's COP beyond the intended adjustment.

Petitioner claims that APSA's amortized expenses were not overstated.

*Department's Position:* We agree with APSA, but not for the reasons stated in its comment. The shut-down costs excluded by APSA and the costs amortized for purposes of the submission were classified by APSA as "Other Costs," rather than "Cost of Sales," on the income statement. Thus, the Department should not have applied the percentage adjustment to the sum of cost of manufacturing as well as the amortized portion of APSA's deferred costs. Therefore, for the final results, we applied the adjustment to the cost of manufacturing only. Also, we applied any general expenses computed as a ratio of the cost of sales to the submitted cost of manufacturing and not the adjusted cost of manufacturing.

*Comment 16:* APSA points out that it incorrectly identified the length of the unit price column on home market sales in its tape file layout description. APSA's file layout stated that the unit price column consisted of a field of five digits and two decimal places when, in fact, it contained six digits and two decimals. Consequently, for some items, the first digit (representing a hundred thousand pesos) was dropped from the printout. APSA requests that the Department correct the field length instructions.

GHC contends that respondent is attempting to submit new factual information. Therefore, the Department should reject APSA's untimely factual submission. If the Department were to change the unit price and recalculate the cost of production, it should recalculate all other adjustments on the basis of the unit price.

*Department's Position:* We agree with APSA. We examined the computer program and determined that APSA had incorrectly formatted the sales tape submitted to the Department. However, because the unit price is a calculated value based on fields of information already contained in the tape that was submitted with the response, we have not accepted new information, as alleged by GHC. Thus, in these final results, we have expanded the unit price in the home market sales tape to the correct field length and used the corrected unit price to recalculate all other adjustments.

**Final Results of the Review**

As a result of our review, we determine the margins to be:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| APSA ..... | 12/01/88–11/30/89 .. | 8.75 |
| CINSA ..... | 12/01/88–11/30/89 .. | 1.94 |

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair value

investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 8.75 percent. This rate represents the highest rate for any firm with shipments in this administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act, as amended (19 U.S.C. 1675(a)(1)), and 19 CFR 353.22.

Dated: June 1, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–13469 Filed 6–7–93; 8:45 am]

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[C–535–001]

## Cotton Shop Towels From Pakistan; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the countervailing duty order on cotton shop towels from Pakistan for the period January 1, 1991 through December 31, 1991. As the Government of Pakistan did not respond to our questionnaire, we have preliminarily determined to use the best information otherwise available for cash deposit and assessment purposes. Accordingly, we preliminarily determine the total net subsidy to be 12.46 percent *ad valorem* for all firms for the period under review. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** June 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Stroup or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 5, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 7910) a notice of "Opportunity to Request Administrative Review" of the countervailing duty order on cotton shop towels from Pakistan (49 FR 8974; March 9, 1984). On March 31, 1992, Milliken & Company, Inc., a U.S. producer of the subject merchandise and the petitioner in the orignial investigation, requested an administrative review of the order. We published the initiation on April 13, 1992 (57 FR 12797). The Department is now conducting that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act"). The Department published the final results of the last administrative review on April 10, 1992 (57 FR 12475).

### Scope of Review

Imports covered by the review are shipments of Pakistani cotton shop towels. During the review period, such merchandise was classifiable under item number 6307.10.20 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purpose. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991 and five programs.

### Best Information Available

On August 31, 1992, the Government of Pakistan ("GOP") requested a two-month extension to submit a response to the Department's countervailing duty questionnaire. On September 3, 1992, the Department granted a three-week extension until September 21, 1992. However, no response was received by the Department.

Therefore, pursuant to section 776(c) of the Act (19 U.S.C. 1677e(c)), which states that the Department may use the best information otherwise available ("BIA") whenever a party refuses or is unable to produce the information requested in a timely manner, we have preliminarily determined that BIA is the appropriate basis for determining cash deposit and assessment rates for this administrative review.

Commerce has broad discretion under the Act to select a BIA rate. In selecting the information to use as BIA, § 355.37(b) of the Department's regulations states, in pertinent part: "If an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take that into account in determining what is the best information available" (19 CFR 355.37(b) (1992)).

In light of respondent's failure to respond to our request for information during the review, and consistent with the Department's past practice, we have preliminarily determined that BIA in this proceeding is the highest individual rate found, either in the investigation or in a subsequent administrative review, for each of the five programs which have been previously found to be providing countervailable benefits. *See, Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Singapore; Preliminary Results of Countervailing Duty Administrative Review*, (57 FR 4987; February 11, 1992); *Preliminary Affirmative Countervailing Duty Determination: Certain Steel Products from Mexico*, 57 FR 57813; December 7, 1992); and *Cotton Shop Towels from Pakistan; Initiation of and Preliminary Results of Administrative Review of Countervailing Duty Order* (50 FR 39744; September 30, 1985). We have selected these rates on a program-by-program basis as discussed below.

### Analysis of Programs

*(1) Export Financing*

This program was found countervailable in the investigation (*see Final Affirmative Countervailing Duty Determination; Cotton Shop Towels from Pakistan* (49 FR 1408; January 11, 1984), and *Countervailing Duty Order; Cotton Shop Towels from Pakistan* (49 FR 8974; March 9, 1984), hereinafter "the investigation"), and in all subsequent reviews because it provides loans only to exporters at preferential rates.

The highest rate found for this program was 5.50 percent *ad valorem*; this rate was found in the administrative

review covering the period October 27, 1983 through March 31, 1984 (*see, Cotton Shop Towels from Pakistan; Initiation of and Preliminary Results of Administrative Review* (50 FR 39744; September 30, 1985) and, *Cotton Shop Towels from Pakistan; Final Results of Administrative Review of Countervailing Duty Order* (51 FR 5219; February 12, 1986)). Accordingly, we preliminarily determine the benefit from this program to be 5.50 percent *ad valorem* for the period January 1, 1991 through December 31, 1991.

*(2) Excise Tax, Sales Tax and Customs Duty Rebate Programs*

Benefits from the excise tax and sales tax rebates were found countervailable in the investigation and in all subsequent reviews because the reports covering the calculations of the values of the rebates showed that the GOP used information from a very limited number of companies in calculating the incidence of indirect taxes on the merchandise, and because the reports did not show the required linkage between the rebates given and the indirect tax incidence. Benefits under the customs duty drawback program were found countervailable because the GOP paid this rebate on items not physically incorporated into the exported product.

The highest rates for the above program thus far were in the investigation where it was determined that the excise tax rebate was 3.80 percent; the sales tax rebate 0.11 percent; and the customs duty rebate 0.37 percent. Accordingly, we preliminarily determine the benefit from these rebates to be 4.28 percent *ad valorem* for the period under review.

*(3) Income Tax Reductions*

This program was found countervailable in the investigation and in all subsequent reviews because receipt of this benefit was based solely on export performance.

The highest rate found for this program was 1.88 percent; this rate was found in the review period January 1, 1985 through December 31, 1985. *See, Cotton Shop Towels from Pakistan; Preliminary Results of Countervailing Duty Administrative Review* (53 FR 34340; September 6, 1988) and *Cotton Shop Towels from Pakistan; Final Results of Countervailing Duty Administrative Review* (54 FR 14671; April 12, 1989). Accordingly, we preliminarily determine the benefit from this program to be 1.88 percent *ad valorem* for the period of review.

*(4) Import Duty Rebate*

This program was determined not to be used in the investigation and in the first and second administrative reviews. We found this program to be used and to be countervailable in the third administrative review (*see, Cotton Shop Towels from Pakistan; Preliminary Results of Countervailing Duty Administrative Review* (53 FR 34340; September 6, 1988) and *Cotton Shop Towels from Pakistan; Final Results of Countervailing Duty Administrative Review* (54 FR 14671; April 12, 1989)) because equipment used to manufacture shop towels is not physically incorporated into the finished product, as specified by item (i) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade.

The highest benefit received under this program, 0.000028 percent *ad valorem*, was also found in the third administrative review, which covered the period January 1, 1985 through December 31, 1985. Accordingly, we preliminarily determine the benefit from this program to be 0.000028 percent *ad valorem* for the period of review.

*(5) Export Credit Insurance*

This program was found countervailable in the investigation and in all subsequent reviews because the premiums charged were insufficient to cover the long term operating costs of the program.

In the investigation, the Department found that the program conferred a benefit of 0.80 percent *ad valorem* to exports of the subject merchandise, which is the highest rate ever determined for this program. Accordingly, we preliminarily determine the benefit under this program to be 0.80 percent *ad valorem* during the review period.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine the total bounty or grant to be 12.46 percent *ad valorem* for the period January 1, 1991 through December 31, 1991.

Therefore, as provided by section 751(a)(1) of the Act, the Department intends to instruct the Customs Service to assess countervailing duties of 12.46 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1991 and on or before December 31, 1991.

The Department also intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 12.46 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held within seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38(c) are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case and rebuttal brief.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Dated: June 1, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–13468 Filed 6–7–93; 8:45 am]

BILLING CODE 3510–DS–P

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## National Institute of Standards and Technology

### Notice of Prospective Grant of Exclusive Patent License

This is to notify the public that the National Institute of Standards and Technology (NIST) intends to grant an exclusive world-wide license to Public Key Partners of Sunnyvale, California to practice the invention embodied in U.S. Patent Application No. 07/736,451 and entitled "Digital Signature Algorithm." A PCT application has been filed. The

rights in the invention have been assigned to the United States of America.

The prospective license is a cross-license which would resolve a patent dispute with Public Key Partners and includes the right to sublicense. Notice of availability of this invention for licensing was waived because it was determined that expeditious granting of such license will best serve the interest of the Federal Government and the public. Public Key Partners has provided NIST with the materials contained in Appendix A as part of their proposal to NIST.

Inquiries, comments, and other materials relating to the prospective license shall be submitted to Michael R. Rubin, Acting Chief Counsel for Technology, Room A–1111, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland 20899. His telephone number is (301) 975–2803. Applications for a license filed in response to this notice will be treated as objections to the grant of the prospective license. Only written comments and/or applications for a license which are received by NIST within sixty (60) days for the publication of this notice will be considered.

The prospective license will be granted unless, within sixty (60) days of this notice, NIST receives written evidence and argument which established that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Dated: June 2, 1993.

**Raymond G. Kammer,**

*Acting Director, National Institute of Standards and Technology.*

**Appendix "A"**

The National Institute for Standards and Technology ("NIST") has announced its intention to grant Public Key Partners ("PKP") sublicensing rights to NIST's pending patent application on the Digital Signature Algorithm ("DSA").

Subject to NIST's grant of this license, PKP is pleased to declare its support for the proposed Federal Information Processing Standard for Digital Signatures (the "DSS") and the pending availability of licenses to practice the DSA. In addition to the DSA, licenses to practice digital signatures will be offered by PKP under the following patents:

| | |
|---|---|
| Cryptographic Apparatus and Method ("Diffie-Hellman"). | No. 4,200,770 |
| Public Key Cryptographic Apparatus and Method ("Hellman-Merkle"). | No. 4,218,582 |
| Exponential Cryptographic Apparatus and Method ("Hellman-Pohlig"). | No. 4,424,414 |
| Method For Identifying Subscribers And For Generating And Verifying Electronic Signatures In A Data Exchange System ("Schnorr"). | No. 4,995,082 |

It is PKP's intent to make practice of the DSA royalty free for personal, non-commercial and U.S. Federal, state and local government use. As explained below, only those parties who enjoy commercial benefit from making or selling products, or certifying digital signatures, will be required to pay royalties to practice the DSA.

PKP will also grant a license to practice key management, at no additional fee, for the integrated circuits which will implement both the DSA and the anticipated Federal Information Processing Standard for the "key escrow" system announced by President Clinton on April 16, 1993.

Having stated these intentions, PKP now takes this opportunity to publish its guidelines for granting uniform licenses to all parties having a commercial interest in practicing this technology:

First, no party will be denied a license for any reason other than the following:

(i) Failure to meet its payment obligations,

(ii) Outstanding claims of infringement, or

(iii) Previous termination due to material breach.

Second, licenses will be granted for any embodiment sold by the licensee or made for its use, whether for final products software, or components such as integrated circuits and boards, and regardless of the licensee's channel of distribution. Provided the requisite royalties have been paid by the seller on the enabling component(s), no further royalties will be owned by the buyer for making or selling the final product which incorporates such components.

Third, the practice of digital signatures in accordance with the DSS may be licensed separately from any other technical art covered by PKP's patents.

Fourth, PKP's royalty rates for the right to make or sell products, subject to uniform minimum fees, will be no more than 2½% for hardware products and 5% for software, with the royalty rate further declining to 1% on any portion of the product price exceeding $1,000. These royalty rates apply only to non-infringing parties and will be uniform without regard to whether the licensed product creates digital signatures, verifies digital signatures or performs both.

Fifth, for the next three (3) years, all commercial services which certify a signature's authenticity for a fee may be operated royalty free. Thereafter, all providers of such commercial certification services shall pay a royalty to PKP of $1.00 per certificate for each year the certificate is valid.

Sixth, provided the foregoing royalties are paid on such products or services, all other practice of the DSA shall be royalty free.

Seventh, PKP invites all of its existing licensees, at their option, to exchange their current licenses for the standard license now offered for DSA.

Finally, PKP will mediate the concerns of any party regarding the availability of PKP's licenses for the DSA with designated representatives of NIST and PKP. For copies of PKP's license terms, contact Michael R. Rubin, Acting Chief Counsel for Technology, NIST, or Public Key Partners.

Dated: June 2, 1993.

Robert B. Fougner, Esq.,

*Director of Licensing, Public Key Partners, 310 North Mary Avenue, Sunnyvale, CA 94086.*

[FR Doc. 93–13473 Filed 6–7–93; 8:45 am]

BILLING CODE 3510–13–M

## National Oceanic and Atmospheric Administration

### Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Notice.

The Gulf of Mexico Fishery Management Council (Council) will hold a public meeting of its Mackerel Management Committee at the Sheraton Brickell Point Hotel, 495 Brickell Avenue, Miami, FL; telephone: (305) 373–6000. The meeting will be held from 9:30 a.m. until 5 p.m. on June 14, 1993, and from 8:30 a.m. until 12 noon on June 15, 1993. The agenda is as follows:

The meeting will attempt to resolve problems in the commercial Gulf migratory group king mackerel fishery. Commercial fishermen in the Florida Keys took a larger share of the commercial quota than usual in 1992–1993, partly as a result of a court ruling which voided Florida's king mackerel trip landing limit regulations.

The Council has requested emergency relief to allocate by area for the 1993–1994 season. The Council's Mackerel Management Committee will seek comments from the various groups of fishermen to reach a long-term equitable

distribution in the Florida fishery in a proposed amendment to the Fishery Management Plan for Coastal Migratory Pelagics. The Committee will develop recommendations for later presentation to the Council.

For more information contact Terrance R. Leary, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: June 2, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–13422 Filed 6–7–93; 8:45 am]

BILLING CODE 3510–22–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Change in Name of Visa Issuing Institution and Color of Export Visa Form for Certain Textile and Apparel Products Produced or Manufactured in Sri Lanka

June 2, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs permitting a change in the institution authorizing visas and providing for the use of an export visa form printed on light green security paper.

**EFFECTIVE DATE:** June 4, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the Democratic Socialist Republic of Sri Lanka has notified the U.S. Government that one of the two institutions (currently Board of Investment of Sri Lanka and Ministry of Textile Industries) authorized to issue visas for textile and apparel products exported from Sri Lanka has changed its name from "Ministry of Textile Industries" to "Ministry of Handlooms and Textile Industries."

Effective on June 4, 1993, goods produced or manufactured in Sri Lanka and exported prior to July 1, 1993 may be accompanied by a visa issued by the "Ministry of Handlooms and Textile Industries." Effective on July 1, 1993, goods produced or manufactured in Sri Lanka and exported from Sri Lanka on and after July 1, 1993 must be accompanied by a visa issued by either the "Board of Investment of Sri Lanka" or the "Ministry of Handlooms and Textile Industries."

Also effective on July 1, 1993, the Government of the Democratic Socialist Republic of Sri Lanka will begin issuing an export visa form in which the original copy of the form is printed on light green security paper. The light green, serially numbered export visa form replaces the dark green form currently in use.

Textile products which are produced or manufactured in Sri Lanka and exported from Sri Lanka during the period July 1, 1993 through August 31, 1993 may be accompanied by export visa forms printed on either the light green or dark green paper. Goods exported from Sri Lanka on and after September 1, 1993 must be accompanied by an export visa form printed on the light green paper.

See 53 FR 34573, published on September 7, 1988.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

June 2, 1993.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 1, 1988, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes export visa requirements for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka.

Effective on June 4, 1993, you are directed to amend further the directive dated September 1, 1988 to permit entry into the United States for consumption and withdrawal from warehouse for consumption of textile and apparel products, produced or manufactured in Sri Lanka and exported from Sri Lanka prior to July 1, 1993 which are accompanied by a visa stamp with the designation "Ministry of Handlooms and Textile Industries" (formerly "Ministry of Textile Industries"). Visas issued by the "Board of Investment of Sri Lanka," the other authorizing institution, will continue to be accepted.

Effective on July 1, 1993, goods produced or manufactured in Sri Lanka and exported from Sri Lanka on and after July 1, 1993 must be accompanied by a visa issued by either the "Board of Investment of Sri Lanka" or the "Ministry of Handlooms and Textile Industries."

Also effective on July 1, 1993, you are directed to provide for the use of an export visa form issued by the Government of the Democratic Socialist Republic of Sri Lanka in which the original copy of the serially numbered visa form is printed on light green security paper. This serially numbered light green form replaces the dark green form currently being used.

Textile products produced or manufactured in Sri Lanka and exported from Sri Lanka during the period July 1, 1993 through August 31, 1993 shall be permitted entry if accompanied by a visa form printed on either the serially numbered light green paper, or the dark green paper. Merchandise exported from Sri Lanka after August 31, 1993 must be accompanied by an export visa form issued by the Government of the Democratic Socialist Republic of Sri Lanka which is printed on the serially numbered light green security paper.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–13467 Filed 6–7–93; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Intent To Prepare an Environmental Impact Statement for the Disposition of Red Butte Dam, Near Salt Lake City, UT

**AGENCY:** Department of Defense, Department of the Army.

**ACTION:** Notice of intent.

**SUMMARY:** This Notice of Intent is for the preparation of an Environmental Impact Statement (EIS) for the disposal of Red Butte Dam, located in a Forest Service Natural Area near the University of Utah. It is no longer needed to supply domestic water to facilities formerly comprising the military installation called Fort Douglas. The Army must determine the impacts of various alternatives for disposing of the dam to include the "No Action" alternative. All reasonable alternatives will be analyzed on an equal basis.

Issues to be addressed in the EIS include, but are not limited to, flood protection provided by the dam, water rights, the affect on threatened or endangered species, disposition of the

silt impounded by the dam, and future ownership of the facility. The current alternatives are:

a. No action—the U.S. Army to continue to operate the dam in its present condition.

b. Rehabilitation of the dam and transfer of the facility to another party/agency.

c. Partial removal of the dam and use of the lowered dam as a debris detention basin, and transfer of the facility to another party/agency.

*Scoping:* Individuals or organizations may participate in the scoping workshop to be held July 1993 in Salt Lake City (exact date, time and location to be determined, will be distributed via local media).

**ADDRESSES:** Written comments may be sent to Commander, U.S. Army Engineer District, Sacramento, ATTN: CESPK–ED–M (Mr. Wandell Carlton), 1325 J Street, Sacramento, CA 95814–2922, no later than 15 days following the public scoping workshop.

**FOR FURTHER INFORMATION CONTACT:** Verbal comments and questions regarding this proposal may be directed to Mr. Wandell Carlton, Sacramento District, Corps of Engineers at (916) 557–7424.

**Gregory D. Showalter,**

*Alternate Army Federal Register Liaison Officer.*

[FR Doc. 93–13445 Filed 6–7–93; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0082]**

### Clearance Request for Economic Purchase Quantities—Supplies

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000–0082).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Economic Purchase Quantities—Supplies.

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The provision at 52.207–4, Economic Purchase Quantities—Supplies, invites offerors to state an opinion on whether the quantity of supplies on which bids, proposals, or quotes are requested in solicitations is economically advantageous to the Government. Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to (1) recommend an economic purchase quantity, showing a recommended unit and total price, and (2) identify the different quantity points where significant price breaks occur. This information is required by Public Law 98–577 and Public Law 98–525.

**B. Annual Reporting Burden**

Public reporting burden for this collection of information is estimated to average 50 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 2,252; responses per respondent, 35; total annual responses, 78,820; preparation hours per response, 83; and total response burden hours, 65,421.

**OBTAINING COPIES OF PROPOSALS:** Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0082, Economic Purchase Quantities—Supplies, in all correspondence.

Dated: June 1, 1993.

**Beverly Fayson,**

*FAR Secretariat.*

[FR Doc. 93–13444 Filed 6–7–93; 8:45 am]

**BILLING CODE 6820–34–M**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0083]**

### Clearance Request for Qualification Requirements

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000–0083).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Qualification Requirements.

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified. The solicitation at FAR 52.209–1, Qualification Requirements, requires offerors who have met the qualifications requirements to identify the offeror's name, the manufacturer's name, source's name, the item name, the service identification, and test number (to the extent known).

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1 is included in the solicitation. The offeror must insert the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known). Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

**B. Annual Reporting Burden**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 7,882; responses per respondent, 100; total annual responses, 788,200; preparation hours per response, .25; and total response burden hours, 197,050.

**OBTAINING COPIES OF PROPOSALS:** Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0083, Qualification Requirements, in all correspondence.

Dated: June 2, 1993.

**Beverly Fayson,**

*FAR Secretariat.*

[FR Doc. 93–13449 Filed 6–7–93; 8:45 am]

BILLING CODE 6820–34–M

## Department of the Navy

### Navy Exchange System Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Navy Exchange System Advisory Committee will meet June 23, 1993, in the Mayflower Hotel, Washington DC. The meeting will commence at 9:00 a.m. and will be closed to the public because it is likely to relate solely to internal agency personnel rules and practices; may disclose confidential commercial or financial information; and may involve information which, if disclosed prematurely, would be likely to significantly frustrate implementation of a proposed agency action. The Secretary of the Navy has therefore determined, in writing, that the public interest requires the meeting be closed to the public because is will be concerned with matters listed in section 552b(c)(2),(4) and (9) (B) of title 10, United States Code.

For further information concerning this meeting, please contact: Captain Roger J. Blood, SC, USN, Naval Supply Systems Command (SUP 09B), 1931 Jefferson Davis Highway, Room 508, Arlington, VA 22241-5360, Telephone Number: (703) 607-0072.

Dated: May 28, 1993.

**Michael P. Rummel**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 93–13442 Filed 6–7–93; 8:45 am]

BILLING CODE 3810–AE–F

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

**[Recommendation 93–3]**

### Improving DOE Technical Capability in Defense Nuclear Facilities Programs

**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 Improving DOE Technical Capability in Defense Nuclear Facilities Programs. The Board requests public comments on this recommendation.

**DATES:** Comments, data, views, or arguments concerning this recommendation are due on or before July 8, 1993.

**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: June 3, 1993.

**John T. Conway,**

*Chairman.*

### Improving DOE Technical Capability in Defense Nuclear Facilities Programs

Dated: June 1, 1993.

Effective functioning of any organization, whether in the private sector or government, is highly dependent upon the capabilities of people and the way they are guided and deployed. Nowhere is this dependency more crucial than in the Department of Energy's (DOE) defense nuclear complex, where the potential hazards inherent in nuclear materials production, processing, and manufacturing require high quality technical expertise to assure public and worker safety.

Nuclear weapons development and production have progressed over the years from early efforts of a small group of highly talented, ingenious individuals in scientific laboratories to employment of thousands of workers in industrial-type production environments. While the national response to today's changing international scene is resulting in downsizing of the nuclear stockpile and a change in mission of many of the defense nuclear facilities, the need remains for continuing vigilance to protect public and worker health and safety. In fact, a case can be made for the need for greater vigilance now throughout the weapons complex because of: increased risk of equipment mishaps in aged facilities, loss of existing technical expertise through attrition and downsizing, and a reduced inclination for young engineers and scientists to get involved in the nuclear weapons field.

Nevertheless, the level of scientific and technical expertise in the DOE of defense nuclear facilities and operations has been declining. The Defense Nuclear Facilities Safety Board in its last three annual reports has observed that:

> * * * the most important and far-reaching problem affecting the safety of DOE defense nuclear facilities is the difficulty in attracting and retaining personnel who are adequately qualified by technical education and experience to provide the kind of management, direction, and guidance essential to safe operation of DOE's defense nuclear facilities.

The Board has not been alone in calling attention to the problem. Congressional perception of the need to upgrade DOE technical expertise is evident in the Board's enabling legislation. The need for such upgrading is further underscored by assessments made by a number of other groups over the past decade, as the attached excerpts from their reports indicate.

A reputation for technical excellence is a strong attraction for talented individuals. Organizations with strong technical missions commonly cite technical excellence as a goal towards which management should strive. However, sustained leadership emphasis and deliberate actions are required if the reality of technical excellence is to be achieved.

Actions by the Board, such as recommendations and public hearings, have resulted in some efforts on the part of certain DOE organizations and M & O contractors to upgrade existing staff and recruit better qualified personnel. However, such efforts have not been coordinated DOE-wide and have been well short of the need. The Board believes that a more aggressive, broad-

based, and well-coordinated program directed at the enhancement of the technical capabilities of the DOE staff should be defined and implemented.

The Board recognizes the difficulty any ongoing organization faces in developing programs targeted at upgrading competence of staff. Such efforts rarely succeed without strong endorsement, involvement, and guidance by the organization's top management and without the impetus provided by objective appraisals made by outside, independent experts. Further, the sheer size, differing requirements, and dispersion of DOE staff complicates both the problem and the solution. Nonetheless, the strong correlation between technical excellence and assurance of public health and safety compels this Board to urge that DOE give high priority to the problem of attracting and retaining technical personnel with exceptional qualifications. More specifically the Board recommends that DOE:

1. Establish the attraction and retention of scientific and technical personnel of exceptional qualities as a primary agency-wide goal.

2. Take the following specific actions promptly in the interest of achieving this goal.

a. Seek excepted appointment authority for a selected number of key positions for engineering and scientific personnel in DOE programmatic offices, in other line units, and in the oversight units responsible for the defense nuclear complex.

b. Establish a technical personnel manager within the Office of the Secretary to coordinate recruitment, classification, training, and qualification programs for technical personnel in defense nuclear facilities programs.

3. Develop a broadly based program, giving consideration to the following:

a. DOE Internal Initiatives

(1) Develop a set of mutually supportive actions which DOE could take, within existing personnel structures, to enhance capabilities. Measures that could be considered include:

(a) Plan and execute a system for using attrition to build technical capability.

(b) Review the performance appraisal system for technical employees for its effectiveness in determining basic pay, training needs, promotions, reductions in grade, and reassignment/removal.

(c) Review and improve programs for training and assigning technical personnel. (This activity would be coordinated with actions taken, planned to be taken, in response to Board Recommendations 90–1, 91–6, 92–2, and 92–7.)

(d) Explore with the Secretary of Defense the possibility of assigning to DOE defense nuclear facilities activities a number of outstanding officers with nuclear qualifications who may now be surplus to DOD needs.

(e) Establish initiatives designed to take advantage of skills of marginal technical performers and retrain them.

(f) Expand Headquarters/Field personnel exchange programs for highly qualified junior technical staff to promote understanding of all aspects of technical issues including their resolution.

b. Independent External Assessments

(1) Use respected, independent, external organizations such as the National Research Council of the National Academy of Sciences, and the National Academy of Public Administration to assess DOE's ongoing and planned actions directed at attracting and retaining personnel with strong technical capabilities and to make recommendations for enhancements. Such assessment could include: .

(a) Government-wide and/or DOE personnel recruitment and development policies and practices that may be effective inducements to government service.

(b) Comparison of DOE methods of building a qualified technical staff with qualifications comparable to those of other government agencies with predominant technical missions.

c. DOE Internal Assessments

(1) Perform an in-depth assessment of educational and experience requirements of key positions and develop both a short-term and long-term plan for key personnel development. Such assessment could include:

(a) Identification of qualifications (education and experience) required in key positions (above GS–14) in DOE Headquarters and field organizations with responsibilities for safely carrying out the defense nuclear program.

(b) Evaluation of incumbents for their ability to meet such qualification requirements.

(c) Evaluation of current availability within DOE of fully qualified personnel to fill these positions.

(2) Develop an action plan to meet needs thus identified.

**John T. Conway,**

*Chairman.*

**Appendix—Letter to Secretary of Energy**

June 1, 1993.

The Honorable Hazel R. O'Leary,
Secretary of Energy, Washington DC 20585.

Dear Secretary O'Leary: On June 1, 1993, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 93–3 which is enclosed for your consideration. Recommendation 93–3 deals with Improving DOE Technical Capability in Defense Nuclear Facilities Programs.

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.*

Enclosure

**Reference Documents Identifying DOE Technical Personnel Problems**

*1. "A Safety Assessment of Department of Energy Nuclear Reactors," DOE/US–0005, March 1981*

An important contributing factor [to the lack of adequate attention by DOE Headquarters' organizations to the nuclear safety aspects of its reactors] is the lack of sufficient numbers of highly competent technical people in Headquarters' organizations with nuclear safety responsibilities. Field Office organizations also suffer from this lack.

*2. National Research Council Reports*

a. *"Safety Issues at the Defense Production Reactors," National Academy Press, 1987.*

The committee concludes that the Department, both a headquarters and in its field organizations, has relied almost entirely on its contractors to identify safety concerns and to recommend appropriate actions, in part because the imbalance in technical capabilities and experience between the contractors and DOE staff is of sufficient magnitude to preclude DOE from comprehensive DOE involvement in the operation of the production reactors. The committee recommends that the Department acquire and properly assign the resources and talent necessary to ensure that safe operation is being attained.

b. *"Safety Issues at the DOE Test and Research Reactors," National Academy Press, 1988.*

The suitability of the existing [DOE organizational] arrangement is undermined by the absence of adequate staff in the DOE line management who are sophisticated on safety and operational matters * * *. In effect, the system relies almost exclusively on the skills and competence of the contractors.

c. *"The Nuclear Weapons Complex: Management for Health, Safety, and the Environment," National Academy Press, 1989.*

Constant attention must be paid to the maintenance and improvement of technical capabilities. Concerted efforts are needed to recruit competent technical personnel at all levels; and DOE must maintain an environment for the retention of employees by providing challenging assignments, meaningful participation in decision making, and professional advancement. Strong training programs are necessary to build a culture in which health, safety, and environmental considerations are seen as an integral component of operations.

*3. Secretary of Energy Letter to the President, December 20, 1991*

* * * The technical knowledge and skills of many DOE managers and employees are not sufficient to do their jobs.

*4. S. Conf. Rep. No. 232 (to accompany S. 1085), 100th Cong., 1st Sess. (1987)*

The Board is expected to raise the technical expertise of the Department substantially, to assist and monitor the continued development of DOE's internal ES&H organization, and to provide independent advice to the Secretary.

*5. Advisory Committee on Nuclear Facility Safety ("Ahearne Committee") Letter to the Secretary of Energy, March 24, 1989.*

We recommend that you streamline management to make responsibilities clear, that you put knowledgeable people in line positions of responsibility, and that you give them authority. This is important for assurance of nuclear safety. Solving the DOE's problems will require upper management and operating personnel to work together closely and effectively. This will not be possible if the staff must work through buffers of people who are not technically competent.

*6. "Hazards Ahead: Managing Cleanup Worker Health and Safety at the Nuclear Weapons Complex," Office of Technology Assessment, 1993*

EM * * * lacks adequate numbers of qualified staff to develop occupational health and safety programs suited to EM line operations and has little capacity to assess contractor's performance in health and safety matters.

The DOE Office of Environment, Safety and Health (EH) does not have enough qualified staff to monitor contractor operations.

[FR Doc. 93–13462 Filed 6–7–93; 8:45 am]
BILLING CODE 6820–KD–M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before July 8, 1993.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: June 2, 1993.

**Cary Green,**

*Director, Information Resources Management Service.*

*Office of Special Education and Rehabilitative Services*

*Type of Review:* Reinstatement
*Title:* Report of Vending Facility Program
*Frequency:* Annually
*Affected Public:* State or local governments
*Reporting Burden:*
*Responses:* 51
*Burden Hours:* 739
*Recordkeeping Burden:*
*Recordkeepers:* 0
*Burden Hours:* 0
*Abstract:* This report will provide statistical and financial information to the President and Congress relating to the Randolph-Sheppard Vending Facility Program mandated by the 1974 amendments to the Randolph-Sheppard Act (Pub. L. 93–516). The data will report sales, earnings and costs of vending stands operated by blind vendors under the Vending Facility Program. It assists Federal and State agencies to insure accountability and good management of the program.

*Office of Special Education and Rehabilitative Services*

*Type of Review:* Revision
*Title:* Application for Funds—Preschool Grants Program Under Section 619 of the Individuals With Disabilities Education Act
*Frequency:* Triennially
*Affected Public:* State or local governments
*Reporting Burden:*
*Responses:* 59
*Burden Hours:* 590
*Recordkeeping Burden:*
*Recordkeepers:* 0
*Burden Hours:* 0
*Abstract:* The information will be used by ED to determine a State's eligibility for a grant under this program. The grant funds will be used to provide special education and related services to all children with disabilities age 3 through 5 years, and may provide free appropriate public education to 2-year-old children with disabilities who will reach age 3 during the school year.

[FR Doc. 93–13426 Filed 6–7–93; 8:45 am]
BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. JD93-09297T Texas-139]

### State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 2, 1993

Take notice that on May 28, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak, (Malakoff South Field), underlying Henderson County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 5 and consists of approximately 1,800 acres in portions of the following surveys:

Jacob Tator Survey—Abstract No. 756
Jose Cordova Survey—Abstract No. 131
John Ward Survey—Abstract No. 790
Joseph Rice Survey—Abstract No. 653

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93-13402 Filed 6-7-93; 8:45 am]

BILLING CODE 6717-01-M

### International Energy Agency Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of meeting.

**FOR FURTHER INFORMATION CONTACT:** Samuel M. Bradley, Acting Assistant General Counsel for International Affairs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-2900.

**SUPPLEMENTARY INFORMATION:** In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on June 15, 1993, at the headquarters of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre-Pascal, Paris, France, beginning at 9:15 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the OECD offices on that date, including a preparatory meeting among company representatives.

The Agenda for the meeting is under the control of the SEQ. It is expected that the following draft Agenda will be followed:

1. Adoption of Agenda
2. Summary Record of the 78th Meeting
3. Seventh Allocation Systems Test (AST-7)
—SEQ Report on AST-7 to the Governing Board
—Follow-up to AST-7, including proposals for updating of the Emergency Management Manual and Industry/Secretariat Operations Manual
4. Emergency Response Reviews of IEA Countries
—France
—New Zealand
—Turkey
—Preparation of Overall Report on the Emergency Response Review Cycle
5. Emergency Reserve Situation and Developments
—Emergency Reserve and Net Import Situation of IEA Countries on 1st January and on 1st April 1993
—SEQ Report to the Governing Board on the Emergency Reserve Situation of IEA Countries
—Future Emergency Reserve Requirements of IEA Countries
—Workshop on Emergency Reserve Management and Stockdraw
6. Emergency Data System and Related Questions
—The Quality of Questionnaire C Data
—Monthly Oil Statistics (MOS) to February 1993
—MOS to March 1993
—Trade Discrepancies and other Problems in MOS
—Base Period Final Consumption Q192-Q492
—Quarterly Oil Forecast
7. Main lines of SEQ Program of Work for 1994
8. Any other business

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings are open only to representatives of members of the IAB and their counsel, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, the Commission of the European Communities, and invitees of the IAB, the SEQ or the IEA.

Issued in Washington, DC, June 2, 1993.

Eric J. Fygi,

*Acting General Counsel.*

[FR Doc. 93-13464 Filed 6-7-93; 8:45 am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

[Docket No. TQ93-6-1-000]

### Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

June 2, 1993.

Take notice that on May 28, 1993, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of July 1, 1993.:

44th Revised Sheet No. 4
ALT. 44th Revised Sheet No. 4

Alabama-Tennessee states that this filing is a quarterly PGA filing which is designed to reflect the cost of gas purchased by Alabama-Tennessee from its suppliers. In addition, Alabama-Tennessee states this filing reflects Alabama-Tennessee's use of the demand cost allocation ratio, for computing the rates for jurisdictional sales customers, that was agreed upon in the settlement filed on December 29, 1992 in Docket No. TQ92-5-1, *et. al.*, which the Commission approved by letter order dated February 24, 1993.

Alabama-Tennessee further states that 44th Rev. Sheet No. 4 reflects the base tariff rates filed on May 27, 1993 in FERC Docket Nos. RP92-237 and RS92-27, *et. al.* (as shown on 1st Sub. 41st Revised Sheet No. 4 and Sub. 42nd Rev. Sheet No. 4 to be made effective on April 1, 1993 and May 1, 1993, respectively), in which Alabama-Tennessee reflected the removal of costs applicable to its merchant function pursuant to the Commission's order dated April 14, 1993 in Docket No. RS92-27. Alabama-Tennessee also states that the underlying rates are based on the Commission's order issued on May 5, 1993 in Docket No. RP92-237, *et. al.* ("May 5 Order"), in which the Commission accepted Alabama-Tennessee's March 31, 1993 motion rate filing as corrected on April 9, 1993. ALT 44th Rev. Sheet No. 4 reflects the rate accepted by the Commission in its May 5 Order, but excludes the reduction associated with the removal of the

merchant function costs. Alabama-Tennessee requested that if the Commission accepts Alabama-Tennessee's proposed 1st Sub. 41st Rev. Sheet No. 4, to be effective April 1, 1993 and Sub. 42nd Revised Sheet No. 4 to be effective May 1, 1993, that it also accept 44th Rev. Sheet No. 4 to be made effective July 1, 1993 and disregard the alternate tariff. However, if the Commission does not accept 1st Sub. 41st Rev. Sheet No. 4 and Sub. 42nd Revised Sheet No. 4 as proposed by Alabama-Tennessee, then Alabama-Tennessee requests the Commission, accept ALT 44th Rev. Sheet No. 4 to be made effective July 1, 1993.

Alabama-Tennessee has requested any waivers of the Commission's Regulations that may be necessary to permit the staff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to its customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

*Lois D. Cashell,*

*Secretary.*

[FR Doc. 93–13400 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. RP92–237–009 and RS92–27–004]**

## Alabama-Tennessee Natural Gas Co.; Proposed Change in FERC Gas Tariff

June 2, 1993.

Take notice that on May 27, 1993, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

1st Sub. 41st Rev. Sheet No. 4
1st Sub. 6th Rev. Sheet No. 4B
Sub 42nd Rev. Sheet No. 4

Alabama-Tennessee proposes that the first two tariff sheets be made effective as of April 1, 1993, and that the last tariff sheet listed be made effective as of May 1, 1993.

According to Alabama-Tennessee, these tariff sheets reflect the lower rates that will result from Alabama-Tennessee's compliance with the Commission's April 14, 1993 order issued in Docket No. RS92–27, in which the Commission directed Alabama-Tennessee to remove the merchant function costs from its rates prior to implementation of Order No. 636 on its system. Alabama-Tennessee states that these rates are based on the Commission's order issued on May 5, 1993 in Docket Nos. RP92–237, et al., in which the Commission accepted Alabama-Tennessee's March 31, 1993 motion rate filing as corrected April 9, 1993, and various purchased gas adjustment filings affecting rates that have been in effect since April 1, 1993. Alabama-Tennessee proposes to reflect the effects of the lower rates as a credit to bills rendered to its customers in the month following the Commission's acceptance of the tariff sheets submitted as part of its filing. Alabama-Tennessee has requested a waiver of § 154.22 of the Commission's regulations so that the subject tariff sheets might be made effective on less than thirty days notice. In addition, Alabama-Tennessee has requested such other waivers of the Commission's regulations as may be necessary to permit the tariff sheets to become effective as proposed.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13406 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP93–126–000]**

## Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 2, 1993.

Take notice that Algonquin Gas Transmission Company (Algonquin) on May 28, 1993, filed a limited application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), to recover certain transition costs incurred as a consequence of Algonquin's implementation of Order No. 636. Algonquin tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet, with a proposed effective date of July 1, 1993:

Original Sheet No. 94

Algonquin states that the allocation of the transition costs is set forth in its Order No. 636 compliance filing and was approved by the Commission's February 11 order in Docket No. RS92–28–000. Algonquin also states that the sole purpose of this filing is to establish the balances of certain transition costs to be recovered pursuant to the mechanism approved by the February 11 order. Algonquin requests that the Commission waive § 154.22 of the Commission's regulations to the extent necessary in order to permit this application to take effect on July 1, 1993.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions shown on Algonquin's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1993. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13407 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–365–000]

## ANR Pipeline Co.; Request Under Blanket Authorization

June 2, 1993.

Take notice that on May 28, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–365–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point under ANR's blanket certificate issued in Docket No. CP82–480–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR proposes to add a new delivery point, the Twin Lake Delivery Point, In Kalkaska County, Michigan, to provide additional firm transportation service to Michigan Consolidated Gas Company (MichCon). ANR explains that MichCon requires this delivery point to serve a new franchise area in Kalkaska County. ANR states that the service would be performed under Rate Schedule FTS–1 of its FERC Gas Tariff. ANR further states that the gas would be transported under its blanket certificate and would involve 480 dekatherms equivalent of natural gas per day.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13397 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–127–000]

## Columbia Gas Transmission Corp. Proposed Changes in FERC Gas Tariff

June 2, 1993

Take notice that Columbia Gas Transmission Corporation (Columbia) on May 28, 1993, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective July 1, 1993:

Sixth Revised Sheet No. 30B05
First Revised Sheet No. 30B06
Third Revised Sheet No. 126
Second Revised Sheet No. 177
First Revised Sheet No. 178

Columbia states that the foregoing tariff sheets set forth the procedures and proposed allocation factors for recovery of the rebilled Order Nos. 94/473 costs in compliance with the Commission's May 7, 1993 order in Docket No. RP93–102 rejecting Columbia's prior filing to recover such costs as insufficiently prospective. By this filing Columbia is seeking recovery of rebilled amounts payable to Panhandle Eastern Pipe Line Corporation (Panhandle) pursuant to a settlement approved by the Commission's order dated February 11, 1993, in Docket Nos. RP85–203–011, et al. Columbia proposes to recover the amounts over a twelve-month period. Columbia notes that the tariff sheets set forth the fixed monthly demand surcharge based on firm sales, winter service and converted firm transportation projected to be in effect at July 1, 1993. SGS customers reflect imputed demands based upon test year billing determinants in Docket No. RP92–3.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13408 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–6–2–000]

## East Tennessee Natural Gas Co. Rate Filing

June 2, 1993.

Take notice that on May 28, 1993, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirty-Seventh Revised Sheet Nos. 4 and 5, with a proposed effective date of July 1, 1993.

East Tennessee states that the purpose of the filing is to implement a Quarterly Gas Rate Adjustment to be effective for the period July 1 through September 30, 1993, pursuant to Section 21.(b) of the General Terms and Conditions of East Tennessee's FERC Gas Tariff.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13394 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–187–009]

## Florida Gas Transmission Co.; Report of Refunds

June 2, 1993.

Take notice that on May 28, 1993, Florida Gas Transmission Company (FGT) tendered for filing with the

Federal Energy Regulatory Commission (Commission) its report of refunds reflecting amounts refunded to its jurisdictional sales and transportation customers on April 30, 1993 in compliance with a Commission Order dated January 15, 1993 in Docket Nos. RP91187–000, CP91–2448–000 (Consolidated) and FA91–23–001.

FGT states that in accordance with the terms of the Commission's order FGT has refunded to each of its jurisdictional customers an amount, including interest, equal to the difference between: (1) the total payments actually made by each jurisdictional customer for services rendered to it during the period January 1, 1992 through February 28, 1992; and (2) the total payments that each customer would have made for such services if the rates paid by the customer during this period had equaled the refund rates.

FGT states that copies of the filing have been served on all parties in the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13399 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP93–129–000]**

## Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 2, 1993.

Take notice that on May 28, 1993, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets:

Forty-Second Revised Sheet No. 8
Fifteenth Revised Sheet No. 8A
Twelfth Revised Sheet No. 8B

FGT states that Section 25 of its tariff contains language that establishes a mechanism to permit recovery of transitional costs via a volumetric surcharge. The instant filing includes certain transitional costs included in the TCR Account as of April 30, 1993, and reflects a TCR surcharge for the six months commencing July 1, 1993.

FGT further states that the instant filing includes $300,000 of additional buy-out and buy-down costs. The amount is based on 75% of the $400,000 in payments made to producer suppliers in the period from October 1992 through April 1993 to buy out of or otherwise reform FGT's existing supply portfolio.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13409 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TQ93–6–34–000]**

## Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 2, 1993.

Take notice that on May 28, 1993 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective June 1, 1993:

Forty-First Revised Sheet No. 8

FGT states that the above-referenced tariff sheet is being filed to reflect an increase in FGT's cost of gas purchased from that level reflected in its last Out-of-Cycle PGA filing effective May 1, 1993 in Docket No. TQ93–5–34–000.

On April 30, 1993, FGT made a filing in its Out-of-Cycle PGA in Docket No. TQ93–5–34–000 containing a projected cost of purchased gas for the period May 1, 1993 through July 31, 1993 of $3.2247/MMBtu saturated. Subsequent to the Out-of-Cycle filing, FGT has again experienced an increase in its average cost of purchased gas to a level that now exceeds the level of purchased gas cost established in FGT's last Out-of-Cycle PGA. However, FGT is precluded from adjusting its rates under Section 15.10 (Interim Adjustment Filings) of its FERC Gas Tariff to reflect a level of gas cost that exceeds the level established in its last Out-of-Cycle PGA filing. Therefore, FGT is making the instant Out-of-Cycle PGA filing in order to reflect the increases in its cost of purchased gas to a level of $3.5226/MMBtu saturated.

FGT states that copies of the filing were mailed to all customers served under the rate schedules affected by the filing and the interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13410 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM93–4–5–000]**

## Midwestern Gas Transmission Co.; Rate Filing

June 2, 1993.

Take notice that on May 28, 1993, Midwestern Gas Transmission Company ("Midwestern"), P.O. Box 2511, Houston, Texas 77252, filed its Ninth revised Sheet No. 7 for a proposed effective date of July 1, 1993, pursuant to Article I of the Stipulation and Agreement filed by Midwestern in Docket No. RP91–78 and accepted by the Commission on July 25, 1992. Midwestern states that this filing reflects revisions in the recovery of take-or-pay and contract reformation costs billed to Midwestern by its upstream supplier, Tennessee Gas Pipeline Company (Tennessee) pursuant to Section XXX of Tennessee's general Terms and Conditions.

Midwestern further states that the revised demand surcharge amount reflects an increase over the previously effective demand surcharge amount, which was filed on December 17, 1992 in Docket No. TM93–3–5, resulting in a new proposed effective demand surcharge amount of $696,411,

including interest. The proposed new demand surcharge amount has been amortized over a twelve month period. The volumetric charge will not change.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13395 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TQ93–12–25–000]**

## Mississippi River Transmission Corp.; Rate Change Filing

June 2, 1993.

Take notice that on May 28, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing Eighty-Eighth Revised Sheet No. 4 and Forty-Seventh Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective June 1, 1993. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchased gas cost adjustment (PGA).

MRT states that Eighty-Eighth Revised Sheet No. 4 and Forty-Seventh Revised Sheet No. 4.1 reflect a decrease of 13.36 cents per MMBtu in the commodity cost of purchased gas from PGA rates contained in the annual filing to be effective June 1, 1993 in Docket No. TA93–1–25–000. MRT also states that since the April 1, 1993 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been served on all of MRT's jurisdictional sales customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13398 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP93–351–000]**

## Moraine Pipeline Co. and Natural Gas Pipeline Co. of America; Application

June 2, 1993.

Take notice that on May 20, 1993, Moraine Pipeline Company (Moraine) and Natural Gas Pipeline Company of America (Natural), jointly referred to as applicants, both of which are located at 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP93–351–000 a joint application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, and subparts A and E of part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, as follows: (1) Moraine requests permission to abandon its part 284 blanket certificate issued in Docket No. CP86–492–000 and its facilities authorized in Docket No. CP86–494–000; and (2) Natural requests the issuance of a certificate of public convenience and necessity authorizing the acquisition and operation by Natural of the facilities and service obligations of Moraine all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Following receipt of such authorizations, Moraine would cease to exist as a separate corporate entity and would no longer be a natural gas company subject to the Commission's jurisdiction.

The purpose of this joint application is to provide a more efficient means for Moraine's customers to obtain transportation (and, potentially, storage) services. Moraine and Natural state that efficiency will be achieved by lessening the administrative burden for customers of Moraine, as well as pipeline personnel, and by potentially facilitating customers obtaining the flexibility of new "no-notice" transportation and storage service on Natural.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 23, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.20). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13405 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TQ93–7–16–000, TM93–5–16–000]**

## National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

June 2, 1993.

Take notice that on May 28, 1993, National Fuel Gas Supply Corporation ("National") tendered for filing the following revised tariff sheet as part of

its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on July 1, 1993:

Thirty-Fifth Revised Sheet No. 5

National states that the filing is being made to implement quarterly: (a) Purchased Gas Adjustment (PGA), and (b) Transportation and Compression Cost Adjustment (TCCA), rate changes. National's revised demand and commodity rates are $10.19 per Dt and 299.62 cents per Dt respectively.

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13411 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP93–131–000]**

## Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 2, 1993.

Take notice that on May 28, 1993, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with a proposed effective date of July 1, 1993:

Sixteenth Revised Sheet Number 157
Fourteenth Revised Sheet Number 158
Second Revised Sheet Number 225
First Revised Sheet Number 227
Second Revised Sheet Number 400
Second Revised Sheet Number 401
Third Revised Sheet Number 402
Third Revised Sheet Number 402A
Second Revised Sheet Number 403
Second Revised Sheet Number 404
Second Revised Sheet Number 405
Fourth Revised Sheet Number 423
First Revised Sheet Number 501

Northern Border states that the purpose of this filing is (i) to revise the Maximum Rate and Minimum Revenue Credit under Rate Schedule IT–1; (ii) to delete the specific term "charts" utilized in the context of gas measurement (iii) to revise Article 4—Payments of the IT–1 Transportation Agreement; and (iv) to reflect housekeeping changes. The specific tariff pages affected by these changes are detailed below.

Northern Border states that none of the herein proposed changes result in a change in Northern Border's total revenue requirement due to its cost of service form of Tariff.

Northern Border proposes to increase the Maximum Rate from 3.863 cents per 100 Dekatherm-Miles to 4.018 cents per 100 Dekatherm-Miles and also increase the Minimum Revenue Credit from 2.346 cents per 100 Dekatherm-Miles to 2.742 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit is to be effective July 1, 1993 in accordance with Northern Border's Tariff Provisions under Rate Schedule IT–1. Northern Border is in the process of converting to electric flow measurement (EFM) at its measurement sites which may eliminate the need for the reference to charts.

Northern Border states that Article 4—Payments has been simplified by deleting the stated contract rate and incorporating by reference the Maximum Rate as set forth in Rate Schedule IT–1.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure 18 CFR 385.211, 285.214. All such petitions or protests should be filed on or before June 9, 1993. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13413 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM93–3–37–000]**

## Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

June 2, 1993.

Take notice that on May 27, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance the following tariff sheets, with a proposed effective date of July 1, 1993:

*Second Revised Volume No. 1*

Twenty-Third Revised Sheet No. 10
Twenty-Second Revised Sheet No. 11
Seventeenth Revised Sheet No. 13

*First Revised Volume No. 1-A*

Eighteenth Revised Sheet No. 201

*Original Volume No. 2*

Thirty-Second Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Surcharge effective July 1, 1993, to reflect (1) interest applicable to April, May and June 1993, and (2) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filing is 3.90¢ per MMBtu for the three months commencing July 1, 1993.

Northeast states that a copy of this filing has been served upon all jurisdictional customers and state regulatory commissions in its market area.

Any person desiring to be heard or protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13412 Filed 6–7–93; 8.45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–361–000]

## SunShine Interstate Transmission Co.; Application

June 2, 1993.

Take notice that on May 27, 1993, SunShine Interstate Transmission Company (SITCO), 500 Renaissance Center, Detroit, Michigan 49243, filed in Docket No. CP93–361–000 an application, pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity for authorization to:

(1) Construct, own and operate in interstate commerce an approximately 170 mile pipeline system to transport natural gas from Pascagoula, Mississippi to delivery points in Escambia, and Okaloosa Counties, Florida;

(2) Perform open-access transportation services for others under a blanket certificate of public convenience and necessity issued under subpart G of part 284 of the Commission's Regulations;

(3) Provide open-access transportation services consistent with Order Nos. 636, 636–A, and 636–B, under the terms of the FERC tariff filed with the application; and

(4) Construct and operate certain facilities under blanket certificate authorization issued pursuant to subpart F of the Commission's Regulations;

all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that SITCO is a general partnership formed under the laws of the State of Florida. SITCO states that the general partners are ANR Southern Pipeline Company, Power Interstate Energy Services Corporation and TCPL SunShine Interstate, Ltd.

SITCO proposes to construct, own and operate approximately 143 miles of 30-inch mainline, 27 miles of pipeline lateral facilities (consisting of 12, 10 and 6-inch pipe), one 8,000 horsepower compressor station, and eight meter stations. SITCO states that the facilities would extend from an interconnection with Chandeleur Pipeline Company (Chandeleur), near Pascagoula, Mississippi, and terminating at an interconnection in Okaloosa County, Florida, with the facilities of SunShine Pipeline Company (Sunshine), an intrastate pipeline to be constructed within the State of Florida, and affiliated with SITCO.

SITCO estimates a construction cost of $197 million, which would include the cost of adding a 4,000 horsepower compressor at the Gateway Compressor Station to be in service for operation during 1999. SITCO states that Exhibit G of the application demonstrates an increase in capacity from an initial capacity of 329,500 dt equivalent of natural gas per day in 1995 to the final capacity of 638,700 dt equivalent of natural gas per day in 1999.

SITCO states that it would be a transportation-only pipeline which would interconnect with Chandeleur and with two other interstate pipeline systems, Gateway Pipeline Company at a point near Mobile Bay, and Mobile Bay Pipeline at a point north of Mobile, Alabama. SITCO also states that the proposed in-service date for SITCO's initial facilities is February, 1995. SITCO indicates that it would provide substantial incremental quantities of gas to the rapidly growing Florida market which it claims is served by a single interstate pipeline. It is also stated that SITCO would also be capable of serving markets in Mississippi and Alabama.

SITCO states that it would be a project-financed pipeline and anticipates a capital structure consisting of 75% debt and 25% equity. SITCO proposes to use a cost-based rate methodology which achieves a long-term levelized rate, taking into account the addition of facilities and buildup of volume on the system over time. SITCO proposes to use the Straight Fixed Variable methodology for cost classification, allocation, and rate design. SITCO has included in its filing a pro forma tariff, which it contends conforms to the requirements of Order Nos. 636, 636–A and 636–B.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 23, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for SITCO to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13404 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP93–132–000]

## Tennessee Gas Pipeline Co.; Rate Change Pursuant to Tariff Adjustment Provisions

June 2, 1993

Take notice that on May 28, 1993, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with proposed effective date of July 1, 1993:

First Revised Sheet No. 38
Second Revised Sheet No. 39
First Revised Sheet No. 40
First Revised Sheet No. 41
First Revised Sheet No. 42

Tennessee states that the revised tariff sheets are being filed to revise its recovery of take-or-pay and contract reformation costs pursuant to Article XXX of the General Terms and Conditions of Volume One of its FERC Gas Tariff.

Tennessee states that the purpose of the revisions to Sheet Nos. 38–42 is to adjust Tennessee's transition costs demand surcharge effective January 1, 1993 to reflect the recovery of an additional $3.27 million, including interest, of new demand costs. The total additional costs of $7,816,450 have been allocated under an equitable sharing formula of 50% absorption—41.8% demand—8.2% volumetric in conformance with the Stipulation and Agreement approved by order of the Commission on June 25, 1992, in Docket Nos. RP96–119, et al. The resulting revised demand surcharges are shown on the revised sheets; the volumetric charges remain constant.

Tennessee states that copies of the filing is being mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13401 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP93–124–000]**

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 2, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 28, 1993 submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, six copies each of the following tariff sheets:

*Proposed to be Effective July 1, 1993*

First Revised Sheet No. 515
First Revised Sheet No. 517

Texas Eastern states that on April 22, 1993 the Commission issued the "Order on Compliance Filing and Granting and Denying Rehearing, Denying Rehearing of Interim Settlement, and Rejecting Complaint and Denying Requests for Rehearing" in Docket Nos. RS92–11 *et al.* (April 22 Order). The April 22 Order accepted tariff sheets filed on February 2, 1993 to be effective June 1, 1993, subject to certain modifications as specified therein. On May 14, 1993, Texas Eastern complied with the requested modifications and filed with the Commission to place these tariff sheets into effect in its Sixth Revised Volume No. 1 (May 14 Filing).

Texas Eastern states that as a result of additional discussions with the producing segment of the industry and Texas Eastern's desire to cooperate with all industry segments to the extent possible, Texas Eastern hereby proposes to modify Section 5.7 of the General Terms and Conditions in order to allow parties holding the right to process gas for the removal of liquids and liquefiable hydrocarbons (processors) to make their gas processing elections required by Section 5.7 in a more flexible manner rather than the semi-annual elections currently required. Pursuant to the proposed modification, processors would be required to notify Texas Eastern prior to July 1, 1993 of their desire to exercise their initial election of processing rights. On October 1, 1993 and thereafter, the processors may prospectively change their election by providing Texas Eastern at least thirty days prior written notice of a changed election; provided, the new election shall remain in effect for a minimum of three months and shall be effective on the first day of the month following the thirty day notice period.

Texas Eastern states that in addition, as mentioned in the response to Requirement 94 on pages 22 and 23 of the Explanatory Statement to the May 14 Filing, Texas Eastern hereby proposes to modify Section 5.3(I) of the General Terms and Conditions in order to correctly reflect the quality of gas specification concerning the amount of liquefiable hydrocarbons. The Commission in its April 22 Order required Texas Eastern to change the quality specification in the May 14 Filing to "0.2 gallons per million cubic feet". As noted by Texas Eastern in its May 14 Filing, a literal enforcement of this specification would result in Texas Eastern rejecting nearly all gas tendered for receipt for failing to meet this rigid quality specification. Texas Eastern hereby requests that it be allowed to change the specification from "0.2 gallons per million cubic feet" to "0.2 gallons per thousand cubic feet" so as to reflect the liquefiable hydrocarbon specification originally intended by Texas Eastern. This less stringent quality specification is more consistent with the quality standards normally utilized in the industry.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13414 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP93–125–000]**

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 2, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 28, 1993 filed a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover gas supply realignment costs (GSR Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states it is filing to recover GSR Costs from customers in accordance with the procedures set forth in Section 15.2(C) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and in accordance with the Commission's order on April 22, 1993, in Docket Nos. RS92–11–000, RS92–11–003, RS92–11–004, RP88–67–000, et al., (Phase I/Rates), and RP92–234–001 (April 22 Order). Texas Eastern states that Order No. 636 and the April 22 Order permit Texas Eastern to file this limited Section 4 filing to begin recovery of its GSR Costs.

Texas Eastern states that the filing includes known and measurable GSR Costs incurred to date, plus carrying charges through May 31, 1993, totalling $17,832,979. Additional interest of $408,057 at the current FERC annual rate of 6.00% is added for carrying charges from June 1, 1993 to the projected payment dates.

The proposed effective date of the filing is July 1, 1993.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure. All such motions or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13415 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**Docket No. RP93–128–000]**

## Texas Eastern Transmission Corp. Proposed Changes in FERC Gas Tariff

June 2, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 28, 1993, tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, six copies of the following tariff sheets:

Original Sheet No. 162
Original Sheet No. 163
Original Sheet No. 164
Sheet Nos. 165–199

The proposed effective date of these tariff sheets is July 1, 1993.

Texas Eastern states that the above tariff sheets are filed pursuant to Section 15.2(B) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and as a limited application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), Order Nos. 636, *et seq.* issued in Docket No. RM91–11, the orders accepting Texas Eastern's Order No. 636 compliance filing, subject to conditions, issued January 13, 1993, and April 22, 1993, in Texas Eastern Transmission Corp., Docket Nos. RS92–11–000, RS92–11–003, RS92–11–004, RP88–67–000, et al. (Phase I/Rates), and the Rules and Regulations of the Federal Energy Regulatory Commission.

In the April 22 Order, the Commission accepted Texas Eastern's Sixth Revised Volume No. 1, subject to conditions, and permitted Texas Eastern to implement its restructured services in compliance with Order No. 636 effective June 1, 1993. Texas Eastern states that the filing constitutes a filing to recover its Account 191 Costs, attributable to gas purchases made prior to June 1, 1993, that were incurred as a consequence of Texas Eastern providing a bundled merchant function. Texas Eastern states that the intent filing is based upon the amount debited to Account 191 pursuant to § 154.305(i)(3) of the Commission's Regulations, totalling $21,065,801, as a result of Texas Eastern's PGA refund on May 28, 1993, pursuant to ordering paragraph (B) of the Commission's order in Docket No. RP85–177–102 et al. issued April 28, 1993.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13416 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP85–177–107]**

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 2, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 28, 1993 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on Appendix A to the filing. The proposed effective date of these revised tariff sheets is as set forth on Appendix A to the filing.

Texas Eastern states that this PGA filing is made pursuant to Ordering Paragraph (C) of the Commission's "Order Addressing Reconciliation Report, Technical and Settlement Conferences, Rehearing, Compliance Filings, Field Review, and Requests For Consolidation and Hearing, and Establishing Hearing Procedures" issued April 28, 1993 (April 28 Order). Texas Eastern states that the Compliance filing reflects a decrease of $.0069/dth in the commodity component of the sales rates in effect from February 1, 1991 through January 31, 1992. Texas Eastern states that this commodity rate reduction is in compliance with the Commission's April 28, 1993 order.

Texas Eastern states that copies of its filing have been served on all authorized purchasers of natural gas from Texas Eastern, and all applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13417 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP90–137–008]**

## Williston Basin Interstate Pipeline Co.; Compliance Filing

June 2, 1993.

Take notice that on May 28, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1–A, Original Volume No. 1–B and Original Volume No. 2 of its FERC Gas Tariff, in compliance with the May 6, 1993 order on remand, rehearing and compliance filing.

Williston Basin states that the revised tariff sheets are being filed to comply with the Commission's May 6, 1993 order which directed Williston Basin to file tariff sheets which reflect no take-or-pay throughput surcharge as applicable for service provided to K N Energy, Inc. under Rate Schedule X–3 retroactive to July 1, 1990. Williston Basin also states that pursuant to the Commission's suggestion in its orders of March 12, 1992 and May 6, 1993, the tariff sheets also contain a proposal to make the company whole in terms of recovering the buyout/buydown costs which are the subject of the above-referenced docket number. Williston Basin notes that certain of the above tariff sheets are resubmissions of the tariff sheets filed on April 13, 1992 in compliance with the Commission's March 12, 1992 order in this proceeding.

Williston Basin states that copies of the filing are being served upon the parties listed on the mailing list attached to the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13396 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM93–6–49–000]**

### Williston Basin Interstate Pipeline Co.; Annual Take-or-Pay Reconciliation Filing

June 2, 1993.

Take notice that on May 28, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, suite 300, Bismarck, North Dakota 58501, tendered for filing its Annual Take-or-Pay Reconciliation Filing pursuant to Sections 32 and 33 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. More specifically, Williston Basin filed the following tariff sheets:

*First Revised Volume No. 1*

Forty-ninth Revised Sheet No. 10
Fifth Revised Sheet No. 122
Third Revised Sheet No. 123I

*Original Volume No. 1–A*

Forty-first Revised Sheet No. 11
Forty-sixth Revised Sheet No. 12

*Original Volume No. 1–B*

Thirty-seventh Revised Sheet No. 10
Thirty-seventh Revised Sheet No. 11

*Original Volume No. 2*

Forty-third Revised Sheet No. 11B

Williston Basin has requested that the Commission accept this filing to become effective July 1, 1993.

Williston Basin states that the revised tariff sheets are being filed to reflect recalculated fixed monthly surcharges and a revised throughput surcharge to be effective during the period July 1, 1993 through June 30, 1994 pursuant to the procedures contained in Sections 32 and 33 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, First Revised Volume No. 1 and in accordance with a filing submitted concurrently in compliance with the Commission's May 6, 1993 Order in Docket Nos. RP90–137–000, et al. Williston Basin also states that this filing reflects a revised total throughput surcharge of 12.282 cents per dkt on all applicable sales and transportation volumes.

Williston Basin states that copies of the filing are being served upon the parties listed on the mailing list attached to the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–13403 Filed 6–7–93; 8:45 am]

BILLING CODE 6717–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–4663–9]**

### In-use Urban Bus Testing Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability of Advisory Circular.

**SUMMARY:** This notice announces the availability of an Advisory Circular related to the in-use emissions testing by EPA of urban buses.

**DATES:** This Advisory Circular is effective on June 30, 1993.

**ADDRESSES:** Materials related to this Advisory Circular have been placed in Public File "In-use Urban Bus Testing Advisory Circular." The file is located at 2565 Plymouth Road, Ann Arbor, Michigan 48105 and may be inspected between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher Lieske, Engine and Vehicle Regulations Branch, Regulation Development and Support Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668–4584.

For a copy of the Advisory Circular, contact: Ms. Donna Hoover, (313) 668–4278.

**SUPPLEMENTARY INFORMATION:**

#### I. Clean Air Act Requirements

The Clean Air Act contains several provisions related to an in-use testing program for operating urban buses. First, section 219(c) of the Clean Air Act requires EPA to conduct annual in-use testing of a representative sample of operating urban buses subject to the 1994 and later model year particulate matter standard. Second, section 219(c) requires that a "pass/fail rate" be established for purposes of testing under this program. Third, if EPA determines, based on data from this testing program, that urban buses do not comply with the 1994 particulate standard throughout their useful lives, section 219(c) of the Clean Air Act specifies that EPA must implement a "low-polluting fuels" program. The low-polluting fuels program would require that new urban buses purchased or placed into service in metropolitan areas with a 1980 population of 750,000 or more be run exclusively on low-polluting fuels. Finally, section 219(e) of the Clean Air Act requires that EPA establish procedures for the administration and enforcement of urban bus standards.

#### II. EPA Actions

This Advisory Circular establishes EPA procedures for the annual urban bus in-use testing program required under section 219 (c) of the Clean Air Act. The Advisory Circular also cross references a recent memorandum that describes in-use recall testing as it relates to urban buses. This Advisory Circular is now available to the public. The Advisory Circular addresses various issues relevant to these testing programs including sampling protocols, urban bus evaluation criteria, and testing protocols that EPA plans to use for the urban bus testing program. This document responds to the requirements of Clean Air Act section (e), as they apply to EPA's urban bus in-use testing programs.[1]

EPA plans to undertake a rulemaking to establish the "pass/fail rate" to be used as a central criterion in determining whether or not to

[1] EPA recently determined that the test procedures currently used for testing urban buses adequately reflect actual urban bus operating conditions. See 58 FR 15791 (March 24, 1993).

implement a low-polluting fuels program for urban buses. Other issues related to the "pass/fail" determination will also be discussed during the rulemaking process. If EPA believes, based on annual testing results, that a low-polluting fuels program is required for urban buses, EPA would initiate an additional rulemaking process to make this determination and implement a low-polluting fuels program.

### III. Public Participation

EPA sent copies of the draft Advisory Circular to about 180 interested parties, including engine manufacturers, representatives of the alternative fuels industry, the transit authorities that will be affected by the program, state air pollution control agencies, and environmental groups. EPA held an outreach meeting on March 5, 1993 to discuss the draft Advisory Circular and the in-use testing program with interested parties, and accepted written comments on the draft Advisory Circular.

EPA will provide full opportunity for public comment as part of the rulemaking to establish the "pass/fail rate."

Dated May 28, 1993

**Carol M. Browner,**

*Administrator.*

[FR Doc. 93–13374 Filed 6–7–93; 8:45 am]

BILLING CODE 6560–50–M

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[FRL–4663–7]

## Oil and Grease Workshop

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of workshop.

**SUMMARY:** The Office of Science and Technology will hold "The Oil and Grease Workshop" to discuss alternative solvents to Freon–113 for the determination of oil and grease.

**DATES:** The workshop will be held on June 30, 1993 from 1 p.m. to 5 p.m.

**ADDRESSES:** The workshop will be held at the EPA Conference Center, 11th floor, One Congress Street (directly above the Government Center Parking Garage), Boston, Massachusetts.

**FOR FURTHER INFORMATION:** Conference arrangements for the "Oil and Grease Workshop" are being coordinated by DynCorp Viar, Inc. For information on meeting registration, hotel rates, transportation, and reservations call Christopher Berry at (703) 519–1387. If you have technical questions regarding the workshop please contact William Telliard, Office of Science and Technology (WH–552) telephone (202) 260–7120, fax (202) 260–7185.

**SUPPLEMENTARY INFORMATION:** The workshop is designed to bring together representatives of regulated industries, commercial environmental laboratories, state and Federal regulators, and environmental consultants and contractors to discuss alternative solvents to Freon–113 for the determination of oil and grease. Specific topics of discussion will include the following: overview and discussion of the Phase I study results for the Freon Replacement Study, analysis of oil and grease using various solid phase extraction and infra-red techniques, and options for regulating oil and grease. An open session will also be held as part of the workshop in order to allow industries, laboratories, and government attendees to voice their opinions and concerns.

**James A. Hanlon,**

*Acting Director, Office of Science and Technology.*

[FR Doc. 93–13375 Filed 6–7–93; 8:45 am]

BILLING CODE 6560–50–M

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[FRL–4664–5]

## Science Advisory Board; Environmental Engineering Committee Open Meeting June 29–July 1, 1993

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Environmental Engineering Committee (EEC), will meet from 9 a.m. Tuesday, June 29 until no later than 4 p.m. Thursday, July 1. The meeting will be held in the St. James Board Room, St. James Hotel, 950 24th Street, NW., Washington, DC 20037 (Tel. 202–457–0500).

On June 29, 1993 the EEC's MMSOILS Model Review Subcommittee (MMRS) will continue a review started on April 22 and 23, 1993 (See **Federal Register** Notice, Friday, April 9, 1993, 58 FR 18395). The topics of the second meeting on MMSOILS will include selection of corrective action sample facilities, the data acquisition and facility conceptualization process, the basis for selection of the MMSOILS model, the process of verification and validation of the MMSOILS model, as well as preparation of a draft SAB report on this topic. During the meeting dates of June 29 through July 1, 1993, the EEC will consider three subcommittee reports on reviews of: The Agency's computer model, MMSoils, which figures prominently in the technical aspects of the RCRA corrective action regulatory impact analysis; the Superfund Ground Water Strategic Plan; and the ORD Global Climate Change Engineering (Mitigation) Research Program. The Committee will also discuss membership issues, consider possible FY94 activities, and discuss a committee commentary on EPA research strategies. The Committee may also discuss or hear briefings on environmental engineering issues which relate to the activities of the Environmental Protection Agency.

The meeting is open to the public and seating will be on a first-come basis. Any member of the public wishing further information, such as a proposed agenda for the meeting, should contact Mrs. Dorothy Clark, EEC Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/260–6552 (fax 202/260–7118). Members of the public providing written comments on any issue before the Committee should provide 35 copies. Copies received by June 14, 1993 will be mailed to the Committee; comments received after that date will be provided to the Committee and the public at the meeting.

Members of the public who wish to make a brief oral presentation on any issue before the Committee should contact Mrs. Kathleen Conway, Designated Federal Official to the EEC, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/260–6552 (fax 202/260–7118) no later than noon June 14, 1993. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Dated: May 18, 1993.

**A. Robert Flaak,**

*Acting Staff Director, Science Advisory Board.*

[FR Doc. 93–13378 Filed 6–7–93; 8:45 am]

BILLING CODE 6560–50–P

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[OPPTS–44598; FRL–4626–2]

## TSCA Chemical Testing; Receipt of Test Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the receipt of test data on commercial hexane (CAS Nos. 110–54–3 and 96–37–7), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

**I. Test Data Submissions**

Test data for commercial hexane were submitted by American Petroleum Institute pursuant to a test rule at 40 CFR 799.2155. They were received by EPA on May 12, 1993. The submission describes an "Inhalation Oncogenicity Study of Commercial Hexane in Rats and Mice: Part 1 - Rats." This chemical is used as a solvent to extract seed oils.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

**II. Public Record**

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44598). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. ET–G102, 401 M St., SW., Washington, DC 20460.

**Authority:** 15 U.S.C. 2603.

Dated: May 26, 1993.

**Denise M. Keehner,**

*Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 93–13372 Filed 6–7–93; 8:45 am]

**BILLING CODE 6560–50–F**

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**[OPPTS–59324; FRL–4626–1]**

## Certain Chemicals; Approval of a Test Marketing Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting this exemptions.

**DATES:**

*Written comments by:*

T 93–20, June 11, 1993.

**ADDRESSES:** Written comments, identified by the document control number (OPPTS–59324) and the specific TME number should be sent to: Document Control Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET Washington, DC 20460 (202) 260–1532.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW, Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office ETG–102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

**T 93–20**

*Close of Review Period.* June 25, 1993.

*Manufacturer.* Confidential.

*Chemical.* (G) Methyl amino esters.

*Use/Production.* (G) Intermediate. Prod. range: Confidential.

*Toxicity Data.* Acute oral: LD50 > 5,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rabbit).

Dated: May 25, 1993.

**Frank V. Caesar,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 93–13369 Filed 6–7–93; 8:45 am]

**BILLING CODE 6560–50–F**

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**[OPPTS–51819; FRL–4627–1]**

## Certain Chemicals; Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 86 such PMNs and provides a summary of each.

**DATES:** Close of review periods:

P 93–701, June 20, 1993.

P 93–702, 93–703, June 21, 1993.

P 93–704, June 20, 1993.

P 93–705, 93–706, 93–707, 93–708, 93–709, 93–710, 93–711, June 23, 1993.

P 93–712, 93–713, 93–714, June 26, 1993.

P 93–715, June 23, 1993.

P 93–716, 93–717, 93–718, 93–719, 93–720, 93–721, 93–722, 93–723, 93–724, 93–725, 93–726, 93–727, 93–728, 93–729, 93–730, June 27, 1993.

P 93–731, 93–732, 93–733, 93–734, 93–735, 93–736, 93–737, 93–738, June 28, 1993.

P 93–739, 93–740, 93–741, June 29, 1993.

P 93–742, 93–743, 93–744, 93–745, June 30, 1993.

P 93–746, June 29, 1993.

P 93–747, 93–748, 93–749, 93–750, 93–751, 93–752, 93–753, 93–754, July 3, 1993.

P 93–755, 93–756, 93–757, 93–758, 93–759, 93–760, 93–761, 93–788, 93–789, 93–790, 93–791, 93–792, 93–793, 93–794, 93–795, 93–796, 93–797, 93–798,93–799, 93–800, 93–801, 93–802, 93–803, 93–804, 93–805, 93–806, 93–807, 93–808, 93–809, 93–810, 93–811, 93–812, 93–813, July 4, 1993.

Written comments by:

P 93–701, May 21, 1993.

P 93–702, 93–703, May 22, 1993.

P 93–704, May 21, 1993.

P 93–705, 93–706, 93–707, 93–708, 93–709, 93–710, 93–711, May 24, 1993.

P 93–712, 93–713, 93–714, May 27, 1993.

P 93–715, May 24, 1993.

P 93–716, 93–717, 93–718, 93–719, 93–720, 93–721, 93–722, 93–723, 93–724, 93–725, 93–726, 93–727, 93–728, 93–729, 93–730, May 28, 1993.

P 93–731, 93–732, 93–733, 93–734, 93–735, 93–736, 93–737, 93–738, May 29, 1993.

P 93–739, 93–740, 93–741, May 30, 1993.

P 93–742, 93–743, 93–744, 93–745, May 31, 1993.

P 93–746, May 30, 1993.

P 93–747, 93–748, 93–749, 93–750, 93–751, 93–752, 93–753, 93–754, June 3, 1993.

P 93–755, 93–756, 93–757, 93–758, 93–759, 93–760, 93–761, 93–788, 93–789, 93–790, 93–791, 93–792, 93–793, 93–794, 93–795, 93–796, 93–797, 93–798, 93–799, 93–800, 93–801, 93–802, 93–803, 93–804, 93–805, 93–806, 93–807, 93–808, 93–809, 93–810, 93–811, 93–812, 93–813 June 4, 1993.

**ADDRESSES:** Written comments, identified by the document control number "[OPPTS–?????]" and the specific PMN number should be sent to: Document Control Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099, Washington, DC 20460 (202) 260–3532.

**FOR FURTHER INFORMATION CONTACT:** Susan Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Nonconfidential Information Center (NCIC) also known as the TSCA Public Docket Office, ETG–102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

**P 93–701**

*Importer.* Ciba-Geigy Corporation.

*Chemical.* (G) Substituted azo triazine dye.

*Use/Import.* (G) Textile dye. Import range: Confidential.

*Toxicity Data.* Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rat). Acute static: LC50 96h 10.4 mg/kg (zebra fish). Eye irritation: None (rabbit). Skin irritation: Negligible (rabbit). Mutagenicity: Negative. Skin sensitization: Positive (guinea pig).

**P 93–702**

*Manufacturer.* Confidential.

*Chemical.* (G) Amide carboxylate.

*Use/Production.* (S) Lubricant additive; corrosion inhibitor in coatings. Prod. range: Confidential.

**P 93–703**

*Manufacturer.* Rhone-Poulenc, Inc.

*Chemical.* (G) Acrylated aliphatic urethane polymer.

*Use/Production.* (G) Crosslinker for isocyanate free urethane coatings. Prod. range: Confidential.

**P 93–704**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyurethane-urea dispersion polymer.

*Use/Production.* (S) Binder for architectural coatings. Prod. range: Confidential.

**P 93–705**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyloxypropylene aminepropylene amine ethylenenitrile.

*Use/Production.* (S) Binder for architectural coatings. Prod. range: Confidential.

**P 93–706**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyloxy propylene triamine.

*Use/Production.* (S) Asphalt antistripping additive; coal tar emulsifier for sealant. Prod. range: Confidential.

**P 93–707**

*Manufacturer.* E. I. du Pont de Nemours and Company, Inc.

*Chemical.* (G) Substituted aromatic oligomer.

*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

*Toxicity Data.* Skin sensitization: Positive (guinea pig).

**P 93–708**

*Manufacturer.* E. I. du Pont de Nemours and Company, Inc.

*Chemical.* (G) Substituted aromatic oligomer.

*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 93–709**

*Manufacturer.* E. I. du Pont de Nemours and Company, Inc.

*Chemical.* (G) Substituted aromatic oligomer.

*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral: LD50 2300 mg/kg (rat). Acute dermal: LD50 > 5,000 mg/kg (rabbit). Skin irritation: Strong (rabbit).

**P 93–710**

*Importer.* Ciba-Geigy Corporation.

*Chemical.* (G) 1,4-Phenylenebis(carbonylimino-3,1-propanediylimino) triphenodioxazine sulfonic acid.

*Use/Import.* (G) Textile dye. Import range: Confidential.

*Toxicity Data.* Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rat). Acute static: LC50 > 1,000 mg/l (zebra fish). Eye irritation: None (rabbit). Skin irritation: Negligible (rabbit). Mutagenicity: Negative. Skin sensitization: Negative (guinea pig).

**P 93–711**

*Importer.* Ciba-Geigy Corporation.

*Chemical.* (G) Cuprate(6-),1,2-ethanedylbis(imino(6-halo-1,3,5-triazine-4,2-diyl)imino (hydroxy sulfo-(phenylene)azo(phenylmethylene) azo(sulfobenzoato(10)di-, sodium.

*Use/Import.* (G) Textile dye. Import range: Confidential.

*Toxicity Data.* Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rat). Acute static: LC50 96h 613 mg/l (zebra fish). Eye irritation: None (rabbit). Skin irritation: Negligible (rabbit). Mutagenicity: Negative. Skin sensitization: Positive (guinea pig).

**P 93–712**

*Importer.* ICI Americas.

*Chemical.* (G) Substituted anthraquinone.

*Use/Import.* (S) Thermal transfer printing dye. Import range: Confidential.

*Toxicity Data.* Acute oral: LD50 > 2,000 mg/kg (rat). Eye irritation: Slight (rabbit). Skin irritation: Slight (rabbit). Mutagenicity: Positive. Skin sensitization: Positive (quinea pig).

**P 93–713**

*Manufacturer.* Confidential.

*Chemical.* (G) Vegetable oil-dicyclopentadiene copolymer.

*Use/Production.* (S) Interior architectural clean and interior pigmented finishes, and aluminum paints. Prod. range: Confidential.

**P 93–714**

*Importer.* Confidential.

*Chemical.* (G) Methylene-linked condensation product of arylphonic acids and hydroxarylsulphone aqueous preparation.

*Use/Production.* (S) . Prod. range: Confidential.

**P 93–715**

*Importer.* Confidential.

*Chemical.* (G) Polyalkylene glycol.

*Use/Import.* (G) Lubricating oil. Import range: Confidential.

*Toxicity Data.* Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rat). Acute Static: LC50 96h 1,000 mg/l (fresh water fish). Eye

irritation: None (rabbit). Skin irritation: Negligible (rabbit). Mutagenicity: Negative. Skin sensitization: Negative (guinea pig).

P 93–716

*Manufacturer.* Hoechst Celanese Corporation.

*Chemical.* (G) Disubstituted benzene sulfonic acid.

*Use/Production.* (S) Reactive dye for celluose or nylon. Prod. range: 5,000–15,000 kg/yr.

P 93–717

*Manufacturer.* Hoechst Celanese Corporation.

*Chemical.* (G) Disubstituted benzene sulfonic acid.

*Use/Production.* (S) Reactive dye for celluose or nylon. Prod. range: 5,000–1,5000 ky/yr.

P 93–718

*Importer.* Ciba-Geigy Corporation.

*Chemical.* (G) Substituted azo pyridinyl benzoic acid ester.

*Use/Import.* (G) Textile dye. Import range: Confidential.

*Toxicity Data.* Acute oral: LD50 > 5,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rat). Acute static: LC50 96h > 1,000 mg/l (zebra fish). Eye irritation: Slight (rabbit). Skin irritation: Negligible (rabbit). Mutagenicity: Negative. Skin sensitization: Positive (guinea pig).

P 93–719

*Manufacturer.* Allied Signal, Inc.

*Chemical.* (G) Cyclosiloxanes, hydrogen methyl, polymer with methylvinylcyclosiloxanes,.

*Use/Production.* (S) Production of polymer matrix composites and impregnation of carbon, ceramic or glass fibers. Prod. range: Confidential.

P 93–720

*Manufacturer.* Hoechst Celanese Corporation.

*Chemical.* (G) Ethanol, 2,2'-((3-chloro-4-(substituted azophenyl)imino))bis-(substituted) (ester).

*Use/Production.* (S) Powder and liquid formulation for dyeing of cellulose. Prod. range: 40,000–50,000 kg/yr.

P 93–721

*Manufacturer.* QO Chemicals, Inc.

*Chemical.* (S) Furan, 2-(ethoxymethyl) tetrahydro-.

*Use/Production.* (G) Used as additive for elastomer manufacturing. Prod. range: Confidential.

P 93–722

*Manufacturer.* Confidential.

*Chemical.* (G) Phosphonocarboxylate, monoethanolamine salt.

*Use/Production.* (G) Scale inhibitor for water based solutions. Prod. range: 500–1,500 kg/yr.

P 93–723

*Manufacturer.* Confidential.

*Chemical.* (G) Phosphonocarboxylate, ammonium salt.

*Use/Production.* (G) Scale inhibitor for water based solutions. Prod. range: 500–1,500 kg/yr.

P 93–724

*Manufacturer.* Confidential.

*Chemical.* (G) Phosphonocarboxylate, mixed ammonium monoethanol amine salt.

*Use/Production.* (G) Scale inhibitor for water based solutions. Prod.range: 500-1,500 kg/yr.

P 93–725

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyl phosphonate, ammonium salt.

*Use/Production.* (G) Scale inhibitor for water based solutions. Prod. range: 600–1,800 kg/yr.

P 93–726

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyl phosphonate, mixed ammonium salt.

*Use/Production.* (G) Scale inhibitor for water based solutions. Prod. range: 600–1,600 kg/yr.

P 93–727

*Manufacturer.* Confidential.

*Chemical.* (G) Copolymer resin solution.

*Use/Production.* (S) Component of industrial water-thinned paints, especially for automative applications. Prod. range: Confidential.

P 93–728

*Manufacturer.* Confidential.

*Chemical.* (G) Epoxy ester resin solution.

*Use/Production.* (G) Base for customer manufacture of copolymer for water thinned paints. Prod. range: Confidential.

P 93–729

*Manufacturer.* Confidential.

*Chemical.* (G) Carboxy-terminated aryl alkyl polyester resin.

*Use/Production.* (G) Resin for coatings. Prod. range: Confidential.

P 93–730

*Manufacturer.* Kerk McGee Chemical Corporation.

*Chemical.* (G) Ammonium polyvanadate.

*Use/Production.* (S) Alloying additive for the production of metal alloys containing vanadium. Prod. range: 30,000 kg/yr.

P 93–731

*Importer.* Confidential.

*Chemical.* (G) Aliphtatic ester.

*Use/Import.* (S) Coalescing agent and industrial solvent. Import range: Confidential.

P 93–732

*Importer.* Confidential.

*Chemical.* (G) Aliphatic ester.

*Use/Import.* (S) Coalescing agent and industrial solvent. Import range: Confidential.

P 93–733

*Importer.* Confidential.

*Chemical.* (G) Aliphatic acid.

*Use/Import.* (S) Coalescing agent and industrial solvent. Import range: Confidential.

P 93–734

*Importer.* Confidential.

*Chemical.* (G) Aliphatic ester.

*Use/Import.* (S) Coalescing agent and industrial solvent. Import range: Confidential.

P 93–735

*Importer.* Confidential.

*Chemical.* (G) Aliphatic ester.

*Use/Import.* (S) Coalescing agent and industrial. Import range: Confidential.

P 93–736

*Manufacturer.* Minnesota Mining & Manufacturing Company

*Chemical.* (G) 1,1'- Methylene bis(isocyanatobenzene) substituted polymer.

*Use/Production.* (G) Crosslinker. Prod. range: Confidential.

P 93–737

*Manufacturer.* Hoechst Celanese Corporation.

*Chemical.* (G) Trisubstituted naphthalene disulfonic acid.

*Use/Production.* (S) Powder formulation of fiber reactive dye for cellulose. Prod. range: 16,000–200,000 kg/yr.

P 93–738

*Manufacturer.* Hoechst Celanese Corporation.

*Chemical.* (G) Trisubstituted naphthalene disulfonic acid.

*Use/Production.* (S) Powder formulation of fiber reactive dye for cellulose. Prod. range: 16,000–200,000 kg/yr.

P 93–739

*Manufacturer.* Confidential.

*Chemical.* (G) Aryl benzene sulfonic acid.

*Use/Production.* (G) Destructive use. Prod. range: 16,000–200,000 ky/yr.

P 93–740

*Manufacturer.* Confidential.

*Chemical.* (G) Aryl benzene.
*Use/Production.* (G) Destructive use. Prod. range: Confidential.
*Toxicity Data.* Acute oral: LD50 5.0 g/kg (rat). Acute dermal: LD50 2.0 g/kg (rat). Acute static: EC50 96h > 1,000 mg/l (rainbow trout). Eye irritation: Slight (rabbit). Skin irritation: Slight (rabbit). Mutagenicity: Negative.

**P 93–741**

*Manufacturer.* Confidential.
*Chemical.* (G) Aryl benzene sulfonic acid calcium salt.
*Use/Production.* (G) Lubricant oil additive. Prod. range: Confidential.
*Toxicity Data.* Acute oral: LD50 5.0 g/kg (rat). Acute dermal: LD50 2.0 g/kg (rat). Eye irritation: Slight (rabbit). Skin irritation: Slight (rabbit). Skin sensitization: Negative (guinea pig).

**P 93–742**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic polymer.
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 93–743**

*Manufacturer.* Confidential.
*Chemical.* (G) Polyester urethane resin.
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 93–744**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic polymer.
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 93–745**

*Manufacturer.* Confidential.
*Chemical.* (G) Hydroxyl functional polyester resin.
*Use/Production.* (G) Destructive use. Prod. range: Confidential.

**P 93–746**

*Importer.* Confidential.
*Chemical.* (G) Fatty acid ester preparation.
*Use/Import.* (G) Open, nondispersive. Import range: Confidential.

**P 93–747**

*Manufacturer.* E. I. du Pont de Nemours & Company.
*Chemical.* (G) Poly (amic acid) resin.
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.
*Toxicity Data.* Eye irritation: Moderate (rabbit). Skin irritation: Moderate (rabbit).

**P 93–748**

*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic polymer.
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 93–749**

*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic polymer.
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 93–750**

*Manufacturer.* Confidential.
*Chemical.* (G) 2H-Pyran-4 ol, tetrahydro-alkyl-disubstituted-, alkanoate.
*Use/Production.* (S) Raw material for use in fine fragrances (perfume and colognes) for cosmetics soap, and detergents. Prod. range: Confidential.
*Toxicity Data.* Acute oral: LD50 4.5 g/kg (rat). Acute dermal: LD50 2.0 g/kg (rat). Acute Static: LC50 96h > 100 mg/l (rainbow trout). Eye irritation: Slight (rabbit). Skin irritation: Slight (rabbit). Mutagenicity: Negative. Skin sensitization: Negative (guinea pig).

**P 93–751**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Alkoxylated amide, alkali salt.
*Use/Production.* (S) Chemical intermediate. Prod. range: Confidential.

**P 93–752**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (S) Alkoxylated amide.
*Use/Production.* (S) Fuel additive. Prod. range: Confidential.

**P 93–753**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Alkoxylated amide.
*Use/Production.* (S) Fuel additive. Prod. range: Confidential.

**P 93–754**

*Manufacturer.* Henkel Corporation.
*Chemical.* (G) Alkyl alkoxylate epoxide.
*Use/Production.* (S) Intermediate in for formulated product for coatings applications. Prod. range: Confidential.

**P 93–755**

*Manufacturer.* Henkel Corporation.
*Chemical.* (G) Complex alkyl polyalkoxy epoxide.
*Use/Production.* (S) Intermediate. Prod. range: Confidential
*Toxicity Data.* Acute oral: LD50 4.5 g/kg (rat). Acute dermal: LD50 > 2.0 g/kg (rat). Skin irritation: Negligible (rabbit).

**P 93–756**

*Manufacturer.* Aldrich Chemical Company.
*Chemical.* (S) 3-(Phenylsulfonyl)-1-propene.
*Use/Production.* (G) Solution component. Prod. range: Confidential.

**P 93–757**

*Manufacturer.* Confidential.
*Chemical.* (G) Cycloaliphatic aromatic polyester polyol.
*Use/Production.* (G) Polyester binder for decorative industrial coating. Prod. range: Confidential.

**P 93–758**

*Importer.* BASF Corporation.
*Chemical.* (G) Polyester acrylic.
*Use/Import.* (S) Binder. Import range: Confidential.

**P 93–759**

*Importer.* BASF Corporation.
*Chemical.* (G) Polyester acrylate.
*Use/Import.* (S) Binder. Import range: Confidential.

**P 93–760**

*Manufacturer.* Confidential.
*Chemical.* (G) Indoly, phenyl substituted isobenzofuranone.
*Use/Production.* (G) Used in paper coatings. Prod. range: Confidential.

**P 93–761**

*Manufacturer.* International Specialty Products.
*Chemical.* (S) 2-Methyl-1,5-bis (2-oxopyrrolidin-1-yl) pentane.
*Use/Production.* (S) Specialty industrial solvent. Prod. range: Confidential

**P 93–788**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod. range: Confidential.

**P 93–789**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod. range: Confidential.

**P 93–790**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod. range: Confidential.

**P 93–791**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod. range: Confidential.

**P 93–792**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.

*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–793**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–794**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–795**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–796**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–797**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–798**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–799**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–800**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–801**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–802**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–803**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–804**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–805**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–806**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–807**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–808**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–809**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–810**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–811**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–812**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

**P 93–813**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod.
range: Confidential.

Dated: May 25, 1993.

**Frank V. Ceasar,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 93–13370 Filed 6–7–93; 8:45 am]
BILLING CODE 6560–50–F

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**[OPPTS–51818; FRL–4585–9]**

## Certain Chemicals; Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 81 such PMNs and provides a summary of each.

**DATES:** Close of review periods:

P 93–620, 93–621, 93–622, 93–623, May 31, 1993.

P 93–624, 93–625, 93–626, 93–627, 93–628, 93–629, 93–630, 93–631, 93–632, 93–633, 93–634, 93–635, 93–636, June 1, 1993.

P 93–637, June 5, 1993.

P 93–638, June 2, 1993.

P 93–639, 93–640, 93–641, 93–642, 93–643, 93–644, 93–645, 93–646, June 5, 1993.

P 93–647, 93–648, 93–649, 93–650, 93–651, 93–652, 93–653, 93–654, 93–655, 93–656, June 6, 1993.

P 93–657, June 5, 1993.

P 93–658, June 8, 1993.

P 93–659, 93–660, 93–661, 93–662, 93–663, 93–664, June 12, 1993.

P 93–665, 93–666, June 13, 1993.

P 93–667, 93–668, 93–669, 93–670, 93–671, 93–672, June 14, 1993.

P 93–673, 93–674, June 13, 1993.

P 93–675, June 20, 1993.

P 93–676, June 13, 1993.

P 93–677, June 15, 1993.

P 93–678, June 13, 1993.

P 93–679, June 22, 1993.

P 93–680, 93–681, 93–682, 93–683, 93–684, June 14, 1993.

P 93–685, 93–686, June 15, 1993.

P 93–687, June 22, 1993.

P 93–688, 93–689, June 15, 1993.

P 93–690, 93–691, 93 2, 93–693, June 16, 1993.

P 93–694, 93–695, 93–696, 93–697, 93–698, 93–699, 93–700, June 20, 1993.

Written comments by:

P 93–620, 93–621, 93–622, 93–623, May 1, 1993.

P 93–624, 93–625, 93–626, 93–627, 93–628, 93–629, 93–630, 93–631, 93–632, 93–633, 93–634, 93–635, 93–636, May 2, 1993.

P 93–637, May 6, 1993.

P 93–638, May 3, 1993.

P 93–639, 93–640, 93–641, 93–642, 93–643, 93–644, 93>645, 93–646, May 6, 1993.

P 93–647, 93–648, 93–649, 93–650, 93–651, 93–652, 93–653, 93–654, 93–655, 93–656, May 7, 1993.

P 93–657, May 6, 1993.
P 93–658, May 9, 1993.
P 93–659, 93–660, 93–661, 93–662, 93–663, 93–664, May 13, 1993.
P 93–665, 93,666, May 14, 1993.
P 93–667, 93–668, 93–669, 93–670, 93–671, 93,672, May 15, 1993.
P 93–673, 93–674, May 14, 1993.
P 93–675, May 21, 1993.
P 93–676, May 14, 1993.
P 93–677, May 16, 1993.
P 93–678, May 14, 1993.
P 93–679, May 23, 1993.
P 93–680, 93–681, 93–682, 93–683, 93–684, May 15, 1993.
P 93–685, 93–686, May 16, 1993.
P 93–687, May 23, 1993.
P 93–688, 93–689, May 16, 1993.
P 93–690, 93–691, May 17, 1993.
P 93–692, May 16, 1993.
P 93–694, 93–695, 93–696, 93–697, 93–698, 93–699, 93–700, May 21, 1993.

**ADDRESSES:** Written comments, identified by the document control number "[OPPTS–51818]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ET–201, Washington, DC 20460 (202) 260–3532.

**FOR FURTHER INFORMATION CONTACT:** Susan Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office, ETG–102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

**P 93–620**

*Manufacturer.* EiChrom Industries, Inc.

*Chemical.* (G) Aryl cyano, phosphorus ester based olefin polymer.

*Use/Production.* (S) Intermediate in production of ion exchange resin. Prod. range: Confidential.

**P 93–621**

*Manufacturer.* EiChrom Industries, Inc.

*Chemical.* (G) Aryl cyano, phosphorus ester based olefin polymer.

*Use/Production.* (S) Intermediate in production of ion exchange resin. Prod. range: Confidential.

**P 93–622**

*Manufacturer.* Eastman Chemical Company.

*Chemical.* (S) Ethanol, 2,2'-oxybis-propanol, oxybis-1,4-benzenedicarboxylic acid.

*Use/Production.* (S) Polyurethane foams. Prod. range: Confidential.

**P 93–623**

*Manufacturer.* Eastman Chemical Company.

*Chemical.* (S) Ethanol, 2,2'-oxybis-propanol, oxybis-1,4-benzenedicarboxylic acid dimethyl ester.

*Use/Production.* (S) Polyurethane foams. Prod. range: Confidential.

**P 93–624**

*Manufacturer.* Confidential.

*Chemical.* (G) Silicon-modified polyester resin.

*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 93–625**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyester resin.

*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 93–626**

*Manufacturer.* Confidential.

*Chemical.* (G) Phenolic-modified alkyd resin.

*Use/Production.* (S) Mirror backing enamel. Prod. range: Confidential.

**P 93–627**

*Importer.* Confidential.

*Chemical.* (G) Aliphatic ester.

*Use/Import.* (S) Solvent. Import range: Confidential.

**P 93–628**

*Importer.* Hitachi Chemical Company America, Ltd.

*Chemical.* (G) Methyl methacrylate polymer.

*Use/Import.* (S) Photoresist for primary imaging of printed circuit boards. Import range: Confidential.

**P 93–629**

*Importer.* Hitachi Chemical Company America, Ltd..

*Chemical.* (G) Methyl methacrylate polymer.

*Use/Import.* (S) Binder for dry film for primary imaging of printed circuit boards. Import range: Confidential.

**P 93–630**

*Manufacturer.* Confidential.

*Chemical.* (G) Prepolymer of aromatic diisocyanate, a diol, an aliphatic polyester and an aliphatic polyether.

*Use/Production.* (G) Intermediate for a laminating adhesive. Prod. range: Confidential.

**P 93–631**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyester-polyether-polyurethane.

*Use/Production.* (G) Laminating adhesive. Prod. range: Confidential.

**P 93–632**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyester resin.

*Use/Production.* (G) Open, nondispersive. Prod. range: Confidential.

**P 93–633**

*Importer.* Confidential.

*Chemical.* (G) Aliphatic ester.

*Use/Import.* (S) Solvent. Import range: Confidential.

**P 93–634**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyester resin.

*Use/Production.* (G) Toner additive for photocopy machines. Prod. range: Confidential.

**P 93–635**

*Manufacturer.* Henkel Corporation.

*Chemical.* (G) Amides, hydrogenated coco, *N*-((3-dimethylamino) propyl).

*Use/Production.* (S) An isolated intermediate to be used in the manufacture of a betaine surfactant. Prod. range: 688,000 kg/yr.

**P 93–636**

*Manufacturer.* Henkel Corporation.

*Chemical.* (S) Partially hydrogenated coconut oil.

*Use/Production.* (S) Intermediate (precursor) for hydrogenated cocamidopropyl (amine betaine) precursor. Prod. range: 500,000 kg/yr.

**P 93–637**

*Manufacturer.* Henkel Corporation.

*Chemical.* (S) 1-Propanaminium, 3-amino-*N*-(carboxymethyl)-*N*,*N*-dimethyl-, *N*-hydrogenated coco acyl derivatives, chlorides, inner salts.

*Use/Production.* (S) To be used in a liguid dishwashing concentrate. Prod. range: 2,750,000 kg/yr.

**P 93–638**

*Manufacturer.* Confidential.

*Chemical.* (G) Aliphatic carbamate ester.

*Use/Production.* (G) Chemical intermediate. Prod. range: 500,000 kg/yr.

*Toxicity Data.* Acute oral: LD50 433 g/kg (rat). Acute dermal: LD50 2.0 g/kg (rabbit). Mutagenicity: negative.

**P 93–639**

*Manufacturer.* Lonza, Inc.

*Chemical.* (G) Branched alkyl chloride.

*Use/Production.* (G) Organic intermediate (destructive use). Prod. range: Confidential.

P 93–640

*Manufacturer.* Lonza, Inc.

*Chemical.* (G) *N*-Alkyl-*N*-methylamine.

*Use/Production.* (G) Organic intermediate (destructive use). Prod. range: Confidential.

P 93–641

*Manufacturer.* Lonza Inc.

*Chemical.* (G) *N,N*-Dialkylamine. .

*Use/Production.* (G) Organic intermediate (destructive use). Prod. range: Confidential.

P 93–642

*Manufacturer.* Lonza Inc.

*Chemical.* (S) *N,N*-Dimethyl, *N*-isononyl decanaminium chlorides.

*Use/Production.* (G) Anti-corrosion/anti-deposition additive. Prod. range: Confidential.

P 93–643

*Manufacturer.* Confidential.

*Chemical.* (G) Substituted polyoxyalkylene-*M*-toluidine.

*Use/Production.* (G) Colorant. Prod. range: Confidential.

P 93–644

*Manufacturer.* Confidential.

*Chemical.* (G) Substituted aromatic ozonide.

*Use/Production.* (S) Adhesives of automobile and construction polyurethane foams of automobile electric insulators. Prod. range: 20,000–800,000 kg/yr.

P 93–645

*Manufacturer.* Confidential.

*Chemical.* (G) Substituted aromatic ozonide.

*Use/Production.* (G) Destructive use Prod. range: Confidential.

P 93–646

*Manufacturer.* Eastman Kodak Company.

*Chemical.* (G) (Alkyamino and alkyl) phenylimino substituted oxonaphthalene carboxamide.

*Use/Production.* (G) Contained use in a commercial article.Prod. range: 1,000–3,000 kg/yr.

*Toxicity Data.* Acute oral: LD50 5,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rabbit). Acute static: LC50; > 0.77mg/l (aquatic earthworm). Eye irritation: None (rabbit). Skin senitization: Positive (guinea pig).

P 93–647

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyl benzene

*Use/Production.* (G) Destructive use Prod. range: Confidential.

P 93–648

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyl benzene sulfonic acid.

*Use/Production.* (G) Destructive use Prod. range: Confidential.

P 93–649

*Manufacturer.* Confidential

*Chemical.* (G) Alkyl benzene sulfonic acid salt overbased.

*Use/Production.* (G) Lubricant oil additive. Prod. range: Confidential.

*Toxicity Data.* Acute oral: LD50 5.0 g/kg (rat). Acute dermal: LD50 > 2.0 g/kg (rat). Eye irritation: Slight (rabbit). Skin irritation: Slight (rabbit). Skin senitization: Negative (guinea pig).

P 93–650

*Manufacturer.* Confidential.

*Chemical.* (G) Copolymer alkyd resin.

*Use/Production.* (S) Industrial air-dry finishes. Prod. range: Confidential.

*Toxicity Data.* Acute oral: LD50 4.59 g/kg (rat). Acute dermal: LD50 > 0.2 g/kg (rabbit). Acute static: LC50 > 100 mg/l (rainbow trout). Eye irritation: Mild (rabbit). Skin irritation: Slight (rabbit). Skin senitization: Positive (guinea pig).

P 93–651

*Importer.* Confidential.

*Chemical.* (G) Perfluoroalkylethylacrylate copolymer.

*Use/Import.* (S) Additive in greases. Import range: Confidential.

*Toxicity Data.* Acute oral: LD50 4.59 g/kg (rat). Acute dermal: LD50 > 0.2 g/kg (rabbit). Acute static: LC50 > 100 mg/l (rainbow trout). Eye irritation. None (rabbit).

P 93–652

*Manufacturer.* Confidential.

*Chemical.* (G) Substituted fatty acid derivative.

*Use/Production.* (G) Paper additive. Prod. range: Confidential.

P 93–653

*Importer.* Hoechst Celanese Corporation.

*Chemical.* (G) Polyisocyanate blocked with malonic acid ester.

*Use/Import.* (S) Additive in paints. Import range: 20,000 kg/yr.

P 93–654

*Manufacturer.* Confidential.

*Chemical.* (G) Acrylic modified soya alkyd polymer.

*Use/Production.* (S) Binder in automotive coatings. Prod. range: Confidential.

P 93–655

*Manufacturer.* Confidential.

*Chemical.* (G) Ketone resin grafted copolymer.

*Use/Production.* (G) Additive for cement to retard cement setting. Prod. range: Confidential.

P 93–656

*Manufacturer.* Confidential.

*Chemical.* (G) Nitrogen heterocyclic compounds.

*Use/Production.* (G) Hydrogen sulfide (H2S) scavenger. Prod. range: Confidential.

P 93–657

*Manufacturer.* Minnesota Mining & Manufacturing Company.

*Chemical.* (S) Mixture of lithium perfluorooctane sulfonate; lithium perfluoroheptane sulfonate; lithium perfluorohexane sulfonate.

*Use/Production.* (G) Surfactant. Prod. range: Confidential.

*Toxicity Data.* Acute oral: LD50 154 mg/kg (rat). LD50 Acute dermal: 2.0 g/kg (rabbit). Inhalation: LC50 0.19 mg/l (rat). Acute static: 16 mg/l 96h Eye irritation: Moderate (rabbit). Skin irritation: Slight (rabbit).

P 93–658

*Importer.* Confidential.

*Chemical.* (G) Polysubstituted phenyl-azo-polysubstituted phenol dye.

*Use/Import.* (G) Fabric printing. Import range: Confidential.

T3Toxicity Data. Acute oral: LD50 5,000 mg/kg (rat). Eye irriation: Modern (rabbit). Skin irriation: None (rabbit).

P 93–659

*Manufacturer.* H.B. Fuller Company.

*Chemical.* (G) Fatty acids, C - unsatd., dimers; acid functionalized hydrocarbon; decanedioic acid; alkanediamines; polymer.

*Use/Production.* (S) Hot melt adhesive. Prod. range: Confidential.

P 93–660

*Manufacturer.* H.B. Fuller Company.

*Chemical.* (G) Fatty acids, $C_{18}$-unsatd., dimers; acid functionalized hydrocarbon; decanedoic acid; alkanediamines; polymer.

*Use/Production.* (S) Hot melt adhesives. Prod. range: Confidential.

P 93–661

*Manufacturer.* H. B. Fuller Company.

*Chemical.* (G) Fatty acids, $C_{18}$-unsatd., dimers; acid functionalized hydrocarbon, decanedioc acid; nonanedioic acid; alkanediamines; cycloalkanediamines; polymer.

*Use/Production.* (S) Adhesive. Prod. range: Confidential.

P 93–662

*Manufacturer.* Confidential.

*Chemical.* (G) Amine carboxylate salt.
*Use/Production.* (G) Epoxy resin ingredient. Prod. range: Confidential.

**P 93–663**

*Manufacturer.* Confidential.
*Chemical.* (G) Aliphatic polyurethane, isocyanate terminated.
*Use/Production.* (G) Polyurethane resin ingredient. Prod. range: Confidential.

**P 93–664**

*Manufacturer.* Confidential.
*Chemical.* (G) Alkyl ammonium salt with hydrochloric acid.
*Use/Production.* (G) Site-limited process intermediate for the production of an inorganic acid. Prod. range: Confidential.

**P 93–665**

*Importer.* MTC America, Inc..
*Chemical.* (G) Benzophenone polyimide resin.
*Use/Import.* (S) Molding powder for grinder matrix resin for composite. Import range: Confidential.

**P 93–666**

*Importer.* Hoechst Celanese Corporation.
*Chemical.* (G) Styrne, polymer with diisopropyl maleate, glycidylmethacrylate and isobornylacrylate.
*Use/Import.* (S) Resin for powder coating. Import range: 12,000–30,000 kg/yr.

**P 93–667**

*Importer.* Hoechst Celanese Corporation.
*Chemical.* (G) Polyphosporic acids, polymers with castor oil and aromatic diol, *N,N*-dimethylethanolamine salts.
*Use/Import.* (S) Wetting agent for paints. Import range: 50–100 kg/yr.

**P 93–668**

*Manufacturer.* Essex Specialty Products.
*Chemical.* (G) Silylated aliphatic polyurea lacquer.
*Use/Production.* (S) Polymer for use in coating solution. Prod. range: 15,000–40,000 kg/yr.

**P 93–669**

*Manufacturer.* Confidential.
*Chemical.* (G) Silylated aliphatic polyurea lacquer.
*Use/Production.* (S) Polymer for use in coating solution. Prod. range: Confidential.

**P 93–670**

*Manufacturer.* Confidential.
*Chemical.* (S) Maleic anhydride; diethylene glycol; *N*-butanol.
*Use/Production.* (S) A radiation coating for industrial use. Prod. range: Confidential.

**P 93–671**

*Manufacturer.* Confidential.
*Chemical.* (S) Methanol, maleic anhydridr, and bisphenol-*A*-diolycidyl ether.
*Use/Production.* (S) A radiation curable coating for industrial use. Prod. range: Confidential.

**P 93–672**

*Manufacturer.* Confidential.
*Chemical.* (G) Polyanhydride of the dodecandiacid.
*Use/Production.* (S) A radiation curable coating for industrial use. Prod. range: Confidential.

**P 93–673**

*Importer.* Confidential.
*Chemical.* (G) Substituted aromatic diazo *A*.
*Use/Import.* (G) Component of photoresist for electronics, graphics arts, and printing industry. Open, nondispersive use. Import range: Confidential.

**P 93–674**

*Manufacturer.* Henkel Corporation.
*Chemical.* (G) Complex substituted vinyl polymer.
*Use/Production.* (S) Water based coatings. Prod. range: Confidential.

**P 93–675**

*Importer.* Ciba-Geigy Corporation.
*Chemical.* (G) Substituted azo triazine dye.
*Use/Import.* (G) Textile dye. Import range: Confidential.
*Toxicity Data.* Acute oral: LD50 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rabbit). Acute static: LC50; > 1.00 mg/l 96hr (carp). Eye irritation: None (rabbit). Skin irritation: None (rabbit). Mutagenicity: Negative. Skin sensitization: Positive (guinea pig).

**P 93–676**

*Manufacturer.* EiChrom Industries, Inc..
*Chemical.* (S) Aryl, cyano, phosphrous ester based olefin polymer, sulfonated and hydrolyzed.
*Use/Production.* (S) Ion exchange resin for analytical and decontamination application. Prod. range: Confidential.

**P 93–677**

*Manufacturer.* EiChrom Industries, Inc.
*Chemical.* (G) Aryl, cyano, phosphous ester based olefin polymer, sulfonated and hydralyzed.
*Use/Production.* (S) Ion exchange resin for analytical an& decontamination application. Prod. range: Confidential.

**P 93–678**

*Manufacturer.* EiChrom Industries, Inc.
*Chemical.* (G) Aryl cyano, phosphorus ester based olefin polymer, sulfonated and hydrolyzed, alkali salt.
*Use/Production.* (S) Intermediate in production of ion exchange resin. Prod. range: Confidential.

**P 93–679**

*Manufacturer.* EiChrom Industries, Inc.
*Chemical.* (G) Aryl/cyano, phosphorus ester based olefin polymer, sulfonated and hydrolyzed, alkali salt.
*Use/Production.* (S) Intermediate in production of ion exchange ion resin. Prod. range: Confidential.

**P 93–680**

*Manufacturer.* Confidential.
*Chemical.* (S) 4-Hydroxybutylvinyl either; isophorone diisocyanate; caprolacetone triol.
*Use/Production.* (S) A radiation curable coating for industrial use. Prod. range: Confidential.

**P 93–681**

*Manufacturer.* Confidential.
*Chemical.* (S) 4-Hydroxybutylvinyl ether; adiprene.
*Use/Production.* (S) A radiation curable coating for industrial use. Prod. range: Confidential.

**P 93–682**

*Manufacturer.* Confidential.
*Chemical.* (G) Urethane acrylic latex.
*Use/Production.* (G) Component of spray applied coating. Prod. range: 20,000–80,000 kg/yr.

**P 93–683**

*Manufacturer.* Confidential.
*Chemical.* (G) Urethane acrylic latex.
*Use/Production.* (G) Component of spray applied coating. Prod. range: 20,000–80,000 kg/yr.

**P 93–684**

*Manufacturer.* Confidential.
*Chemical.* (G) Urethane acrylic latex.
*Use/Production.* (G) Component of spray applied coating. Prod. range: 20,000–80,000 kg/yr.

**P 93–685**

*Importer.* Confidential.
*Chemical.* (G) Fluoroalkyl acrylate copolymer.
*Use/Import.* (G) Dispersive use. Import range: Confidential.

**P 93–686**

*Manufacturer.* Confidential.

*Chemical.* (G) Aromatic polyisocyanate.

*Use/Import.* (G) Dispersive use. Import range: Confidential.

**P 93–687**

*Manufacturer.* EMG Minerals, Inc..

*Chemical.* (S) Reaction product between mica and 2-propenoic acid, 2-methyl 3-(trimethoxysilyl) propyl ester.

*Use/Production.* (S) Resin reinforcement. Prod. range: Confidential.

**P 93–688**

*Importer.* BASF Corporation.

*Chemical.* (G) Silico phosphanate, sodium salt.

*Use/Import.* (G) Antifreeze additive. Import range: Confidential.

*Toxicity Data.* Acute static: LC50 2150 mg/l kg 96h (rain trout).

**P 93–689**

*Manufacturer.* Minnesota Mining & Manufacturing Company.

*Chemical.* (G) Modified tetramethylene oxide polyurethane.

*Use/Production.* (G) Binder resin. Prod. range: Confidential.

**P 93–690**

*Manufacturer.* Confidential.

*Chemical.* (G) Organic compound containing N.P.

*Use/Production.* (G) Paint additive. Prod. range: Confidential.

**P 93–691**

*Manufacturer.* Confidential.

*Chemical.* (G) A tertiary amine salt of the polymer of substituted propanoic acid with an organic diisocyanate, mixed polyols and water.

*Use/Production.* (G) Component of adhesive system. Prod. range: Confidential.

**P 93–692**

*Importer.* Hoechst Celanese Corporation.

*Chemical.* (G) Formaldehyde, polymer with phenol, modified with epoxy-resin, carboxylated, amine salt.

*Use/Import.* (S) Coating. Import range: Confidential.

**P 93–693**

*Importer.* Essex Specialty Products.

*Chemical.* (G) Aminofunctional polysilane adduct.

*Use/Import.* (S) Intermediate for use in polymer synthesis for use in coating manufacture. Import range: Confidential.

**P 93–694**

*Manufacturer.* Eastman Kodak Company.

*Chemical.* (G) Trisubstituted phenol.

*Use/Production.* (G) Contained use in an article. Prod. range: 7,500– 10,000 kg/yr.

*Toxicity Data.* Acute oral: LD50 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rat). Eye irritation: None (rabbit). Skin irritation: None (rabbit). Mutagenicity: Negative. Skin sensitization: Positive (guinea pig).

**P 93–695**

*Manufacturer.* Interplastic Coporation.

*Chemical.* (G) Flame retardant polyether resin.

*Use/Production.* (S) Reinforced plastics. Prod. range: Confidential.

**P 93–696**

*Manufacturer.* Loctite Corporation.

*Chemical.* (G) Nitrile substituted alkyl ester of a propenoic acid.

*Use/Production.* (S) A component of "superglue type" adhesive formulations. Prod. range: 5,000–50,000 kg/yr.

*Toxicity Data.* Acute oral: LD50 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rat). Eye irritation: None (rabbit).

**P 93–697**

*Manufacturer.* Eastman Kodak Company.

*Chemical.* (G) Substituted naphthalene carboxamide.

*Use/Production.* (G) Chemical intermediate. Prod. range: 200–2,000 kg/yr.

*Toxicity Data.* Acute oral: LD50 > 1.231 mg/kg (rat). Skin irritation: None (rabbit). Skin sensitization: Postive (guinea pig).

**P 93–698**

*Manufacturer.* Confidential.

*Chemical.* (G) Acrylic polymer.

*Use/Production.* (G) Coating for open, nondispersive use in orginal equipment manufacture. Prod. range: Confidential.

**P 93–699**

*Importer.* Hitachi Chemical Company Amercia, Ltd.

*Chemical.* (G) Substituted benzene dicarboxylic acid ester.

*Use/Import.* (G) Photo resist for circuit boards. Import range: Confidential.

**P 93–700**

*Importer.* Powdertech Corporation.

*Chemical.* (G) Organo polysiloxane.

*Use/Import.* (G) Open nondispersed use. Import range: 1,500–000 kg/yr.

Dated: May 25, 1993.

**Frank V. Caesar,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 93–13373 Filed 6–7–93; 8:45 am]

BILLING CODE 6560–50–F

**[FRL–4663–8]**

## Water Quality Criteria; Aquatic Life Criteria for Metals

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Notice of availability with request for comments.

**SUMMARY:** On January 25–27, 1993, the Environmental Protection Agency (EPA) held an open meeting in Annapolis, Maryland, to discuss issues related to the application of aquatic life criteria for metals. EPA invited a group of experts drawn from academia, consultants, States, the regulated community, EPA Regions, EPA Laboratories and EPA Headquarters. The workshop focused on the identification of short-term solutions to problems with criteria and permits for metals, and on the identification of additional research needs for metals bioavailability and toxicity. The workshop participants met on January 28–29, 1993 to prepare written statements with their recommendations. The purpose of today's notice is to make those recommendations available to the public at large for comment.

**DATES:** Written comments should be submitted on or before July 8, 1993.

**ADDRESSES:** Send written comments to: Metals Policy, Ecological Risk Assessment Branch, Health and Ecological Criteria Division (WH–586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Commenters are requested to submit one original and three copies of their written comments and any references cited in their comments. All comments must be postmarked or delivered by hand by July 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Metals Policy, Ecological Risk Assessment Branch, Health and Ecological Criteria Division (WH–586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Telephone: 202–260–0658).

**SUPPLEMENTARY INFORMATION:**

### Background Information

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life and recreation.

Over the years, EPA has issued a number of ambient water quality criteria for the protection of aquatic organisms and their uses from the toxic effects of metals. EPA has also issued guidance on the application of these criteria in State

water quality programs. Last year, EPA made available an Interim Guidance on the Interpretation and Implementation of Aquatic Life Criteria for Metals ("Interim Guidance"), and issued a notice of availability in the June 5, 1992 **Federal Register** (57 FR 24041). That notice indicated that EPA would revise the Interim Guidance from time to time, as necessary, to reflect evolving knowledge in this area. The public comments received on the Interim Guidance will be considered in making revisions to the guidance.

Since issuance of the Interim Guidance, EPA has continued a dialogue with the States, the regulated community and other interested parties on issues related to the implementation of metals criteria. Based on issues raised by different groups, EPA decided that it would hold an open meeting to bring together experts representing different perspectives on metals issues to discuss those issues and to provide recommendations to EPA for consideration in a possible revision of the Interim Guidance. The overall purpose of the meeting was (1) to identify possible short term solutions to problems with criteria and permits for metals; and (2) to identify additional research needs for metal bioavailability and toxicity.

The meeting was held in Annapolis, Maryland on January 25–27, 1993. There were 34 participants at the meeting. The participants made a number of introductory presentations and conducted panel discussions on a number of issues related to ambient water quality criteria for metals. Approximately 120 observers also attended the meeting and offered comments on the issues identified. The participants met on January 28–29, 1993 to discuss their recommendations and to prepare written statements. These written statements have been transmitted to EPA for consideration.

**Request for Comments**

The purpose of today's notice is to request public comments on the written recommendations resulting from the Annapolis meeting. EPA would like to emphasize that the recommendations were developed and submitted to EPA by the experts invited to the meeting. These recommendations should not be considered EPA's recommendations or policy. EPA will consider the recommendations from the Annapolis meeting, as well as any public comments received on those recommendations and all the comments received on the Interim Guidance, during its deliberations on possible revisions of the Interim Guidance.

The six recommendations that follow are all short-term in nature and are meant to further implementation of the aquatic life criteria for metals. These recommendations exclude mercury and selenium because these metals bioaccumulate and their mode of action differs from other metals. In addition to the recommendations listed below, the Annapolis group also recommended that EPA fund some basic integrated longer term research to determine what controls the bioavailability of metals. Comments are especially solicited on the central question for discussion at the Annapolis meeting, i.e., what is the best approach for expressing ambient water quality criteria for metals in order to accurately reflect ambient toxicity?

**Workshop on Aquatic Life Criteria for Metals Recommendations**

*I. Clean Analytical Chemistry*

Most metals data have not been collected using appropriate clean techniques (both sampling and analytical). Consequently, values for effluents and receiving waters may be suspect and should be verified using appropriate clean sampling and analytical techniques. Metals concentrations in the low parts per billion range that have been collected in previous years have been shown to be unreliable due to various types of sample contamination. This may include effluents, as well as ambient water samples. Therefore, modern methods for clean (ultra-clean techniques for open ocean and lakes, clean techniques for all other water body types) collection, sample handling, and instrumental techniques should be used, and new effluent and receiving water data should be collected.

EPA Headquarters should prepare guidance for the States, regions, and dischargers to describe clean sampling and analytical laboratory procedures. Guidance should also be provided to permit writers on how to handle pending and previously issued permits (i.e., how good is the analytical data that was submitted and is being submitted), and the relationship of clean techniques to existing Part 136 analytical methods and sample handling requirements.

*II. Total Recoverable Metal for Mass Balances and Permits*

Calculations and modeling to develop TMDLs and permit limits should account for total recoverable loadings because that form of the metal behaves as a conservative parameter in natural waters. Permits should be written in terms of total recoverable metal since this is the only form that can be used to reliably compute the resulting concentrations in the water column and sediments.

*III. Dissolved Metal to Approximate the Bioavailable Fraction*

A. Based on the data presented at the conference, and the option of the majority of assembled scientists, the dissolved metal concentration better approximates the bioavailable fraction of waterborne metals than the total recoverable concentration of metals. In some cases, even the dissolved concentration may overestimate the bioavailable fraction for metals that strongly complex to either inorganic or organic ligands (e.g., filterable carbon containing particles). On the other hand, the dissolved concentrations may underestimate the bioavailable fraction where food sources for organisms are shown to be contaminated and represent a significant exposure pathway. On balance, the assembled experts at the workshop recommend that the existing water quality criteria values be applied as a dissolved metal concentration as the dissolved metal concentration is currently the better estimate for bioavailable metal fractions.

B. It is necessary to estimate the dissolved concentration resulting from total metal loadings in the receiving water (the "translation" problem), because the required load allocations calculated from either simple dilution or more elaborate fate models are in terms of total recoverable metal. The best estimate of the ratio of dissolved to total recoverable metal is by direct measurements using clean techniques. These measurements should be taken in the ambient waters at or near the critical conditions (e.g., low stream flows) for which the permits are calculated, and around the criteria concentrations. If relationships between the dissolved fraction and other water quality variables, particularly suspended solids, are available, they can be used in more comprehensive modeling frameworks to project the ratio of dissolved to total recoverable (probabilistic/dynamic models).

C. In order to interpret current water quality criteria for metals as a dissolved concentration, it may be necessary to retest the most sensitive species and measure dissolved and total recoverable metal during the tests, where this information is not available. This appears to be most critical for chronic tests where the organisms are fed. For these new experiments, it is recommended that measurements of ionic metal concentrations also be made.

*IV. Water Effect Ratio (WER)*

The water effect ratio is a biologically based method to estimate the bioavailable fraction of a toxic pollutant in a receiving water. Guidance for this method will be available shortly. The application of WER can be used as a substitute for the dissolved fraction by estimating the bioavailable fraction. For this use, both total recoverable metal and dissolved metal should be measured. If the criteria are expressed as dissolved, then a dissolved WER should be used. Use of a dissolved WER should reduce the dependence of the WER of suspended solids concentrations. If the criteria are expressed as total recoverable, then a total recoverable WER should be used.

*V. List of Under- and Over-protective Factors*

EPA should prepare a list of the under and over protective factors and assumptions in the standards-to-permits process as information for permit writers. This could serve to better ensure that the criteria are applied to achieve the intended level of protection. The permit writer should consider both the over and underprotective factors in limits and in considering when a WER is appropriate. These factors and assumptions should at a minimum include:

A. Duration and violation frequency
B. Criteria (applicability of dissolved fraction)
C. Steady state versus dynamic modelling for TMDLs.
D. Permit limits and averaging periods.

*VI. Organometallic Compounds*

There are classes of compounds, for example metalized dyes, that contain metals of concern. However, these chemicals may have characteristics that require additional consideration. Some metalized dyes are designed so that the metal is tightly bound, and they will not break down quickly. However, some treatment processes will enhance the breakdown of these compounds. If these chemicals can degrade rapidly, for example in the treatment plants, then these chemicals would convert to ionic metal, and would be handled as described in the above discussions. If, however, they are resistant to decay, then they should be evaluated as a separate class of chemicals, with specific properties. (It has not been determined exactly what procedures or criteria to use to determine resistance to decay.) Data presented demonstrating the bioavailability or toxicity of these compounds in the effluent should be used in developing permit limits for metal.

**James A. Hanlon,**

*Acting Director, Office of Science and Technology.*

[FR Doc. 93–13376 Filed 6–7–93; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 93–598]**

### Comments Invited on Idaho Public Safety Plan

May 28, 1993.

The Commission has received the public safety radio communications plan for Idaho (Region 12).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87–112, Region 12 consists of the state of Idaho. (General Docket No. 87–112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, interested parties may file comments on or before July 7, 1993 and reply comments on or before July 22, 1993. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 93–149 Idaho—Public Safety Region 12.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 93–13393 Filed 6–7–93; 8:45 am]

Billing Code 6712–01–M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed; CCNI/Lykes Reciprocal Space Charter and Coordinated Sailing Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 232–011214–002

*Title:* CCNI/Lykes Reciprocal Space Charter and Coordinated Sailing Agreement

*Parties:*

Compania Chilena De Navegacion Interoceanica S.A.
Lykes Bros. Steamship Co., Inc.

*Synopsis:* The proposed amendment adds ENS Container Line, Ltd. as a party to the Agreement, changes the name of the Agreement to Agreement 11214 and makes other minor technical changes. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: June 2, 1993.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–13418 Filed 6–7–93; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Community Bankers, Inc., et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has 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.

The 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 1993.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Community Bankers, Inc.*, Granbury, Texas; to acquire Community Data Services, Inc., Cleburne, Texas, and thereby engage in providing data services to the general public consisting of the processing and preparation of reports from data supplied by the customers pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in North Central Texas.

Board of Governors of the Federal Reserve System, June 2, 1993.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 93–13429 Filed 6–7–93; 8:45 am]

BILLING CODE 6210–01–F

## Guaranty State Bancorp, 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 July 2, 1993.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. Guaranty State Bancorp*, Durham, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Guaranty State Bank, Durham, North Carolina.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Lincoln County Bancorp, Inc.*, Troy, Missouri; to acquire 100 percent of the voting shares of Altenburg Bancorp, Inc., Altenburg, Missouri, and thereby indirectly acquire Bank of Altenburg, Altenburg, Missouri.

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Fort Ridgely National Bancorporation, Inc.*, Fairfax, Minnesota; to become a bank holding company by acquiring 84 percent of the voting shares of First National Bank of Fairfax, Fairfax, Minnesota.

*2. Marquette Bancshares, Inc.*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of First State Holding Company, Coon Rapids, Minnesota, and thereby indirectly acquire First Bank Coon Rapids, Coon Rapids, Minnesota.

**D. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Enevoldsen Management Company*, Potter, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of The Potter State Bank, Potter, Nebraska.

**E. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. First United Bank Group, Inc.*, Albuquerque, New Mexico; Ford Bank Group, Inc., Lubbock, Texas; and Ford Bank Group Holdings, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of Texas Commerce Bank, N.A., Lubbock, Texas, and Midland National Bank, Midland, Texas.

**F. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. Pend Oreille Bancorp*, Newport, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Pend Oreille Bank, Newport, Washington.

Board of Governors of the Federal Reserve System, June 2, 1993.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 93–13428 Filed 6–7–93; 8:45 am]

BILLING CODE 6210–01–F

## Paul Gerard Heafy; Change in Bank Control Notice

### Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has 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 notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice 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 indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 28, 1993.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Paul Gerard Heafy*, Oklahoma City, Oklahoma; to acquire 50.32 percent of the voting shares of Parker County Bancshares, Inc., Weatherford, Texas, and thereby indirectly acquire First National Bank & Trust Co. of Weatherford, Weatherford, Texas.

Board of Governors of the Federal Reserve System, June 2, 1993.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 93–13430 Filed 6–7–93; 8:45 am]

BILLING CODE 6210–01–F

**Societe Generale, 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 June 28, 1993.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

*1. Societe Generale*, Paris, France; to engage *de novo* through its subsidiary, FIMAT Futures USA, Inc., in providing brokerage services and investment advice regarding exchange-traded derivative securities; providing brokerage services and investment advice regarding U.S. and non U.S. government obligations and options thereon, acting as agent and providing investment advice in transactions involving over-the-counter options products that are securities; and buying and selling U.S. government and state obligations on the order of investors as riskless principal pursuant to §§ 225.25(b)(4), (b)(15) and (b)(16) 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. Central Arkansas Bancshares, Inc.*, Arkadelphia, Arkansas; to engage *de novo* through its subsidiary, First Banc Securities, Inc., Hot Springs, Arkansas, in providing investment or financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y and thereby engage in providing full service brokerage activities.

Board of Governors of the Federal Reserve System, June 2, 1993.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 93–13431 Filed 6–7–93; 8:45 am]

BILLING CODE 6210–01–F

## GENERAL SERVICES ADMINISTRATION

**Information Collection Activities Under Office of Management and Budget Review**

**AGENCY:** Public Buildings Service (PMF), GSA.

**ACTION:** The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0044, Application/Permit for use of Space in Public Buildings and Grounds. This GSA form is used by the general public to request the use of public space in Federal buildings for cultural, recreational or educational activities.

**ADDRESSES:** Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

*Annual Reporting Burden:*
*Respondents:* 8,000;
*Annual responses:* 1;
*Average hours*
*Per response:* 0.08;
*Burden hours:* 666.

**FOR FURTHER INFORMATION CONTACT:** Valerie W. Matthews, (202) 501–0842.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: May 27, 1993.

**Emily C. Karam,**

*Director, Information Management Division.*

[FR Doc. 93–13447 Filed 6–7–93; 8:45 am]

BILLING CODE 6820–23–M

**Multiple Award Federal Supply Schedule-Erosion Control Fabric**

**NOTICE:** General Products Commodity Center, Federal Supply Service, is reviewing Erosion Control Fabric (Biodegradable and Non-Biodegradable) provided under Multiple Award Federal Supply Schedule 56, Part IV, Section A, FSC Group 5620, Special item Number (SIN) 563–8, for possible conversion to another method of contracting under a single award contract. Comments regarding this matter may be directed to Elot Green, Chief, Commodity Management Group (7FXEC), 819 Taylor Street, room 6A24, Fort Worth, TX 76102–6114. Industry and agency comments are requested with comments to include consideration of the potential impact on small business concerns. Comments should be made within 30 days from the date of this notice.

Dated: May 28, 1993.

**Larry Moore,**

*Director, General Products Commodity Center (7FX).*

[FR Doc. 93–13448 Filed 6–7–93; 8:45 am]

BILLING CODE 6820–24–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Administration for Children and Families**

**Revised Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs for Fiscal Year 1994**

**AGENCY:** Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Correction notice: Revised notification of the Fiscal Year 1994 federal allotments to states for developmental disabilities Basic Support and Protection and Advocacy formula Grant programs.

**SUMMARY:** This notice sets forth the revised Fiscal Year 1994 individual allotments to States administering the Basic Support and Protection and Advocacy programs, pursuant to Section 125 and Section 142 of the Developmental Disabilities Assistance

and Bill of Rights Act (Act). This revision is required because the estimated FE 1994 allotments published in the **Federal Register** on March 30, 1993, (58 FR 16685) were based on an erroneous formula computation. The allotments published herein supersede those published on March 30, 1993, and are based on FY 1993 appropriation levels. If Congress enacts and the President approves an amount different from the Fiscal Year 1993 funding levels, the allotments will be adjusted accordingly. These allotments reflect the appropriated funds allocated to the States based on the most recent data available for population, extent of need for services for persons with developmental disabilities, and the financial need of the States. The revised amounts published herein supersede those published in the **Federal Register** on March 30, 1993.

**EFFECTIVE DATE:** October 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Bettye J. Mobley, Chief, Family Support Branch, Office of Financial Management, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone (202) 690–7220.

**SUPPLEMENTARY INFORMATION:** Section 125(a)(2) of the Act requires that adjustments in the amounts of State allotments may be made not more often than annually and that States are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year.

The Administration on Developmental Disabilities updated the data elements for issuance of Estimated Fiscal Year 1994 allotments for the Developmental Disabilities formula grant programs.The data elements are the same as those published in the **Federal Register** on March 30, 1993, which are:

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1991, are from Table 5.J10 of the "Social Security Bulletin: Annual Statistical Supplement 1992" issued by the Social Security Administration, U.S. Department of Health and Human Services. The numbers for the Northern Mariana Islands and the Trust Territories of the Pacific Islands, included under "Abroad" in the Table, were obtained from the Social Security Administration;

B. State data on Average Per Capita Income, 1986–91, are from Table 1, page 38 of the "Survey of Current Business," August 1992, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the Territories also were obtained from that Bureau; and

C. States' data on Total Population and Working Population (ages 18–64) as of July 1, 1991, are from "Current Population Reports: Population Estimates and Projections, Series P–25, Number 1010, issued by the Bureau of The Census, U.S. Department of Commerce. Estimates for the Territories are no longer available, therefore, the Territories' population data are from the 1990 Census Population Counts. The Territories' working populations were issued in the Bureau of Census report, "General Characteristics Report: 1980," which is the most recent data available from the Bureau.

REVISED ESTIMATED FY 1994 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

| | Basic support | Protection & advocacy |
|---|---|---|
| Total | $67,371,680 | $22,506,496 |
| Alabama | 1,297,127 | 397,723 |
| Alaska | 420,475 | 214,470 |
| Arizona | 900,199 | 279,806 |
| Arkansas | 722,736 | 230,793 |
| California | 5,875,034 | 1,802,400 |
| Colorado | 715,865 | 234,184 |
| Connecticut | 657,489 | 222,584 |
| Delaware | 420,475 | 214,470 |
| District of Columbia | 420,475 | 214,470 |
| Florida | 2,875,254 | 913,707 |
| Georgia | 1,630,899 | 520,983 |
| Hawaii | 420,475 | 214,470 |
| Idaho | 420,475 | 214,470 |
| Illinois | 2,558,244 | 809,472 |
| Indiana | 1,417,898 | 452,912 |
| Iowa | 765,757 | 240,338 |
| Kansas | 593,670 | 214,470 |
| Kentucky | 1,212,244 | 365,731 |
| Louisiana | 1,342,905 | 418,389 |
| Maine | 420,475 | 214,470 |
| Maryland | 924,027 | 294,075 |
| Massachusetts | 1,269,223 | 389,166 |
| Michigan | 2,344,282 | 741,350 |
| Minnesota | 997,616 | 318,638 |
| Mississippi | 919,838 | 284,694 |
| Missouri | 1,289,953 | 412,108 |
| Montana | 420,475 | 214,470 |
| Nebraska | 420,475 | 214,470 |
| Nevada | 420,475 | 214,470 |
| New Hampshire | 420,475 | 214,470 |
| New Jersey | 1,489,195 | 450,480 |
| New Mexico | 451,250 | 214,470 |
| New York | 4,107,915 | 1,231,080 |
| North Carolina | 1,765,146 | 563,916 |
| North Dakota | 420,475 | 214,470 |

REVISED ESTIMATED FY 1994 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

| | Basic support | Protection & advocacy |
|---|---|---|
| Ohio | 2,793,938 | 892,245 |
| Oklahoma | 870,453 | 265,533 |
| Oregon | 693,310 | 226,461 |
| Pennsylvania | 3,076,024 | 943,057 |
| Rhode Island | 420,475 | 214,470 |
| South Carolina | 1,012,266 | 323,232 |
| South Dakota | 420,475 | 214,470 |
| Tennessee | 1,404,113 | 442,538 |
| Texas | 4,202,372 | 1,266,245 |
| Utah | 512,243 | 214,470 |
| Vermont | 420,475 | 214,470 |
| Virginia | 1,364,538 | 435,879 |
| Washington | 1,067,871 | 330,120 |
| West Virginia | 755,079 | 239,375 |
| Wisconsin | 1,264,763 | 404,020 |
| Wyoming | 420,475 | 214,470 |
| America Samoa | 220,750 | 114,741 |
| Guam | 220,750 | 114,741 |
| Marshall Islands [1] | 220,750 | 0 |
| Micronesia [1] | 220,750 | 0 |
| Palau [1] | 220,750 | 0 |
| Puerto Rico | 2,378,569 | 729,094 |
| Trust Territories [2] | 0 | 114,741 |
| Virgin Islands | 220,750 | 114,741 |
| Northern Mariana Islands | 220,750 | 114,741 |

[1] The 1990 Amendments to the Developmental Disabilities Assistance and Bill of Rights Act (the Act) provided that the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau (formerly the Trust Territories of the Pacific Islands (TTPI)) each would receive a minimum allotment under the Basic Support formula program.

[2] Prior to the Act, TTPI had been eligible for a single minimum allotment under both programs, Basic Support and Protection and Advocacy. Under the 1990 Amendments, TTPI continues to be eligible for a single minimum amount under the Protection and Advocacy program; however, under the Compact of Free Association, (Pub. L. 99–239), only the Republic of Palau continues to be eligible to receive funds under the Protection and Advocacy program. Therefore, the Republic of Palau will receive its proportional share of the TTPI allotment, and the remainder will be withheld for reallotment in accordance with section 142(b)(1) of the Act.

Dated: May 26, 1993.

**Will Wolstein,**

*Acting Commissioner, Administration on Developmenatal Disabilities.*

[FR Doc. 93–13387 Filed 6–7–93; 8:45 am]

BILLING CODE 4184–01–M

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**[Program Announcement No. OCS 93–07]**

## Family Violence Prevention and Services Program

**AGENCY:** Office of Community Services, Administration for Children and Family (ACF), Department of Health and Human Services (HHS).

**ACTION:** Notice of the availability of funding for grants for family violence intervention and prevention activities tc State domestic violence coalitions.

**SUMMARY:** This announcement governs the proposed award of Family Violence Prevention and Services Act grants to private non-profit State domestic violence coalitions to conduct activities to promote domestic violence intervention and prevention, and to increase public awareness of domestic violence issues. This announcement sets forth the application process and requirements for grants to be awarded for fiscal year (FY) 1993.

**CLOSING DATES FOR APPLICATIONS:** Applications meeting the criteria specified in this announcement must be received no later than July 23, 1993.

**ADDRESSES:** Address the applications to: Department of Health and Human Services, Office of Community Services, Administration for Children and Families, ATTN: William D. Riley, Fourth Floor—East Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

**FOR FURTHER INFORMATION CONTACT:** William D. Riley (202) 401–5529.

**SUPPLEMENTARY INFORMATION:**

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J. Certifications

### A. Legislative Authority

Title III of the Child Abuse Amendments of 1984 (Pub. L. 98–457, 42 U.S.C. 10401 *et seq.*) is entitled the "Family Violence Prevention and Services Act" (the Act). It was first implemented in FY 1986 and was reauthorized for Fiscal Years 1993 through 1995 and amended on May 28, 1992 by Public Law 102–295.

### B. Background

Section 311 of the Act authorizes the Secretary to award grants to Statewide private non-profit State domestic violence coalitions to conduct activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues. This is the first funding cycle of this new grant program. Grants will be made to one Statewide domestic violence coalition in each State, the U.S. Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

### C. Eligibility

To be eligible for grants under this program announcement an organization shall be a statewide private non-profit domestic violence coalition with the following characteristics:

(1) The membership of the coalition includes representatives from a majority of the programs for victims of domestic violence operating within the State (a State domestic violence coalition may include representatives of Indian Tribes and Tribal Organizations as defined in

the Indian Self Determination and Education Assistance Act);

(2) The Board of Directors' membership is representative of a majority of the programs for victims of domestic violence in the State; and

(3) The purpose of the coalition is to provide services, community education, planning and monitoring, and technical assistance to programs to establish and maintain shelter and related assistance for victims of domestic violence and their children (sec. 311(b)).

**D. Funds Available**

Public Law 102–394, the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act for FY 1993 made $2,480,000 available for grants to State domestic violence coalitions. Grants of $46,800 each will be available for the State domestic violence coalitions of the 50 States, the Commonwealth of Puerto Rico, and the District of Columbia. The Coalitions of the U.S. Territories (Guam, U.S. Virgin Islands, Northern Mariana Islands, American Samoa, and Trust Territory of the Pacific Islands (Palau)) are eligible for grant awards of approximately $9,280 each.

**E. Grant Award Period**

The grant award period for the program will be one year from the date of the grant award. Therefore, all FY 1993 funds must be obligated by the grantee within one year of the date of the grant award and liquidated not later than two years from the date of the grant award.

**F. Reporting Requirements**

1. The grantees must submit annual reports describing the coordination, training and technical assistance activities, and the public education services supported by grant funds. The annual reports must also provide an assessment of the effectiveness of such grant supported activities. An interim program report is due 90 days after the end of the grant period. The final program report is due 90 days after the end of the liquidation period. Program Reports are to be sent to: Office of Community Services, Administration for Children and Families, Attn: William D. Riley, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447.

2. Grantees must submit annual financial reports, Standard Form 269 (SF–269). An interim financial report is due 90 days after the end of the grant period. A final financial report is due 90 days after the end of the liquidation period. Financial reports are to be sent to: Director for Formula, Entitlement, and Block Grants, Office of Financial Management, Administration for Children and Families, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447.

**G. Application Requirements**

The domestic Violence Coalition application must be signed by the Executive Director of the Coalition or the official designated as responsible for the administration of the grant. The application must contain the following information:

1. A description of the public education campaign regarding domestic violence to be conducted by the coalition through the use of public service announcements and informative materials that are designed for print media;

(A) Billboards;

(B) Public transit advertising;

(C) Electronic broadcast media; and

(D) Other forms of information dissemination that inform the public about domestic violence issues (sec. 311(a)(3)).

2. A discussion of anticipated outcomes and a description of planned grant activities to be conducted in conjunction with judicial and law enforcement agencies concerning appropriate responses to domestic violence cases and an examination of issues including the:

(A) Inappropriateness of mutual protection orders;

(B) Prohibition of mediation when domestic violence is involved;

(C) Use of mandatory arrest of accused offenders;

(D) Discouragement of dual arrests;

(E) Adoption of aggressive and vertical prosecution policies and procedures;

(F) Use of mandatory requirements for presentence investigations;

(G) Length of time taken to prosecute cases or reach plea agreements;

(H) Use of plea agreements;

(I) Consistency of sentencing, including comparisons of domestic violence crimes with other violent crimes;

(J) Restitution of victims;

(K) Use of training and technical assistance to law enforcement and court officials and other professionals;

(L) Reporting practices of, and the significance to be accorded to, prior convictions (both felony and misdemeanor) and protection orders;

(M) Use of interstate extradition in cases of domestic violence crimes; and

(N) The use of statewide and regional planning.

3. Applicant coalition must provide a discussion of anticipated outcomes and a description of planned grant activities to be conducted in conjunction with family law judges, Child Protection Services agencies and children's advocates to develop appropriate responses to child custody and visitation issues in domestic violence cases and in cases where domestic violence and child abuse are both present, including the:

(A) Inappropriateness of mutual protection orders;

(B) Prohibition of mediation when domestic violence is involved;

(C) Inappropriate use of marital or conjoint counseling in domestic violence cases;

(D) use of training and technical assistance for family law judges and court personnel;

Presumption of custody to domestic violence victims;

(F) Use of comprehensive protection orders to grant fullest protection possible to victims of domestic violence, including temporary support and maintenance;

(G) Development by Child Protective Services of supportive responses that enable victims to protect their children;

(H) Implementation of supervised visitations that do not endanger victims and their children; and

(I) The possibility of permitting domestic violence victims to remove children from the State when the safety of the children or the victim is at risk.

4. The following documentation will certify the domestic violence coalition status and must be included in the grant application:

(A) A signed statement from the State agency administering the Family Violence Prevention and Services formula grant funds that will certify that the applicant coalition is the statewide domestic violence coalition for the State.

(B) A description of the agreed upon procedures between the applicant coalition and the state agency designated as responsible for family violence activities carried out under the Act which includes:

(i) The process and procedures regarding the applicant coalition's participation in the planning and monitoring of the distribution of grants and grant funds provided in its State under section 303(a); and

(ii) the procedures developed with the State agency that allow for the participation in compliance activities regarding their basic State formula family violence grantees (sec. 303(a)(3)).

(C) A copy of the coalition's 501(c)(3) certification letter from the Internal Revenue Service stating private non-profit tax-exempt status;

(D) A copy of the articles of incorporation and by-laws of the applicant coalition;

(E) A list of the organizations operating programs for victims of domestic violence programs in the State and the applicant coalition's membership list by organization;

(F) A copy of the applicant coalition's current Board of Directors list, with Chairperson identified; and

(G) A copy of the resume of any coalition or contractual staff to be supported by funds from this grant (sec. 311(b)).

5. Assurances (include in application as an appendix)

(A) Applicant coalition must provide documentation in the form of support letters, memoranda of agreement, or jointly signed statements, that the coalition;

(i) Has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial organizations in the preparation of the grant application; and

(ii) Will actively seek and encourage the participation of such organizations in grant funded activities (sec. 311(b)(4)(A)&(B)).

(B) Prohibition on lobbying. Provide documentation in the form of a signed statement that the coalition will not use grant funds, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar legal document by any Federal, State of local agency, or to undertake to influence the passage or defeat of any legislation by the Congress, or any State or local legislative body, or State proposals by initiative petition, except that the representatives of the State Domestic Violence Coalition may testify or make other appropriate communications:

(i) When formally requested to do so by a legislative body, a committee, or a member of such organization; and

(ii) In connection with legislation or appropriations directly affecting the activities of the State domestic violence coalition or any member of the coalition (sec. 311(d)).

(C) Prohibition on Discrimination. Provide documentation in the form of a signed statement that the State Domestic Violence Coalition will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (sec. 307).

## H. Notification Under Executive Order 12372

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Alabama, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Oklahoma, Oregon, Virginia, Pennsylvania, American Samoa and Palau have elected to participate in the Executive Order (E.O.) process and have established Single Points of Contact (SPOCs). Applicants from these thirteen jurisdictions need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and to receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from this application deadline date to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official state process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to the Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Division of State Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. A list of the Single Points of Contact for each State and Territory is included as Attachment A of this announcement.

## I. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Public Law 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule, or program announcement. This program announcement contains new information collection requirements in sections (F) and (G), which require that certain information must be provided in an annual report and as part of a grantee's application. We estimate that these requirements will take each grantee approximately 6 hours to complete. As there are 53 grantees, the total number of hours annually will be 318.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (room 308), Washington, DC 20503, Attention: Desk Office for the Administration for Children and Families.

## J. Certifications

Applicants must comply with the required certifications found at Attachments B, C, and D, as follows:

(1) Debarment Certification. Pursuant to 45 CFR 76.500, the certification that no principals have been debarred must be submitted with the application.

(2) Anti-Lobbying Certification and Disclosure Form. Pursuant to 45 CFR Part 93, the certification must be signed and submitted with the application.

A Standard Form LLL, which discloses lobbying payments, must be submitted with the application or during the life of the grant if any funds have been paid, or will be paid, to exert influence in connection with the grant.

(3) Certification Regarding Drug-Free Workplace Requirements. Pursuant to 45 CFR 76.600, the certification must be signed and submitted with the application. States or Territories are not required to file a Drug-Free Workplace certification if a statewide certification has been submitted to the Department of Health and Human Services.

(Catalog of Federal Domestic Assistance number 93.671, Family Violence Prevention and Services.)

Dated: May 18, 1993.

**Jacqueline G. Lemire,**

*Acting Director, Office of Community Services.*

**Attachment A—State Single Points of Contact**

*Arizona*

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315

*Arkansas*

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

*California*

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

*Colorado*

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

*Connecticut*

Under Secretary, Attn: Intergovernmental Review coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

*Delaware*

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

*District of Columbia*

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue NW., Washington, D.C. 20004, Telephone (202) 727–9111

*Florida*

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone: (904) 488–8114

*Georgia*

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

*Hawaii*

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—Room 406, Honolulu, Hawaii 96813, Telephone (808) 548–5893, FAX (808) 548–8172

*Illinois*

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

*Indiana*

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

*Iowa*

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

*Kentucky*

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

*Maine*

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

*Maryland*

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

*Massachusetts*

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

*Michigan*

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223

*Mississippi*

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280

*Missouri*

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

*Montana*

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522

*Nevada*

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: John B. Walker, Clearinghouse Coordinator

*New Hampshire*

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

*New Jersey*

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

*New Mexico*

Aurelia M. Sandoval, State Budget Division, DFA, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

*New York*

New York, State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

*North Carolina*

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499

*North Dakota*

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094

*Ohio*

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

*Rhode Island*

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

*South Carolina*

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493

*South Dakota*

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

*Tennessee*

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

*Texas*

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

*Utah*

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

*Vermont*

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

*West Virginia*

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

*Wisconsin*

William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266–1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin Department of Administration, (608) 266–0267

*Wyoming*

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

**Territories**

*Guam*

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

*Northern Mariana Islands*

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

*Puerto Rico*

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

*Virgin Islands*

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–0750

**Attachment B—Certification Regarding Lobbying**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

*State for Loan Guarantee and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

Signature

Title

Organization

Date

**Attachment C—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions**

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered

transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below with modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions*

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

BILLING CODE 4184-01-M

Attachment D

# U.S. Department of Health and Human Services
## Certification Regarding Drug-Free Workplace Requirements
## Grantees Other Than Individuals

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee certifies that it will or will continue to provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

**The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):**

**Place of Performance (Street address, City, County, State, ZIP Code)**_____

_____

*Check ___ if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

**DGMO Form#2 Revised May 1990**

[FR Doc. 93–13388 Filed 6–7–93; 8:45 am]

BILLING CODE 4184–01–C

## Health Care Financing Administration

### Privacy Act of 1974; Report of New System

**AGENCY:** Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

**ACTION:** Notice of new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Evaluation of the Medicare Case Management Demonstration" No. 09–07–0061 HHS/HCFA/ORD. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires that only the "routine uses" portion of the systems be published for comment, HCFA invites comments on all portions of this notice. See "Dates" section for comment period.

**DATES:** HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, on June 2, 1993. The new systems of records will become effective August 9, 1993, unless HCFA receives comments which would necessitate alterations to the system.

**ADDRESSES:** The public should address comments to Richard DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room 2–H–4 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. Comments received will be available for inspection at this location.

**FOR FURTHER INFORMATION CONTACT:** David W. Walsh, Division of Health Systems and Special Studies, Office of Demonstrations and Evaluations, Office of Research and Demonstrations, Health Care Financing Administration, Room 2–E–5 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187, Telephone (410) 966–6628.

**SUPPLEMENTARY INFORMATION:** HCFA proposes to initiate a new system of records collecting data under the authority of section 4207(f) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508. The purpose of this system of records is to provide data necessary to evaluate HCFA's Medicare Case Management Demonstration. This evaluation will study the operational feasibility and cost effectiveness of case management as a way of controlling Medicare beneficiaries' catastrophic health care costs.

HCFA will award a contract for an independent evaluation of the impact of case management on controlling Medicare beneficiaries' catastrophic health care costs. Consequently, the evaluation contractor will establish a system of records that includes individually identifiable data for these purposes. HCFA and the contractor will collect only that information necessary to perform the system's function.

The demonstration project will operate for 2 years, preceded by a 9-month developmental phase. The entire period of the demonstration, including the developmental, operational, and close-out phases, will be from October 1992 to June 1995. The independent evaluation will end approximately 1 year later. The system of records is expected to include data on the number, type, and cost of services used by demonstration participants and comparison group members. These data will come from forms used by the demonstration sites to enroll participants, individual-level data collected by the sites, Medicare Common Working File, and other HCFA administrative data as defined by the evaluation contractor.

Samples to conduct analyses will be selected from an estimated 3,400 demonstration participants and other individuals from comparison sites. In order to fulfill the objectives and complete the tasks of this contract, the contractor must have individually identifiable records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, it will not have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for "routine use"—that is, disclosure for purposes that are compatible with the purposes for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for the purpose of administering the Medicare program for which we are responsible. The disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: May 25, 1993.

**William Toby, Jr.,**

*Acting Deputy Administrator, Health Care Financing Administration.*

**No. 09–70–0061**

**SYSTEM NAME:**

Evaluation of the Medicare Case Management Demonstration, HHS/HCFA/ORD.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

The system will be maintained by an evaluation contractor to be selected by HCFA. Contact the system manager (identified below) for the location of the contractor. The system, or portions of the system, may also be transferred to the HCFA Data Center for processing and temporary storage. The address of the Data Center is: Health Care Financing Administration Data Center, Lyon Building, 7131 Rutherford Road, Baltimore, Maryland, 21207–5187.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Medicare-covered individuals, who have been identified as candidates for case management as a means of controlling their catastrophic health care costs.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system will contain information concerning individuals' names, demographic characteristics (e.g., age and sex), health status, health care coverage, utilization and cost of health care services. Data will be collected on both the experimental and comparison groups.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 4207(f) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508).

**PURPOSE(S):**

To provide data necessary to test the operational feasibility and cost effectiveness of case management as a way of controlling Medicare beneficiaries' catastrophic health care costs in the Medicare fee-for-service sector.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure may be made to:

1. The evaluation contractor, to be selected by HCFA, who will use this information to analyze the impacts of the demonstration. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

2. A congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. The Department of Justice, to a court or other tribunal, or to another party before such court or other tribunal, when:

a. The Department of Health and Human Services (HHS), or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof (when HHS determines that the litigation is likely to affect HHS or any of its components);

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, or another party before such court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that each disclosure is compatible with the purpose for which the records were collected.

4. A contractor for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system, or for developing, modifying, and/or manipulating Automated Data Processing (ADP) software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

5. To an individual or organization for a research, demonstration, evaluation, or epidemiologic project related to the prevention of disease or disability or the restoration or maintenance of health if HCFA:

a. Determines that use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and

(2) Is of sufficient importance to warrant the risk of any adverse effect on the privacy of the individual that additional exposure of the record might bring, and

(3) Is such that there is reasonable probability that the objective for the use would be accomplished.

c. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) For use in another research project, under these same conditions, and with the written authorization of HCFA, or

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

d. Secures a written statement attesting to the recipient's understanding of and willingness to abide by these provisions.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper and magnetic media.

**RETRIEVABILITY:**

Information will be retrieved by beneficiary's name, Social Security number, and HIC number.

**SAFEGUARDS:**

The contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, the contractor will initiate ADP system security procedures required by the HHS *Information Resources Manual* (e.g., use of passwords) and the National Institute of Standard and Technology Federal Information Processing Standards. Similar safeguards will be provided if any records are transferred to HCFA Central Office.

**RETENTION AND DISPOSAL:**

Hard copy data collection forms and magnetic tapes (or equivalent media) with identifiers will be retained in secure storage areas. Records will be retained for 2 years after the termination of the evaluation contract. The disposal techniques of degaussing will be used to strip magnetic tape (or equivalent media) of identifying names and numbers. Hard copy records with individual identifiers will be destroyed at this time.

**SYSTEM MANAGER AND ADDRESS:**

Director, Office of Research and Demonstrations, Health Care Financing Administration, Rm. 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

**NOTIFICATION PROCEDURE:**

Inquiries and requests for system records should be addressed to the system manager at the address indicated above. The requestor must specify the name, address, Social Security number, and HIC number.

**RECORD ACCESS PROCEDURE:**

Same as notification procedures. Requestors should reasonably specify the record contents being sought. These procedures are in accordance with Department regulations (45 CFR 5b.5(a)(2)).

**CONTESTING RECORD PROCEDURE:**

Contact the system manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). These procedures are in accordance with Department regulations at 45 CFR 5b.7.

**RECORD SOURCE CATEGORIES:**

Sources of information contained in this records system are expected to include: forms used by the demonstration sites to enroll participants, individual-level data collected by the demonstration sites, Medicare Common Working File, and other HCFA administrative data as defined by the evaluation contractor.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:**

None.

[FR Doc. 93–13365 Filed 6–7–93; 8:45 am]

BILLING CODE 4120–03–M

## Health Resources and Services Administration

## Grants To Improve Emergency Medical Services and Trauma Care in Rural Areas

**AGENCY:** Health Resources and Services Administration.

**ACTION:** Notice of availability of grant funds.

**SUMMARY:** The Health Resources and Services Administration announces that up to $432,600 is available in fiscal year 1993 for grants to public and private nonprofit entities for the purpose of carrying out research and demonstration projects with respect to improving the availability and quality of emergency medical services and trauma care in rural areas. These grants are authorized by Section 1204 of the Public Health Service Act, as amended. Funds are appropriated under Public Law 102–394.

**DATES:** To receive consideration, grant applications must be received by the close of business August 9, 1993. Applications will meet the deadline 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 review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Hand delivered applications must be received by 5 p.m. on August 9, 1993. Applications received after the deadline will be returned.

**FOR FURTHER INFORMATION CONTACT:** Additional information relating to technical or program issues may be obtained from Mrs. Diane McMenamin, Deputy Director, Division of Trauma and Emergency Medical Systems, Bureau of Health Resources Development, Parklawn Building, room 11A–22, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–3401. Grant applications and additional information regarding business, administrative, or fiscal issues related to the awarding of grants under this Notice may be requested from the Grants Management Officer (GMO), Ms. Glenna Wilcom, Parklawn Building, room 13A–38, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–2280. Applicants for grants will use Form PHS 5161–1 (revised 7/92), approved under OMB Control Number 0937–0189. Completed applications should be sent to the GMO.

**SUPPLEMENTARY INFORMATION:**

### Background and Objectives

The program to Improve Trauma Care in Rural Areas provides assistance to public and private nonprofit organizations for the purpose of carrying out research and demonstration projects to improve the availability and quality of emergency medical services (EMS) and trauma care in rural areas. As mandated by legislation, applications must address one or more of the following five topics:

1. Innovative uses of communications technologies;
2. Model curricula for training EMS personnel, including first responders, emergency medical technicians, emergency nurses and physicians, and paramedics. The curricula may address the assessment, resuscitation, stabilization, treatment, and transport of seriously injured patients, especially the problems of long transports to the appropriate facility; or the management and operation of an EMS system;
3. Techniques for making EMS training (both original certification and continuing education) more accessible to emergency medical personnel in rural areas;
4. Protocols and other agreements to improve access to prehospital care and transport of injured patients to the appropriate facilities; and
5. Evaluation of the effectiveness of EMS and system protocols.

The program is not designed simply to provide access to health resources critically needed in rural communities. As such, a proposal should not be oriented towards the acquisition of new EMS or trauma care equipment or other resources. Rather, as a research and demonstration program, proposed projects must address a specific outcome related to the five issues listed above, describe an innovative approach to test the outcome, and specify a methodology to evaluate the impact of the approach on the desired outcome. The outcome of these projects should have broad implications which can be translated to other rural areas.

The Public Health Service urges applicants to submit workplans 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, 202 783–3238.

*Program Priorities*

In making grants, the legislation requires special consideration of applicants providing services in any rural area identified by a State for which:

1. There is no system of access to EMS through the telephone number 9–1–1; or
2. There is no basic life-support system; or
3. There is no advanced life-support system.

Special consideration means that approved applications providing services in such rural areas will be funded before approved applications providing services in other rural areas. In order to receive special consideration under this legislative provision, it is the responsibility of the applicant to obtain and include with the application a certification by the State EMS Office that the proposed services or study of such services will be provided in rural areas meeting one or more of the above listed program priorities. The definition of basic or advanced life-support systems must be consistent with the definition generally recognized by the State.

The program is interested in funding research and demonstration projects aimed at addressing two critical issues in rural areas:

1. The problems associated with making access to EMS available through the 9–1–1 telephone service, including the consolidation of a multitude of Public Safety Answering Points within a geographic area. Emphasis may be placed on either: (a) developing a plan for improving 9–1–1 in a specific locale; or (b) addressing from an evaluation perspective how to best address problems in expanding 9–1–1 to rural areas.
2. The impact of EMS and trauma care services, or the lack thereof, on Native American reservations and surrounding counties.

The program may choose to fund approved applications addressing these two issues rather than other approved applications with higher scores.

*Availability of Funds*

Up to $432,600 is available for this program. Approximately 2–5 grants will be funded ranging from $75,000 to $250,000. The grant period will be 12 months from the date of award.

*Eligible Applicants*

Any public or private nonprofit entity may apply. Although the applicant entity is not required to be located in a rural area, the applicant must provide services and otherwise perform a research and demonstration activity in a rural area(s). In order to meet the rural requirement, an area must be located *outside* a Metropolitan Statistical Area

(MSA) as defined by the Office of Management and Budget. A list of the cities and counties that are designated as being within an MSA will be included with the application. Thus, if the city or county name does not appear on this list, the area would meet the definition of rural as used in this program.

*Application Evaluation Criteria*

Grant applications will be evaluated by an objective review committee according to the following:

1. Applicant's demonstrated experience and qualifications to complete the project proposed and to perform a research and demonstration project;

2. Adequacy of documentation in support of the need and justification for the research and demonstration project, including innovative and creative proposals, and the importance of the evaluation outcome to the implementation and improvement of EMS/trauma systems in rural areas, including Native American reservations;

3. Appropriateness and adequacy of the work plan, methodologies, and schedule for organizing and completing the project within the 1 year timeframe, including adequate commitment and participation of the affected rural area if applicant is not located in a rural area;

4. Extent to which the proposed project and the outcome would have broad implications and be capable of replication in other rural areas with similar needs and characteristics, including cost-effectiveness;

5. Coordination with the State EMS Office and where appropriate, with any program of emergency medical services for children in the State; and the extent to which the proposed project demonstrates coordination and consistency with the State EMS and trauma care system in place or in the planning phase;

6. Reasonableness of the budget proposed and the cost efficiency of the project relative to service vs. administrative costs.

7. Demonstrated understanding of the problems with rural EMS and trauma care and of the effectiveness of measures proposed to improve these problems.

*Allowable Costs*

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 74, subpart Q, and 45 CFR part 92. The four separate sets of cost principles prescribed for recipients of grants for public and private nonprofit entities are: OMB Circular A–87 for State and local governments; OMB Circular A–21 for institutions of higher education; 45 CFR part 74, appendix E for hospitals; and OMB Circular A–122 for nonprofit organizations.

*Reporting Requirements*

A successful applicant under this notice will submit quarterly reports in accordance with provisions of the general regulations which apply under 45 CFR part 74, subpart J, Monitoring and Reporting of Program Performance, with the exception of State and local governments to which 45 CFR part 92, subpart C reporting requirements will apply.

*Public Health System Impact Statement*

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the Office of Management and Budget—0937–0195. Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications by community-based non-governmental organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

a. A copy of the face page of the application (SF 424)

b. A summary of the project PHSIS, not to exceed one page, which provides:

(1) A description of the population to be served,

(2) A summary of the services to be provided,

(3) A description of the coordination planned with the appropriate State or local health agencies.

*Executive Order 12372*

Grants awarded under this notice are subject to the provisions of Executive Order 12372, which sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribes) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposals serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCS is included in the application kit. The SPOC has 60 days after the application deadline date to submit review comments. The granting agency does not guarantee to "accommodate or explain" State recommendations received after that date.

The OMB Catalog of Federal Domestic Assistance Number for this program is 93.952.

Dated: April 15, 1993.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 93–13434 Filed 6–7–93; 8:45 am]

BILLING CODE 4160–15–P

## Availability of Funds for Grants To Provide Health Services in the Pacific Basin

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of available funds.

**SUMMARY:** The Health Resources and Services Administration announces the availability of approximately $860,000 for discretionary grants to public and nonprofit private entities for projects to improve health services in the Commonwealth of Northern Mariana Islands, American Samoa, Territory of Guam, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau. The funds will be awarded under the authority of Section 301 of the Public Health Service (PHS) Act.

The 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. This program is related to the priority area of improving access to health services in underserved areas. 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).

**ADDRESSES:** Application kits (PHS form 5161–1 with DHHS Form 424 revised 7/92, as approved by Office of Management and Budget under control number 0937–0189) and additional information regarding business management may be obtained from: Mr. Howard "Al" Tevis, Chief, Office of Grants Management, Public Health Service, Region IX, room 335, 50 United Nations Plaza, San Francisco, CA 94102, 415–556–2595. An original of the completed application and one copy

should be mailed to Ms. Alice H. Thomas, Grants Management Officer, Bureau of Primary Health Care, Health Resources and Services Administration, 12100 Parklawn Drive, Rockville, Maryland 20857. In addition, a copy of the application should be sent to Mr. Tevis in the Regional Office.

**DATES:** To receive consideration, grant applications must be received July 1, 1993. Applications will be considered as meeting the deadline if they are either (1) received on or before the established deadline date or (2) postmarked no later than the deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will not be considered for funding and will be returned to the applicant. Application deadline date for this program was published at 58 FR 19827 on April 16, 1993.

**FOR FURTHER INFORMATION CONTACT:** For general program information and technical assistance, contact Ms. Joan Holloway, Director, Division of Programs for Special Populations, Bureau of Primary Health Care, 5600 Fishers Lane, room 9–12, Parklawn Building, Rockville, Maryland 20857. Telephone (301) 443–8134.

**SUPPLEMENTARY INFORMATION:**

**Background**

This initiative is designed to establish a program of grants to improve health services for Pacific Islanders living in the Flag Territories and the Freely Associated States. These entities (or jurisdictions and nations) face rapidly growing populations, poor health status indicators, and poor economic conditions. Projects will be funded to improve health services delivery, to build health services capacity, and to develop and/or implement quality assurance programs. The provision of technical assistance relating to such projects is permitted under the appropriation.

**Available Funds**

There will be approximately $860,000 available for discretionary grants to improve health services and provide technical assistance in the Pacific Basin.

**Number of Awards**

Approximately 15 awards will be made ranging from approximately $15,000 to $125,000. Grants will be funded for one year budget periods and two year project periods.

**Eligible Applicants**

Eligible applicants include public and private nonprofit entities.

**CRITERIA FOR EVALUATION:**

The following factors will be used to evaluate eligible applications:

**Degree of Need**

The relative need of the populations to be served for the proposed services to be provided based upon:

- Demographic characteristics and health status indicators of the population to be served;
- An overview and analysis of the existing services and delivery systems currently available to serve the target population; and
- The identification of gaps within the existing services, as well as those services which will be developed under this Initiative to bridge the gaps.

**Goals, Objectives and Project Plan**

- The extent to which goals and objectives are clearly defined;
- The extent to which the proposed activities go beyond those services which are currently provided through Federal or local funding;
- The adequacy and feasibility of the new or expanded efforts proposed to meet the needs of the population and to improve the health status of the populace;
- Degree of emphasis on (a) improved health service delivery, including preventive health services, public health issues of major importance in one or more of the six Pacific areas and applicable to other jurisdictions, standards of professional practice, (b) building health services capacity, or (c) establishing quality assurance programs;
- The extent to which the action plan thoroughly describes how the program will achieve its goals and objectives; and
- The extent to which the outcomes from the project are applicable to other jurisdictions.

**Collaboration/Coordination**

- The extent to which services will be integrated and coordinated with other Federal and local programs within the community and jurisdictions being served; and
- The extent and adequacy of community support.

**Experience/Past Performance**

- The adequacy of, experience in, and knowledge of the proposed service areas;
- The extent to which grantees applying for renewal funding were successful in meeting their goals and objectives, particularly as they relate to the improvement of the population's health status; and
- The extent to which grantees applying for renewal funding were successful in satisfying special grant conditions and management assessment items.

**Budget**

- The appropriateness of the proposed budget in relation to other resources and the adequacy of the budget justification to support the proposed interventions for this Initiative.

**Evaluation**

- The adequacy of the evaluation plan designed to measure how well the goals and objectives will be achieved.

**Limits on Use of Grant Funds:**

Project costs related to construction, acquisition or renovation of health facilities will not be approved. Grant funds may not be used to supplant locally funded public programs. Projects addressing computer technology, etc., will not receive priority in funding.

**Other Grant Information:**

All grants to be awarded under this notice are subject to the provision of Executive Order 12372, as implemented by regulations at 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States and local governments for assistance under certain Federal programs. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline. The granting agency does not guarantee to accommodate or explain its response to State process recommendations it receives after that date.

In addition, all grants to be awarded under this notice are subject to the Public Health System Reporting Requirements, Approved by the Office of Management and Budget (OMB) #0937–0195. Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local

health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions. Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and Local health agencies in the area(s) to be impacted no later than the Federal application receipt due data: (1) A copy of the face page of the application (SF 424); and (2) A summary of the project (PHSIS), not to exceed one page, which provides a description of the population to be served, a summary of the services to be provided and description of the coordination planned with the appropriate State or local health agencies.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.163.

Dated: May 4, 1993

**Robert Harmon,**

*Administrator.*

[FR Doc. 93–13364 Filed 6–7–93; 8:45 am]

BILLING CODE 4160–15–P

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## Program Announcement and Proposed Criteria for Allocation of Funds for Cooperative Agreements for the Model State-Supported Area Health Education Centers Program

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1993 Cooperative Agreements for the Model State-Supported Area Health Education Centers (AHEC) Program are being accepted under the authority of section 746(a)(3) of the Public Health Service (PHS) Act, title VII, as amended by the Health Professions Education Extension Amendments of 1992, Title I, Public Law 102–408, dated October 13, 1992. Comments are invited on the Proposed Criteria for Allocation of Funds stated below.

### Purpose and Eligibility

Section 746(a)(3) authorizes Federal assistance to any school of medicine or osteopathic medicine that is operating an area health education centers program and that is not receiving financial assistance under section 746(a)(l) (previously section 781(a)(l)) of the PHS Act. In general, an area health education centers program shall be a cooperative program of one or more medical (M.D. and D.O.) school(s) and one or more nonprofit private regional area health education centers.

The statutory authority for the Model State-Supported AHEC Program contains explicit language regarding activities and agreements between the medical and osteopathic schools which develop AHEC programs and the free-standing, community-based area health education centers which provide training sites and resources for the activities. To accomplish these specific tasks, a system of subcontracts is developed between the health professions schools and the independent centers in the communities.

To receive support, programs must meet the requirements of section 746(a)(3) and program regulations as set forth in 42 CFR part 57, subpart MM.

### Matching Funds Requirement: Non-Federal Contributions in Cash

With respect to the costs of operating the area health education center program of the school, the school will make available (directly or through donations from public or private entities) non-Federal contributions in cash toward such costs in an amount that is not less than 50 percent of such costs. These funds must be for the express use of the AHEC Program and Centers, and not funds designated for other categorical or specific purposes. Amounts provided by the Federal Government may not be included in determining the amount of non-Federal contributions in cash.

### Funding

In fiscal year 1993, approximately $600,000 will be available for this program. Of this amount, fifteen (15) projects will be funded averaging $40,000 each. This funding will be for a one-year project period.

### Programmatic Agreements of Model State-Supported AHEC Programs

Certain programmatic agreements are essential to the operation of a model State-supported AHEC program. In operating such a program, the school agrees to:

a. Coordinate the activities of the program with the activities of any office of rural health established by the State or States in which the program is operating;

b. Conduct heath professions education and training activities consistent with national and State priorities in the area served by the program in coordination with the National Health Service Corps, entities receiving funds under section 329 or 330, and public health departments; and

c. Cooperate with any entities that are in operation in the area served by the program and that receive Federal or State funds to carry out activities regarding the recruitment and retention of health care providers.

### 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. Cooperative Agreements for Area Health Education Centers programs, including the Model State-Supported AHEC 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-l) 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 strenghthening linkages between Area Health Education Centers programs and programs which provide comprehensive community-based services to the to the underserved.

### Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the program requirements set forth in section 746 (a)(3) and program regulations as cited above.

2. The capability of the applicant to carry out the proposed project; and

3. The extent of the need of the area to be served by the proposed model State-supported area health education center program.

### Degree of Federal Involvement in the Planning, Development and Operation of Model State-Supported Area Health Education Centers Program

Personnel of the Bureau of Health Professions have substantial programmatic involvement with the planning, developing, and administering of the AHEC projects by:

1. Reviewing and approving plans, upon which continuation of the cooperative agreement is contingent, to permit appropriate direction and redirection of activities.

2. Reviewing and approving all contracts and agreements among recipient and medical or osteopathic schools, other health professions schools and community-based centers.

3. Participating with project staff in the development of funding projections.

4. Developing with project staff individual project data collection systems and procedures.

5. Participating with project staff in the design of project evaluation protocols and methodologies.

**Other Considerations**

Applicants in States where more than one eligible entity exists are encouraged to collaborate in the submission of a single application, which reflects a consortium of Statewide programs to coordinate community-based health professions training activities.

The principal objective of this new legislation is to encourage State coordination and support for AHEC activities. The most effective approach for obtaining support from State legislatures is to present a unified plan showing how all the programs are working together to provide the needed services in the State. Competitive applications from one State tends to be devisive rather than unifying in reaching common goals.

**Proposed Criteria for Allocation of Available Funds**

As a condition of receiving funding, it is proposed that: (1) applicants be required to meet the eligibility conditions of AHEC programs as set forth in section 746(b), and the AHEC centers they wish to have included must meet eligibility requirements in accordance with section 746(d); (2) the State contribution to the AHEC program(s) in the current year is at least equal to the amount to be received from the Federal program as required by section 746(a)(3)(B); and (3) the program activities for which support is requested are determined by peer reviewers to be qualitatively acceptable.

Programs that submit acceptable applications, in accordance with the above criteria, will receive funding based on the following allocation of funds:

1. The total amount available for funding under section 746(a)(3) will be divided by the total number of qualifying AHEC centers in approved applications. This will yield the per center allocation. The coordinating AHEC applicant for each State will receive an amount equal to the number of qualifying centers in the approved application times the per center allocation.

2. In accordance with the provisions of section 746(e)(l)(A), the award will clearly indicate that 75 percent of the awarded funds are to be spent in approved centers. The remaining 25 percent can be allocated to the AHEC program office and/or other participating schools.

The State matching provision was included in this new legislation to promote State funding. The proposed allocation of Federal funds to all qualifying AHEC programs is intended to provide as broad as possible a base for the accomplishment of this purpose. The number of qualifying AHEC centers is proposed as the means for distribution of funds because the statute requires that 3/4 of funds are designated to go to these entities.

**Additional Information**

Interested persons are invited to comment on the proposed Criteria for Allocation of Available Funds. All comments received on or before July 8, 1993 will be considered.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, 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 Professions, 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: Ms. Diane Murray, Grants Management Specialist (U–76), Centers and Formula Grants Section, Bureau of Health Professions, HRSA, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be returned to the Grants Management Office at the above address.

Questions regarding programmatic information should be directed to: Ms. Cherry Tsutsumida, Chief, AHEC and Special Programs Branch, Division of Medicine, Bureau of Health Professions, HRSA, Parklawn Building, room 4C–03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6950.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. The supplemental instructions are being reviewed for submission to OMB for review and approval. The deadline date for receipt of applications is July 9, 1993. 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 the 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.

This program is not yet listed 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).

This program is not subject to the Public Health System Reporting Requirements.

Dated: May 5, 1993.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 93–13362 Filed 6–7–93; 8:45 am]

BILLING CODE 4160–15–P

## Availability of Funds for Grants for the Public Housing Primary Care Program

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of available funds.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces the availability of approximately $8.7 million in discretionary grants for new starts, service expansions, and noncompeting continuations for fiscal year (FY) 1993 with a budget start date of September 30, 1993. The funds will be awarded under section 340A of the Public Health Service (PHS) Act, as amended, 42 U.S.C. 256a.

The purpose of these grants is to provide primary health services, as defined in section 330(b)(1) of the PHS Act, including health screenings, and health counseling and education services to residents of public housing. This effort is one of several initiatives designed to improve the health status of disadvantaged minorities, as intended in Public Law 101–527, the Disadvantaged Minority Health Improvement Act of 1990.

The 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. This program announcement is related to the priority area of improving access to health services for minorities and disadvantaged Americans in underserved areas. 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).

**ADDRESSES:** The PHS Regional Grants Management Officers (RGMO), whose names and addresses are provided in the appendix to this document, are responsible for distributing program guidance and application instructions (Form PHS 5161–1, revised 07/92, with revised face sheet HHS Form 424, as approved by the Office of Management and Budget under control number 0937–0189), and completed applications must be submitted to them. The RGMO can also provide assistance on business management issues.

**DUE DATE:** All applications for new starts, service expansions, or noncompeting continuations are due to the appropriate RGMO by June 15, 1993. Applications will be considered to be "on time" 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 orderly processing. Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will not be considered for funding and will be returned to the applicant. The deadline date for this program was published on April 16, 1993, at 58 FR 19827.

**FOR FURTHER INFORMATION CONTACT:** For general program information and technical assistance, contact Ms. Joan Holloway, Director, or Mr. James Gray, Chief, Health Care for the Homeless Branch, Division of Programs for Special Populations, Bureau of Primary Health Care (BPHC), at 5600 Fishers Lane, Rockville, Maryland 20857 (telephone 301 443–2512).

**SUPPLEMENTARY INFORMATION:** An estimated $1.7 million will be available to support approximately 3 to 5 new awards ranging from approximately $250,000 to $500,000 for a 12-month budget period with up to a 3-year project period. An estimated $1 million will be available to current grantees on a competitive basis for up to 7 service expansions awards at a range of approximately $135,000 to $200,000. Approximately 14 noncompeting continuation grants will be awarded totaling approximately $6 million to organizations which received grants in FY 1992.

**ELIGIBLE ENTITIES:** To be eligible, an applicant must be a public or nonprofit private entity and have the capacity to effectively administer a grant. In an area where there are a certified Resident Management Corporation (RMC) and public or private nonprofit entities providing primary health services, including those receiving funds under Sections 330 or 340 of the PHS Act, the organizations are encouraged to submit only one application demonstrating collaboration between the respective organizations.

**APPLICABLE REQUIREMENTS:** Grantees and organizations with whom grantees contract to provide primary health services must be participating and qualified providers under the Medicaid plan approved under title XIX of the Social Security Act, and must maximize payment for services available from private insurance, Medicare, other Federal programs, and other third-party sources. Grantees entering into contracts for services may be granted a waiver of this requirement if the organization they contract with does not impose a charge or accept payment available from any third-party payor, including payment under any insurance policy or under any Federal or State health benefits program, including Medicaid.

The Secretary may not make a grant to an applicant unless the applicant signs an agreement indicating that, whether the services are provided directly or through contract, services under the grant will be provided without regard to ability to pay for the services. Further, if a charge is imposed, it will: (1) Be made according to a schedule of charges that is made available to the public; (2) not be imposed on any resident of public housing with an income less than the official poverty level; and (3) be adjusted to reflect the income and resources of the resident.

For applicants which are public entities (e.g., State or local health departments) the Secretary may not award a grant unless the public entity agrees that, with respect to the costs to be incurred by such entity in carrying out the purposes of the grant, the entity will make available non-Federal contributions in cash toward such costs in an amount equal to $1.00 for each $1.00 of Federal funds. In-kind contributions will not constitute acceptable contributions. Also, funds provided by the Federal Government, or services assisted or subsidized by the Federal Government, may not be included in determining the amount of the non-Federal contributions.

**Project Requirements**

The following services are required by Section 340A and must be provided either directly or through contract:

1. Primary health care services, as defined in section 330(b)(1) of the PHS Act, including health screening, and health counseling and educational services for residents of public housing, on the premises of public housing projects or at other locations immediately accessible to residents of public housing;
2. Referral of residents, as appropriate, to qualified facilities and practitioners for necessary followup services;
3. Outreach services to inform residents of the availability of such services (especially high risk women of child-bearing age) and;
4. Aid to residents in establishing eligibility for assistance under entitlement programs (e.g., Medicaid, Women, Infants and Children program, Aid to Families with Dependent Children) and in obtaining services, under Federal, State and local programs providing health services, mental health services, or social services.

In addition, applicants may also provide the following optional services:

1. Training of public housing residents to provide health screenings and educational services; and
2. Health services to individuals who are not residents of public housing, if those services will be provided to such individuals under the same terms and conditions as such services are provided to the residents.

**Restrictions on the Use of Grant Funds**

The following restrictions apply to the use of grants funds:

1. The applicant may not expend more than 10 percent of the Federal grant funds for the purpose of administering the grant;
2. Grant funds may not be used for inpatient services;
3. Grants funds may not be used to make cash payments to intended recipients of primary health services, or health counseling and education services;
4. Grant funds may not be used to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to

purchase major medical equipment or motor vehicles.

Note: Upon request by the applicant, demonstrating that the purposes of the project cannot otherwise be carried out, the Secretary may waive the restriction in paragraph [4].

**Evaluation Criteria for New Starts**

The adequacy of the documentation submitted to comply with the following statutory requirements will first be assessed on:

1. Consultation with residents of the designated public housing development in preparation for submission of applications and the development of an on-going process for consultation;
2. Appropriate leadership and management structures to ensure delivery of health services efficiently and effectively;
3. Procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant;
4. An ongoing program of quality assurance with respect to the services provided under the grant;
5. Procedures to ensure the confidentiality of records;
6. The development and implementation of a reasonable plan to provide health services through individuals who are able to communicate in the language and cultural context of the target population or populations; and
7. A process whereby an annual report will be submitted to the Secretary describing the use and costs of services under the grant.

Each new start application will also be evaluated on the following:

1. Demonstrated need of the target population to be served;
2. The appropriateness of the proposed services to meet the primary health care needs of the community;
3. The adequacy of the proposed project plan and service delivery model;
4. The appropriateness of the current or proposed project staffing pattern to assure that services are accessible, comprehensive, continuous and coordinated;
5. The appropriateness of referral and outreach strategies.
6. Adequacy of the proposed linkages with other government and community-based social service, education, public health and other relevant programs;
7. Evidence of efforts to strengthen relationships with State Medicaid agencies to enhance financing for primary care services; and
8. The reasonableness of the proposed budget and adequacy of the budget justification;

In selecting applicants for funding, preference is mandated by legislation and will be given to: (1) RMCs as defined under Section 20 of the U.S. Housing Act of 1937, or (2) entities receiving funds under either Section 330 of the PHS Act (Community Health Centers) or (3) Section 340 of the PHS Act (Health Care for the Homeless Programs). Grant awards will be considered in such a manner as to provide for an appropriate distribution of program resources throughout the country, including rural communities.

**Evaluation Criteria for Service Expansions**

Service expansions are grants to existing section 340A funded Public Housing Primary Care projects either to: (1) Create a new delivery site; or (2) expand service capacity at an existing site. Applicants may only apply for one of the above two expansion options, and must be prepared to provide the full range of primary health services required under section 340A.

Only those noncompeting continuation grantees which have: (1) demonstrated satisfactory progress to date in attaining stated goals and objectives for the previous year's grant and (2) have received favorable consideration and funding for FY 1993 will be eligible to receive support for service expansion.

An objective review of service expansion applications for a new access point will consider the adequacy of the documentation submitted to comply with statutory requirements, relevant to the scope and nature of the service expansion. Each application will also be evaluated on the:

1. Need for the proposed service expansion, based on demographic and/or health status indicators for the user population, including identification of new population(s) to be served;
2. Clarity and the appropriateness of the proposed goal(s) and objectives of the proposed service expansion;
3. Relationship of the expansion to the existing project plan and service delivery model of the applicant agency;
4. Appropriateness of referral and outreach strategies;
5. Adequacy of the proposed linkages with other government and community-based social service, education, public health and other relevant programs;
6. Evidence of efforts to strengthen relationships with State Medicaid agencies to enhance financing for primary care services; and
7. Reasonableness of the proposed budget and adequacy of the budget justification.

**Evaluation Criteria for Noncompeting Continuations**

Review of non-competing continuation applications for FY 1993 will be based upon the following criteria:

1. The grantee's progress in achieving stated goals and objectives for the previous year's grant;
2. The grantee's ability to resolve any outstanding issues raised during the review of its previous year's grant application;
3. The adequacy of the grantee's proposed project plan;
4. The grantee's history of compliance with reporting requirements; and
5. The adequacy and appropriateness of the proposed budget.

**Other Award Information**

This program has been determined to be a program which is subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs.

The application kit, to be made available under this notice, will contain a listing of States which have chosen to set up a review system and will provide a State point of contact (SPOC) in the State for that review. Applicants (other than Federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the appropriate application deadline date. The BPHC does not guarantee that it will accommodate or explain its response to State process recommendations received after the due date.

**Public Health System Reporting Requirement**

This program is subject to the Public Health System Reporting Requirement (reporting requirements have been approved by the Office of Management and Budget—0937–0195). Under this requirement, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant

applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

1. A copy of the face page of the application (SF 424).

2. A summary of the project (PHSIS), not to exceed one page, which provides:

a. A description of the population to be served;

b. A summary of the services to be provided; and

c. A description of the coordination planned with the appropriate State and local health agencies.

The Catalog of Federal Domestic Assistance number for this program is 93.927.

Dated: March 29, 1993.

**Robert G. Harmon,**

*Administrator.*

## Appendix

### Regional Grants Management Officers

Region I: Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F. Kennedy Federal Building, Boston, MA 02203 (617) 565–1482

Region II: Steven Wong, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278 (212) 264–4496

Region III: Martin Bree, Grants Management Officer, PHS Regional Office III, P. O. Box 13716, Philadelphia, PA 19101 (215) 596–6653

Region IV: Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1106, 101 Marietta Tower, Atlanta, GA 30323, (404) 331–2597

Region V: Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603, (312) 353–8700

Region VI: Joyce Bailey, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202, (214) 767–3885

Region VII: Michael Rowland, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64106, (816) 426–5841

Region VIII: Susan Jaworowski, Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294, (303) 844–4461

Region IX: Al Tevis, Acting Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–2595

Region X: James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121, (206) 553–7997

[FR Doc. 93–13363 Filed 6–7–93; 8:45 am]

BILLING CODE 4160–15–P

## National Institutes of Health

### National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Novel Heparin-Binding Peptides

**AGENCY:** National Institutes of Health, PHS, DHHS.

**ACTION:** Notice.

**SUMMARY:** The National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks a major pharmaceutical company which can effectively pursue the development of novel heparin-binding peptides for which a patent application has been filed. NCI will enter into CRADA negotiations with the selected sponsor. It is the intention of NCI that the selected sponsor will be awarded a CRADA for the co-development of these peptides.

**ADDRESSES:** Questions about this opportunity may be addressed to Dr. David D. Roberts, Laboratory of Pathology, Bldg. 10, room 2A33, National Institutes of Health, Bethesda, MD 20892. Phone (301) 496–6264, facsimile number (301) 402–0043. Further information for proposal preparation may be obtained through a confidentiality agreement between the interested company and the NCI. This information will include forms necessary for examining, and applying for license to, existing relevant patent applications. Under the Collaborative Research and Development Agreement (CRADA), the industrial collaborator may obtain an option to negotiate a license to government patent rights to inventions arising under the CRADA.

**DATES:** Proposals should be received within sixty (60) days of the date of this announcement in the **Federal Register.**

**SUPPLEMENTARY INFORMATION:** The Division of Cancer Biology, Diagnosis and Centers (DCBDC) of NCI is seeking to develop a collaborative relationship with a major pharmaceutical company with the following aims:

(1) Structure/function studies of peptide activity *in vitro* and *in vivo.;*

(2) Preclinical development of the synthetic peptides; and;

(3) Clinical studies as warranted.

A family of related peptides have been synthesized based on the Type I repeats of human thrombospondin that bind to heparin or related sulfated glycoconjugates with high affinity. The peptides differ from previously described heparin-binding peptides in that they do not require basic amino acid residues for binding to heparin. The peptides are potent inhibitors of interactions of heparin, heparan sulfate proteoglycans, or related sulfated glycoconjugates with adhesion molecules, growth factors, cells and some heparin-dependent enzymes. The lack of charge should be advantageous in formulating pharmaceutical agents based on these peptides for efficient delivery to their sites of action. The high potency of these peptides should allow much smaller amounts of peptide to be administered and thus may reduce risks of toxicity and generation of immune responses against the peptides.

The peptides have several defined activities: (a) Inhibition of binding of the adhesive proteins laminin and thrombospondin to heparin and heparan sulfate proteoglycans; (b) inhibition of adhesive protein binding to tumor and endothelial cells; (c) promotion of tumor and endothelial cell adhesion on peptide coated substrates; and (d) modulation of tumor and endothelial cell growth and chemotaxis.

Preclinical studies are in progress to characterize the activities of these peptides in modulating tumor growth, metastasis, and invasion, and in inhibiting angiogenesis. Studies will also investigate potential use of the peptides as inhibitors of pathogen interactions with sulfated glycoconjugates on host cells.

The role of the Division of Cancer Biology, Diagnosis and Centers (DCBDC) of the National Cancer Institute (NCI) under the CRADA will include the following:

1. The government will continue preclinical development of the peptides as inhibitors of tumor growth and metastasis *in vitro* and *in vivo.* Data from these studies will be provided to the pharmaceutical company.

2. The government will provide available data and expertise in structure-function relationships and conformational analysis of the active peptides.

3. As appropriate, the government will initiate clinical trials under its extramural clinical trials network, thus ensuring the clinical evaluation of the compound.

4. Relevant Patent rights are available for licensing through the Office of Technology Transfer, NIH. For further information contact: Carol Lavrich, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. (301) 496–7735, Fax (301) 402–0220.

The role of the successful pharmaceutical company under the CRADA will include the following:

1. Prepare and characterize nonmetabolizable analogs of the active peptides and provide these to the DCBDC, NCI for characterization as angiogenesis and metastasis inhibitors.

2. Provide materials and analytical support to further investigate the specificity of the active peptides for interaction with glycosaminoglycans produced by tumor and endothelial cells.

3. Provide funds for preclinical development of the peptides *in vitro* and animal models.

4. Provide planning and support for clinical development leading to FDA approval and marketing.

Criteria for choosing the pharmaceutical company include the following:

1. Experience in preclinical and clinical drug development.

2. Experience and ability to produce, package, market, and distribute pharmaceutical products in the United States and to provide the product at a reasonable price.

3. A willingness to cooperate with the Public Health Service in the collection, evaluation, publication, and maintenance of data from clinical trials of investigational agents.

4. A willingness to cost share in the development of heparin binding peptides as outlined above. This includes acquisition of material and synthesis of heparin binding peptides in adequate amounts as needed for future clinical trials and marketing.

5. An agreement to be bound by the DHHS rules involving human and animal subjects.

6. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.

7. Provisions for equitable distribution of patent rights to any inventions arising under the CRADA. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, non-exclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an option to negotiate an exclusive or non-exclusive license to the company on terms that are appropriate (when a Government employee is the sole inventor).

Dated: May 21, 1993.

**Reid G. Adler,**

*Director, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 93–13435 Filed 6–7–93; 8:45 am]

## DEPARTMENT OF THE INTERIOR

### Bureau of Mines

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0004), Washington, DC 20503, telephone 202–395–7340.

*Title:* Industrial Minerals Surveys.

*OMB approval number:* 1032–0038.

*Abstract:* Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Surveys, Volumes I, II, and III of the Minerals Yearbook, and Mineral Commodity Summaries for use by private organizations and other Government agencies.

*Bureau form number:* 6–1221–A *et al.* (39 forms).

*Frequency:* Monthly, Quarterly, Semiannual, Biennial, and Annual.

*Description of respondents:* Producers and Consumers of Industrial Minerals.

*Annual responses:* 15,703.

*Annual burden hours:* 10,699.

*Bureau clearance officer:* Alice J. Wissman 202–501–9569.

Dated: October 15, 1992.

**John A. Breslin,**

*Acting Director, Bureau of Mines.*

**Editorial Note:** This document was received at the Office of the Federal Register on June 3, 1993.

[FR Doc. 93–13446 Filed 6–7–93; 8:45 am]

BILLING CODE 4310–53–M

### National Park Service

### Hamilton Grange National Memorial, New York City, NY; Public Meeting, General Management Plan and Environmental Impact Statement and Extension of Document Review/ Comment Period

In accordance with section 102(c) of the National Environmental Policy Act of 1969 and customary procedures, the National Park Service is scheduling a public meeting on the draft General Management Plan and companion environmental compliance document for Hamilton Grange National Memorial for Tuesday, July 13, 1993, at 7 p.m., to be held at Aaron Davis Hall, City College of New York, West 135th Street and Convent Avenue, Manhattan, New York.

All interested parties are encouraged to attend and participate in this meeting which is an opportunity to comment on the draft General Management Plan and draft Environmental Impact Statement. This document was distributed to all known parties of interest on April 29, 1993, for a 60-day period of review and comment to end on June 30, 1993. By this notice the comment period is being extended to Friday, August 13, 1993. All comments should be presented at the public meeting and/or submitted in writing by August 13, 1993, to: Superintendent, Manhattan Sites, National Park Service, 26 Wall Street, New York, New York, 10005. For a copy of the draft document or further information concerning the public meeting, call the Superintendent at (212) 264–4456.

Dated: June 2, 1993.

**John C. Reed,**

*Acting Regional Director.*

[FR Doc. 93–13474 Filed 6–7–93; 8:45 am]

BILLING CODE 4310–70–M

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 29, 1993. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington,

DC 20013–7127. Written comments should be submitted by June 23, 1993.

**Patrick Andrus,**

*Acting Chief of Registration, National Register.*

**CALIFORNIA**

**Riverside County**

*Mission Court Bungalows*, 3355–3373 Second St. and 3354–3362 First St., Riverside, 93000549

*University Heights Junior High School*, 2060 University Ave., Riverside, 93000547

**San Diego County**

*Torrey Pines Gliderport*, W. of Torrey Pines Rd., bordering Torrey Pines Scenic Dr. and S and W of Torrey Pines Golf Course, San Diego, 93000578

**San Luis Obispo County**

*Tribune—Republic Building*, 1763 Santa Barbara St., San Luis Obispo, 93000548

**COLORADO**

**Delta County**

*Delta County Bank Building*, 301 and 305 Main St., Delta, 93000577

*Egyptian Theater*, 452 Main St., Delta, 93000575

**Eagle County**

*First Evangelical Lutheran Church*, 400 2nd St., Gypsum, 93000576

**FLORIDA**

**Volusia County**

*Gamble Place Historic District*, 1819 Taylor Rd., Port Orange, 93000563

**INDIANA**

**Decatur County**

*Pleak, Strauther, Round Barn (Round and Polygonal Barns of Indiana MPS)*, Moscow Rd., O.2 mi. E of Co. Rd. 100W, Greensburg vicinity, 93000557

**MAINE**

**Knox County**

*Rockland Turntable and Engine House*, Park St. W of Rockland RR Station, Rockland, 90001953

**MISSISSIPPI**

**Attala County**

*Lucas, John Copeland, House*, 500 N. Huntington St., Kosciusko, 93000573

**Lowndes County**

*Lindamood Building of Palmer Home for Children*, 912 11th Ave. S., Columbus, 93000574

**Oktibbeha County**

*Nash Street Historic District*, 525 University Dr. and 101–117 N. Nash St., Starkville, 93000572

**MISSOURI**

**Lafayette County**

*Cheatham, John E., House (Lexington MRA)*, 739 MO 13, Lexington, 93000550

*Eneberg, John F., House (Lexington MRA)*, 157 N. 10th St., Lexington, 93000551

*Graves, Alexander and Elizabeth Aull, House (Lexington MRA)*, 2326 Aull Ln., Lexington, 93000552

*John, David, House (Lexington MRA)*, 103 S. 23rd St., Lexington, 93000553

*Johnson, George, House (Lexington MRA)*, 102 S. 30th St., Lexington, 93000554

*Spratt-Allen-Aull House (Lexington MRA)*, 2321 Aull Ln., Lexington, 93000555

*Tevis, D.W.B. and Julia Waddell, House (Lexington MRA)*, 505 S. 13th St., Lexington, 93000556

**Pike County**

*Meloan, Cummings & Co., General Store*, Jct. of Middle and Water Sts., NW corner, Paynesville, 93000571

**NEW MEXICO**

**Guadalupe County**

*Grzelachowski, Alexander, House and Store*, SW of jct. of NM 91 and NM 203, Puerto de Luna, 93000570

**NEW YORK**

**Monroe County**

*Youngs, Thomas, House*, 50 Mitchell Rd., Pittsford, 93000546

**Suffolk County**

*Terry-Ketcham Inn*, 81 Main St., Center Moriches, 92000555

**TENNESSEE**

**Bedford County**

*Eakin, Spencer, Farm*, 201 Nashville Dirt Rd., Shelbyville vicinity, 93000564

**Bledsoe County**

*Bridgman, John, House*, 106 E., Spring St., Pikeville, 93000567

**Polk County**

*Polk County Courthouse*, Bounded by US 411 and Ward, Commerce and Main Sts., Benton, 93000562

**Rutherford County**

*First Presbyterian Church*, 210 N. Spring St., Murfreesboro, 93000561

**Trousdale County**

*Hartsville Historic District*, Roughly bounded by Church, Front, River, Greentop and Court Sts., Hartsville, 93000568

**TEXAS**

**Kaufman County**

*Brooks, William and Blanche, House*, 500 S. Center St., Forney, 93000566

**Young County**

*National Theater*, 522 Oak St., Graham 93000565

**VIRGINIA**

**Spotsylvania County**

*Kenmore*, 8300 Courthouse Rd., Spotsylvania vicinity, 93000569

**WISCONSIN**

**Columbia County**

*Merrell, Henry House*, 505 E. Cook St., Portage, 93000545

A proposed move is being considered for the following property:

**TENNESSEE**

**Williamson County**

*Cool Springs Farm*, Jordan Rd., S of Moore's Ln., Franklin, 83004314

[FR Doc. 93–13475 Filed 6–7–93; 8:45 am]

BILLING CODE 4310–70–M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 32301]**

### SPCSL Corp.—Trackage Rights Exemption—Terminal Railroad Association of St. Louis

Terminal Railroad Association of St. Louis (TRRA) has agreed to grant overhead trackage rights to SPCSL Corp. (SPCSL) over approximately 9.04 miles of TRRA's rail line between SPCSL milepost 275.5 (WR Tower) at Granite City, IL, and SPCSL milepost 282.6 at Valley Junction, IL. The trackage rights were to become effective on May 28, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, SPCSL Corp., One Market Plaza, room 846, San Francisco, CA 94015.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: June 2, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–13432 Filed 6–7–93; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

[INS No. 1615–93]

RIN 1115–AC30

### Extension of Deferral of Enforced Departure for Nationals of El Salvador

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of extension of deferral of enforced departure for nationals of El Salvador.

**SUMMARY:** President Clinton has directed that the Immigration and Naturalization Service (the Service) shall extend, until December 31, 1994, the deferral of enforced departure of nationals of El Salvador who have been granted deferred enforced departure (DED).

**EFFECTIVE DATE:** July 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Kathryn A. Kazolonis or Ronald S. Chirlin, Senior Immigration Examiners, Immigration and Naturalization Service, Examinations Division, 425 I Street, NW., Room 7122, Washington, DC 20536, Telephone (202) 514–5014.

**SUPPLEMENTARY INFORMATION:** Section 303 of the Immigration Act of 1990, Public Law 101–649, dated November 29, 1990, designated El Salvador for Temporary Protected Status (TPS) for a period of eighteen (18) months beginning January 1, 1991, and ending June 30, 1992. Eligible nationals of El Salvador who registered under this special TPS program were required to register on or before October 31, 1991, and to re-register in accordance with Service policy in order to extend TPS benefits.

On June 26, 1992, the Commissioner of the Immigration and Naturalization Service announced in the Federal Register at 57 FR 28700–28701, that deportation of nationals of El Salvador who had registered for TPS, and who had re-registered for the second period, would not be enforced before June 30, 1993, because El Salvador could not then accommodate the repatriation of the approximately 150,000 people who had been granted TPS. Eligible nationals of El Salvador who applied for deferred enforced departure (DED) and who also applied for employment authorization were granted employment authorization until June 30, 1993.

Approximately 83,000 persons have applied for DED since the announcement of June 26, 1992. In addition, nationals of El Salvador who are eligible for DED but have not yet applied may still do so until June 30, 1993. Because immediate repatriation of more than 83,000 persons would have a serious negative impact on the evolving situation in El Salvador, President Clinton has directed that DED be extended for an additional eighteen months, until December 31, 1994.

Eligible nationals of El Salvador who have been granted DED may request this extension by mailing or submitting in person, depending on the practice of the District Office having jurisdiction over their place of residence, a completed Form I–765 at any time between the date of publication of this notice and December 31, 1994. (Applicants should inquire about the filing procedures at the local Service office.) Eligible nationals of El Salvador who have not yet applied for DED may apply both for the initial period of DED and the extension period on a single Form I–765, with a $60 fee if work authorization is requested, provided that the application is filed on or before June 30, 1993. No fee is required for DED registration. Form I–765 should be filed along with the $60 fee if the applicant is requesting employment authorization. The Service will adjudicate the Form I–765 and grant employment authorization, as appropriate, on Form I–688B until December 31, 1994.

The Service anticipates that the majority of the 83,000 eligible Salvadorans will seek to renew their employment authorization under DED on or before July 1, 1993, to avoid interruption in employment authorization. To allow the Service sufficient time to effect an orderly renewal of employment authorizations for this large group of applicants, the Service is granting an automatic extension until October 31, 1993, of the validity of any employment authorization document (EAD) which expires on June 30, 1993, and was previously issued to a DED Salvadoran pursuant to 8 CFR 274a.12(a)(11). Affected Salvadorans should apply for renewal of their EADs at least three months before the expiration of the automatic extension (that is, no later than July 31, 1993) to ensure continuous employment authorization.

Employers of DED Salvadorans whose employment authorization is automatically extended until October 31, 1993, may not refuse to accept, for purposes of verifying or reverifying employment eligibility, an Employment Authorization Document (EAD), Form I–688B, bearing an expiration date of June 30, 1993, and containing a notation "274a.12(a)(11)" or "274a.12(a)(12)" on the face of the document under "Provision of Law." Employers are reminded that this action does not affect the right of a worker to present any other legally acceptable document as proof of work authorization.

Dated: June 2, 1993.

**Chris Sale,**

*Acting Commissioner, Immigration and Naturalization Service.*

[FR Doc. 93–13441 Filed 6–7–93; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

**Background:** The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

*List of Recordkeeping/Reporting Requirements Under Review:* As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The Agency of the Department issuing this recordkeeping/ reporting requirement.
- The title of the recordkeeping/ reporting requirement. The OMB and/or Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Whether small businesses or organizations are affected. An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
- The number of forms in the request for approval, if applicable.
- An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ({202} 219–5095). Comments and questions about the

items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ({202} 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

**Revision**

Occupational Safety and Health Administration
Construction Posting Requirements—Emergency Phone Numbers and Floor Load Limits
State or local governments; Businesses or other for-profit; Small businesses or organizations
As a result of the February 21, 1990, Supreme Court Decision, 110 S. Ct. 929, 58 U.S.L.W. 4200, OSHA is no longer seeking Office of Management and Budget clearance for those paperwork activities involving the employer and the third party (employee) disclosure contained in 29 CFR 1926.50(f) and .250(a)(2).

**Extension**

Mine Safety and Health Administration
Quarterly Mine Employment and Coal Production Report 1219–0006; Form 7000–2
Quarterly
Businesses or other for-profit; small businesses or organizations 89,538 responses; .25 hours per response; 22,385 burden hours; one form

MSHA 7000–2 requires mine operators to report to MSHA quarterly employment levels and coal production. The employment and production data when correlated with the accident data provides information for making decisions on improving safety and health enforcement programs, improving education and training efforts, and establishing priorities in technical assistance activities in safety and health.

Signed at Washington, D.C. this 3rd day of June 1993.

**Kenneth A. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 93–13458 Filed 6–7–93; 8:45 am]

BILLING CODE 4510–26–P

## Occupational Safety and Health Administration

### Shipyard Employment Standards Advisory Committee; Meeting

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given that the Shipyard Employment Standards Advisory Committee (SESAC), established under the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., App. I) and section 7(b) of the Occupational Safety and Health Act, 29 U.S.C. 656(b), will convene for its final meeting on July 7, 1993, at 8:30 a.m., at The Ritz Carlton Pentagon City, 1250 South Hayes Street, Arlington, Virginia 22202. The meeting will adjourn on July 9, 1993, at approximately 12:30 p.m. The public is encouraged to attend.

The agenda is as follows:

I. Call to Order.
II. Review of transcripts of the April 29–30, 1993 meetings.
III. Discussion of the following standards:
(a) 29 CFR part 1915, subpart F, Lockout/Tagout.
(b) 29 CFR part 1915, subpart A, General Provision/Scope.
(c) 29 CFR part 1915, subpart C, Surface Preparation
IV. New Business. Discussion of the following standards, as time permits.
(a) 29 CFR part 1915, subpart J, Ship's Machinery and Piping Systems.
(b) 29 CFR part 1915, subpart Z, Air Contaminants
(1) Inorganic Arsenic
(2) Acrylonitrile
(3) Lead
(c) 29 CFR part 1915, subpart Q, Hazardous Materials
V. Review of SESAC work products.

**PUBLIC PARTICIPATION:** Time permitting, the Committee will consider oral presentations relating to the agenda items. Persons wishing to address the Committee should submit a written request to Mr. Thomas Hall (address below) by the close of business, June 25, 1993. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed. Disabled individuals wishing to attend should contact Mr. Thomas Hall at the address listed below to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 5 copies to the address below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, room N–3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8617.

Signed at Washington, DC, this 3rd day of June 1993.

**David Zeigler,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 93–13461 Filed 6–7–93; 8:45 am]

BILLING CODE 4510–26–M

## Pension and Welfare Benefits Administration

### Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on June 30, 1993, in Suite N–3437—ABC, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

The purpose of the meeting, which will begin at 9:30 a.m. is to consider the items listed below and to invite public comment on any aspect of the administration of ERISA.

I. Introduction of New Council Members
II. Assistant Secretary's Report
A. PWBA Priorities for 1993
B. Report to Congress
C. Miscellaneous Issues
D. Announcement of Council Chairperson and Vice Chairperson
III. Introduction of PWBA Senior Staff and Orientation of New Members
IV. Report of Advisory Council Working Groups (1991/1992 Term)
V. Determination of Council Working Group/s for 1993
VI. Establish Council and Working Group Meeting Dates
VII. Statements from the Public
VIII. Adjourn

Members from the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before June 23, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council. U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Individuals or representatives or organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of

such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 23, 1993.

Signed at Washington, DC this 3rd day of June, 1993.

[FR Doc. 93–13463 Filed 6–7–93; 8:45 am]

BILLING CODE 4510–29–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (93–051)]

### National Aeronautics and Space Administration (NASA)—National Institutes of Health (NIH) Advisory Committee on Biomedical and Behavioral Research; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA–NIH Advisory Committee on Biomedical and Behavioral Research.

**DATES:** June 29, 1993, 8:30 a.m. to 5:15 p.m.; and June 30, 1993, 8:30 a.m. to 4 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Program Review Center, room 9–H–40, 300 E Street SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald J. White, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2147.

**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:

—NASA Background: Space, Microgravity, Biological Sciences

—Current Status of NASA-NIH Cooperative Programs and Projects

—Goals, Objectives, Strategy of the Committee

—Committee Process

—Recommendations to the NASA Administration and NIH Director

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 1, 1993.

**Timothy M. Sullivan,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 93–13450 Filed 6–7–93; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts, NFAH.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by July 6, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Comments on this information collection must be submitted by July 1, 1993.

**ADDRESSES:** Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue NW., Washington DC 20506; (202–682–5401).

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401).

**SUPPLEMENTARY INFORMATION:** The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form.

This entry is not subject to 44 U.S.C. 3504(h).

*Title:* FY 94/95 Music Professional Training/Recording/Services to Composers/Special Projects Application Guidelines

*Frequency of Collection:* One time

*Respondents:* Nonprofit organizations, state and local arts agencies

*Use:* Guideline instructions and applications elicit relevant information from nonprofit arts organizations, and state and local arts agencies that apply in the Training/Recording/Services to Composers/Special Projects category of the Music Program. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

*Estimated Number of Respondents:* 215

*Average Burden Hours Per Response:* 44.7

*Total Estimated Burden:* 9,610

**Judith E. O'Brien,**

*Management Analyst, Administrative Services Division.*

[FR Doc. 93–13437 Filed 6–7–93; 8:45 am]

BILLING CODE 7537–01–M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32393; File No. SR–Amex–93–16]

### Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., To Extend Its Pilot Relating to the Use of the Auto-Ex System During Periods of Extremely High Order Flow in Equities

June 1, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 19, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II 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 Amex proposes to extend the temporary use of its Auto-Ex System for the automatic execution of orders, up to 599 shares, in Amex equities during periods of extremely high order flow.[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The Exchange seeks accelerated approval for the proposed rule change in order to allow the

Continued

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

**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 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 III 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*

1. Purpose

In May 1992, the Commission approved the temporary use of the Auto-Ex System to automatically execute orders of up to 599 shares in Amex equities during periods of extremely high order flow.[4] In November 1992, the Commission extended its temporary approval of Auto-Ex for equities to June 1, 1993.[5]

Auto-Ex is the automated execution feature of the Exchange's Post Execution Reporting System ("PER")[6] and the Amex Options Switch ("AMOS") electronic order routing system. Under the pilot, Auto-Ex is used to execute customer market and marketable limit orders[7] at the best bid or offer being displayed when the order is entered into the system. The execution of market and marketable limit orders is immediately reported to the tape and to the firm entering the order. Auto-Ex trades are submitted for comparison processing by the Exchange as locked-in trades. The Exchange believes the use of Auto-Ex in this manner assists the specialist in providing faster execution and turn-around time for customer orders.

In its May and November 1992 Approval Orders, the Commission stated that it would approve the Amex's proposal temporarily so that it would have an opportunity to monitor the operation and effectiveness of the proposal. During these temporary approval periods, the Exchange was asked to assemble data regarding operation of the Auto-Ex system during actual usage. Since approval of the use of the system, the Exchange has used Auto-Ex on two occasions. The Exchange has separately submitted reports detailing its use of Auto-Ex.[8] The Exchange concluded that overall, the system has operated smoothly during the short periods of use.

The Commission also requested that the Exchange file a proposal either requesting an extension of the temporary use of Auto-Ex or permanent approval of the proposal. Given the limited experience the Exchange has had during the temporary approval period, it believes that it is appropriate at this time to ask for an extension of the temporary approval period for twelve months in order to obtain more experience with the system.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objective(s) of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. 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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–93–16 and should be submitted by June 29, 1993.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the Amex's proposal to extend, for twelve months, the temporary use of its Auto-Ex system for equity transactions is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, specifically, the requirements of Sections 6 and 11A of the Act.[9]

In particular, the use of Auto-Ex for equities should enhance the efficiency of execution of PER orders during periods of heavy volume, and thus facilitate transactions on the Amex, consistent with Section 6(b)(5) of the Act. In this regard, the Commission believes that the proposed automatic execution of equity orders, under the circumstances contemplated by this proposal, should speed order execution and reduce the possibility of order handling delays during periods of heavy volume. In addition, the Commission believes that the proposed extension of

continued use of the Auto-Ex system, which is set to expire on June 1, 1993.

[4] The Commission approved the temporary use of Auto-Ex in Securities Exchange Act Release No. 30757 (May 29, 1992), 57 FR 24067 (June 5, 1992) (approving File No. SR–Amex–92–08) ("May 1992 Approval Order").

[5] *See* Securities Exchange Act Release No. 31538 (November 30, 1992), 57 FR 57847 (December 7, 1992) (approving File No. SR–Amex–92–39) ("November 1992 Approval Order").

[6] PER is the Exchange's electronic order entry and routing system for equities, which directs certain orders directly to the specialist on the Amex floor for manual execution. PER accepts orders for up to 5,000 shares in Amex equities. *See* Securities Exchange Act Release No. 28891 (February 15, 1991), 56 FR 7438 (February 22, 1991) (approving File No. SR–Amex–90–37).

[7] A market order is an order to buy or sell a stated amount of a security at the prevailing best bid or offer. A marketable limit order is an order to buy or sell a stated amount of a security at a specified price or a better price, if obtainable, entered at a time when the prevailing best bid or offer is at or better than the specified price.

[8] As discussed in our May 1992 Approval Order, on August 4, 1992, Auto-Ex was first used for a short period of time in the common stock of one corporation. The Exchange submitted a report to the Commission detailing its use of Auto-Ex on that one occasion. See also *infra* notes 21 and 22.

[9] 15 U.S.C. 78f and 78k–1 (1988).

Auto-Ex for twelve months is consistent with Section 6(b)(8) of the Act, in that it should not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The use of Auto-Ex for equities on a temporary basis should help the Exchange's efforts to remain competitive with exchanges which have similar automation systems in place.[10] Moreover, the Commission believes that the proposal is consistent with Section 11A(a)(1)(C) of the Act is that the proposal is designed to contribute to the best execution of investor's orders while assuring the economically efficient execution of transactions, which in turn should protect the public interest and promote fair and orderly markets. Therefore, the Commission believes that it is appropriate to allow the Exchange to implement the proposal for an additional twelve months because this will allow the Commission an opportunity to monitor the operation and effectiveness of the proposal.[11]

The current Exchange proposal would extend, for twelve months, the use of Auto-Ex to execute automatically orders of up to 599 shares in Amex equities during periods of extremely high order flow. When activated during such periods, Auto-Ex executes all market and marketable limit orders of up to 599 shares at the Amex's best bid or offer being displayed on the Exchange at the time the order is entered into the PER system. As noted above, the execution of market and marketable limit orders is immediately reported to the tape and the firm entering the order. Auto-Ex trades are submitted for comparison processing by the Exchange as locked-in trades.

In order for Auto-Ex to be activated for an equity, two Exchange Floor Governors determine on a case by case basis that there is extremely high order flow for a particular equity security, given the characteristics of the security and the number and size of orders being sent through the PER system.[12] Moreover, the Exchange allows Auto-Ex to be activated and remain in use only when the spread between the displayed bid and offer is wider than the "minimum fractional change"[13] and there is no potential for price improvement.[14] Because of this limitation, the Amex bid or offer should be the *de facto* Intermarket Trading System ("ITS") best bid or offer.

The specialist will be the contra-side of all Auto-Ex orders. If the best bid or offer being displayed is represented by an order on the specialist's book when an Auto-Ex order arrives, the specialist will subsequently execute the book order for his or her own account, thus ensuring that limit book orders are protected.[15] To avoid double printing of orders in this situation, the specialist transaction with the order book will not be reported to the Market Data System ("MDS"), but the trade occurring though Auto-Ex will be automatically reported to MDS.[16]

The Commission approved the temporary use of Auto-Ex for equities, under certain circumstances, in May 1992[17] and subsequently extended the temporary use period until June 1, 1993.[18] In its November 1992 Approval Order, the Commission requested that the Amex submit by April 15, 1993, a report detailing each use of Auto-Ex in equities during the temporary approval period. The Commission stated that it expected the Exchange to continue to track the use of the Auto-Ex System in the ways outlined in the May 1992 Approval Order.[19]

The Amex submitted two reports to the Commission on April 21, 1993,[20] and May 25, 1993.[21] The report states that Auto-Ex was used on May 13, 1993, for a short period of time in the common stock of one corporation. The Amex reports that two Floor Governors made the decision to activate Auto-Ex due to a queue of fourteen minutes in the PER System.[22] Auto-Ex was turned on at 1:10 p.m. and was turned off fourteen minutes later at 1:24. During this period a total of seven trades were executed on Auto-Ex representing a volume of 2,200 shares. The report states that all of the orders on Auto-Ex were executed at 5⅝ with the specialist as the contra-side of each order. According to the Amex, orders on the specialist's book representing 35,000 shares were also executed at 5⅝; by 1:45 p.m. offers at 5⅝ were exhausted and the quote was changed to 5⅝–5¾. The Amex, therefore, concludes that all orders on

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[10] The Boston, Midwest, Pacific and Philadelphia Stock Exchanges have various automatic execution systems for trading equity securities.

[11] See May 1992 Approval Order, *supra*, note 4 for the Commission's rationale for approving the use of Auto-Ex on a temporary basis. The discussion in the aforementioned order is incorporated by reference into this order.

[12] In addition to trading characteristics and the circumstances surrounding the increased volume of orders, the Exchange stated that the main considerations for activating Auto-Ex for a particular security would be the length of the order queue in PER and, if there is order flow build-up prior to the opening, the number of orders eligible for execution at the opening price through the Exchange's Opening Automated Reporting Service ("OARS"). Specifically, the Exchange would use the following guidelines: queues longer than one minute in PER and a backlog of more than 100 orders stored in OARS. See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, Exchange Branch, Commission, dated March 16, 1992.

[13] Amex Rule 127 lists the minimum fractional changes for securities traded on the Exchange.

[14] See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, Exchange Branch, Commission, dated February 24, 1992, correcting the filing to reflect that there is no potential for price improvement when the spread between the displayed bid and offer is no wider than the minimum fractional change. The Amex stated that Auto-Ex will automatically prevent the automatic execution of orders when the spread in a security becomes wider than the minimum fractional change. See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, Exchange Branch, Commission dated March 16, 1992.

[15] See letter from Claire McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, Exchange Branch, Commission, dated March 16, 1992. The Amex noted, however, that during periods of extremely high order flow, orders being represented by floor brokers in the crowd should also increase, resulting in more orders on the specialist's book being executed against orders in the crowd, thus requiring use of this procedure only occasionally.

[16] MDS is the Amex's system for the collection and reporting of market information for processing by the Securities Industry Automation Corporation ("SIAC") and dissemination by securities information vendors. The Amex stated that Exchange systems will capture for surveillance purposes trade data regarding the transaction between the specialist and the limit order book. Conservation between Claire P. McGrath, Senior Counsel, Amex, and Edith Hallahan, Staff Attorney, Commission, on May 29, 1992.

[17] See Securities Exchange Act Release No. 30757, supra note 4.

[18] See Securities Exchange Act Release No. 31538, supra, note 5.

[19] Specifically, the Commission stated that it was interested in: the extent to which Amex experiences queues in its PER and OARS systems due to heavy volume prior to implementation of Auto-Ex; the total volume and number of orders backlogged and executed through Auto-Ex and outside of Auto-Ex when it was in use; other characteristics of the stock supporting the use of Auto-Ex; the length of time Auto-Ex was in place; the number and types of orders executed during its use; and any other problems that occurred from use of the Auto-Ex system. The Commission also indicated its interest in the length of time between an Auto-Ex execution and the resulting execution by the specialist of a limit order to protect the book.

[20] See letter from William Floyd-Jones, Assistant General Counsel, Amex, to Diana Luka-Hopson, Branch Chief, Exchange Branch, Division of Market Regulation, Commission, dated April 21, 1993. The report stated that the Exchange has not used the Auto-Ex system for equity trading since the Commission last extended the temporary use of the Auto-Ex system for certain equities in November.

[21] See letter from Claire P. McGrath, Senior Counsel, Amex, to Diana Luka-Hopson, Branch Chief, Exchange Branch, Division of Market Regulation, Commission, dated May 25, 1993.

[22] The Amex submitted a brief statistical report along with its May 25, 1993, letter reporting on the May 13, 1993, use of Auto-Ex. Both the letter and statistical report indicate that prior to 1:10 p.m. there was a queue of approximately fourteen minutes in the PER System. According to the Amex, the statistical report section on PER/AMOS Queue read: "172", which means that there was a maximum queue of 172 messages in the PER System. PER can route approximately twelve to thirteen messages per minute, therefore, a queue of 172 messages is the equivalent of approximately fourteen minutes. The Amex reports that not every "message" is an order. Cancellations and various administrative queries also constitute "messages" and contribute to the formation of the queue.

the specialist's book entitled to an execution at 5⅝ during that period were executed.[23] Finally, the Amex reports that there were no operational or other problems associated with the use of Auto-Ex on May 13, 1993, and that the Exchange has not received any complaints regarding its use of the system on that day.

The Commission believes that it is appropriate to extend the temporary use of Auto-Ex, under the circumstances described above, for an additional twelve months to provide the Exchange with additional time to assemble data regarding the operation and effectiveness of the proposal. During the extended use period, the Commission expects the Exchange to continue to track the use of the Auto-Ex System in the ways outlined in the May 1992 and November 1992 Approval Orders.[24] In Order to facilitate its review of the proposal, the Commission requests that the Amex submit its report detailing each use of Auto-Ex for equities by April 15, 1994.[25] In addition, the Commission expects that the Exchange will submit a proposed rule change by April 15, 1994, to either request permanent approval or an extension of the temporary use of Auto-Ex for equity orders.

The Commission finds good cause for approving the proposed change prior to the thirtieth day after the publication thereof in the **Federal Register.** The Commission believes that accelerated approval of the proposal is appropriate to ensure that the temporary use of Auto-Ex for equities continues without interruption. In addition, the proposal was published for comment in the **Federal Register** and we did not receive any comments.[26]

[23] The Amex reports that, in comparison, the total number of trades in the common stock executed outside the parameters of the Auto-Ex System (*i.e.* limit orders, orders larger than 599 shares and manually handled orders), during the same time period was twenty-eight, representing a volume of 37,000 shares.

[24] See supra notes 4 and 5.

[25] See supra note 18.

[26] See Securities Exchange Act Release No. 30757, (May 29, 1992) 57 FR 24067 (June 5, 1992), (File No. SR-Amex-92-08). Further, the general substance of the proposal, the use of Auto-Ex for Amex equities, has been noticed previously in the **Federal Register** for the full statutory period without comment. See Securities Exchange Act Release No. 27013 (July 10, 1989), 54 FR 30298 (File No. SR-Amex-89-11). This filing proposed the use of Auto-Ex for twenty select equities, without limiting its use to situations of extremely high order flow and a minimum variation market, as proposed in the above captioned filing. The filing also proposed that in the event a limit order on the book or in the crowd represented the best bid or offer, the Auto-Ex order would be routed to the specialist's PER screen for execution against that book or crowd bid or offer. The Amex withdrew this portion of the proposal on June 19, 1990.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–Amex–93–16) is approved for a twelve month period ending on June 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–13466 Filed 6–7–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–32395; File No. SR–DTC–92–18]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change Relating to DTC's Enhancement of its Repo Tracking System

June 1, 1993.

### I. Introduction

On November 10, 1992, The Depository Trust Company ("DTC") filed a proposed rule change (File No. SR–DTC–92–18) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] concerning an enhancement to DTC's Repo Tracking System ("RTS"). On December 4, 1992, notice of the proposed rule change was published in the **Federal Register** to solicit comments from interested persons.[2] The Commission received no comments.[3]

### II. Description of the Proposal

The proposed rule change enhances DTC's RTS by allowing a Repurchase Agreement ("Repo")[4] buyer to instruct DTC to cease charging it for future income payments on a CUSIP[5] and to cease crediting its counterparty with the income.

In designing RTS, DTC created three instructions for participants to use in order to facilitate DTC's processing of Repos: (1) The Repo Deliver Order instruction; (2) the Repo Reclaim instruction; and (3) the Repo Adjustment instruction.[6] The Repo Deliver Order allows a seller to instruct DTC to make a book-entry delivery of securities to a counterparty. At the same time, the seller may instruct DTC to credit future distributions on the underlying securities to the seller's account. The Repo Reclaim instruction may be used by a receiving participant to reverse a book-entry delivery of the securities subject to the Repo. The receiver of a Repo Deliver Order must reclaim a delivery on the day the delivery originated. The Repo Adjustment instruction causes DTC to adjust Repo positions without effecting book-entry transfer of securities. However, only the party forfeiting the right to receive a distribution may validly issue a Repo Adjustment instruction.

DTC's procedures provide that should DTC cease to act for a participant, or should a participant become insolvent, DTC is not obligated to allocate automatically future distributions created by RTS transactions. Instead, DTC may unwind such a participant's Repo positions to eliminate any DTC obligations with respect to future distributions created by past RTS transactions with the terminated participant (without affecting the counterparties' legal obligations or rights with respect to the terminated participant). Additionally, prior to permitting a participant to retire voluntarily, DTC verifies that the retiring participant has closed out all of its entitlements and obligations for future distributions created by past Repo instructions.

DTC's current procedures do not permit a participant obligated for future distributions to instruct DTC to negate that obligation, although the Public Securities Association's ("PSA") Master Repurchase Agreement[7] allows a Repo buyer to withhold income at its discretion, absent agreement to the contrary. Thus, the PSA Master Repurchase Agreement appears to contemplate circumstances under which a Repo buyer would desire to withhold

[27] 15 U.S.C. 78s(b)(2) (1988).

[28] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 31535 (November 30, 1992), 57 FR 57519.

[3] DTC received written comment letters generally supporting DTC's proposed enhancement from Goldman, Sachs & Co., dated October 9, 1992; The Northern Trust Company, dated October 5, 1992; Bankers Trust Company, dated September 29, 1992; Security Pacific, dated September 17, 1992; Goldman, Sachs & Co., dated June 11, 1992; Morgan Stanley & Co. Incorporated, dated May 4, 1992; and Smith Barney, Harris Upham & Co. Inc., dated April 29, 1992.

[4] A "repurchase agreement" is a contractual agreement between a seller of securities and a buyer of securities whereby the seller agrees to repurchase the securities at an agreed upon price within a specified period of time (typically less than thirty days) and the buyer agrees to resell the securities.

[5] CUSIP is the acronym for Committee on Uniform Securities Identification Procedures. This Committee is responsible for creating the identification numbers used to distinguish one security issue from another.

[6] See Securities Exchange Act Release No. 28765 (January 10, 1991), 56 FR 1832, approving File No. SR–DTC–90–10.

[7] The PSA Master Repurchase Agreement is the standard agreement used by the participants to a Repo transaction. The agreement is included as Exhibit 3 to the filing.

income from the Repo seller for legitimate reasons.

Among the reasons why a buyer might decide to withhold income are: (1) The securities delivered by the seller to the buyer with the original Repo Deliver Order may have been returned by the buyer to the seller with an ordinary, non-Repo, deliver order that failed to adjust the parties' Repo positions; (2) the buyer may have satisfied its obligation to resell the securities by delivering substitute securities that adjusted the Repo position for a different CUSIP; (3) the buyer may have decided that instead of transferring income to the seller it wishes to apply the income payment or payments to reduce the amount to be transferred to buyer by seller upon termination of the Repo transaction; or (4) the obligated participant's non-participant counterparty has defaulted on its obligation to repurchase, and the obligated participant, by the terms of a repurchase agreement, has become the owner of the Repo securities or has sold them out.[8]

In any of the foregoing situations, the obligated participant may be able to persuade the counterparty participant or the participant acting for a non-participant counterparty to issue a Repo Adjustment instruction to DTC to negate the obligation. The proposed rule change would address those situations where the obligated participant would not be able to persuade the counterparty to issue a Repo Adjustment instruction by providing the obligated participant with an alternative approach.

The proposed rule change allows DTC to eliminate the obligated participant's obligation on future distributions and the counterparty's entitlement to them upon receipt of a Letter of Instructions.[9] DTC will effect this by increasing the instructing participant's Repo position and decreasing that of the counterparty participant or the non-participant counterparty's participant. DTC will require the instructing participant to notify the counterparty of the instructions to DTC, while DTC will notify the counterparty of any action DTC takes based on the instructions. The Form of Letter of Instructions requires that an effective date for reversal of the obligation be provided. As long as the effective date specified is both two days after the date DTC's Dividend Department receives the representation in proper form, and prior to the payment date for a distribution, the upcoming allocation and all future allocations previously required by the Repo positions will not be made. Should the payment date be fewer than two days after such receipt, DTC will use its best efforts to reverse the obligation before the next payment date.

DTC will implement the instructing participant's instructions without making any determination about the parties' legal obligations to each other.

## III. Discussion

The Commission believes that DTC's proposed rule change is consistent with section 17A of the Act and, specifically, with sections 17A(b)(3) (A) and (F).[10] Those sections require a clearing agency to be organized and its rules designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

In the course of developing its negation of obligation enhancement to RTS, DTC received seven comment letters from interested Repo participants.[11] As originally conceived, DTC's proposal to allow a Repo participant to eliminate its obligation to a counterparty would only have been permitted where a non-participant counterparty had defaulted on its obligation to repurchase from the Repo buyer. While the commentators approved of this proposal, some believed that the elimination of obligation should be allowed in other circumstances as well. These commentators pointed out that Paragraph 5 of the standard form of Master Repurchase Agreement sponsored by the PSA permits a Repo buyer to withhold income at its discretion, absent agreement to the contrary. Thus, DTC has decided not to limit a participant's ability to stop payment on a Repo and instead will permit a buyer to withhold income at its discretion.

The proposed rule change addresses those situations where an obligated participant has good reason to instruct DTC to eliminate its obligation but is unable to obtain counterparty cooperation allowing use of a Repo Adjustment instruction. Thus, Repo buyers will be able to prevent payments to Repo sellers for obligations they no longer have without attempting to obtain the cooperation of Repo sellers. In this respect, the rule change is consistent with the PSA Master Repurchase Agreement and the legal rights of Repo buyers and sellers will not be affected. Rather, the new procedure will have the effect of restoring a Repo buyer to the position it had been in before the RTS procedures were introduced. Because a Repo buyer may have legitimate reasons for withholding income, and because the PSA Master Repurchase Agreement recognizes these reasons, the proposed rule change acts to preserve the rights of the respective parties in a Repo transaction. Moreover, nothing in this proposed rule change will limit or negate a Repo seller's legal rights to any income owed by the Repo buyer or the Repo buyer's obligation to pay any income owed to the Repo seller. Consequently, DTC's proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

## IV. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–DTC–92–18) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–13419 Filed 6–7–93; 8:45 am]

BILLING CODE 8010–01–7

[8] In such a situation, because the counterparty is not a direct participant of DTC, DTC's unwind procedures will not be triggered and the obligated participant will continue to be obligated to DTC for future distributions even though it is no longer legally obligated to its counterparty under their contract.

[9] The Letter of Instructions (the form is attached as Exhibit 2 to the filing) is to be used by a participant to instruct DTC to void the participant's obligation under DTC's RTS with respect to future distributions on a CUSIP, and void the entitlement of the participant's counterparty to the distributions.

[10] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[11] These written comments are included as Exhibit 4 to DTC's rule filing. See letter from Joseph F. Vaccaro, Vice President, Goldman, Sachs & Co., to Joseph Sack, Vice President, Public Securities Association (October 9, 1992); letter from Thomas P. DuMais, Vice President, the Northern Trust Company, to Anthony Gazzola, The Depository Trust Company (October 5, 1992); letter from Joseph Apicella, Assistant Vice President, Bankers Trust Company, to Michael Miklas, The Depository Trust Company (September 29, 1992); letter from John Morik, Assistant Vice President, Security Pacific, to Michael Miklas, The Depository Trust Company (September 17, 1992); letter from Edward F. Watts, Jr., Vice President, Goldman, Sachs & Co., to Clifford J. Dean, The Depository Trust Company (June 11, 1992); letter from Robert Hennessy, Vice President, Morgan Stanley, to Clifford J. Dean, The Depository Trust Company (May 4, 1992); and letter from Jerome J. Clair, Managing Director, Smith Barney to Clifford J. Dean, The Depository Trust Company (April 29, 1992).

[12] 17 CFR 200.30-3(a)(12) (1990).

[Rel. No. IC–19509; 811–0969]

## The First Connecticut Capital Corporation; Application

June 2, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** The First Connecticut Capital Corporation.

**RELEVANT ACT SECTIONS:** Section 3(c)(5)(C) and 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

**FILING DATE:** The application was filed on July 14, 1992, and amended on December 23, 1992 and March 22, 1993. In a letter dated May 28, 1993, applicant's counsel stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

**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 June 28, 1993, and should be accompanied by proof of service on 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 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. Applicant, 1000 Lafayette Boulevard, suite 805, Bridgeport, Connecticut 06604.

**FOR FURTHER INFORMATION CONTACT:** Joseph G. Mari, Senior Special Counsel, (202) 272–3030, or Barry D. Miller, Senior Special Counsel, (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 and Legal Analysis

1. Applicant is a closed-end, non-diversified, management investment company. On August 12, 1960, applicant registered under the Act and filed a registration statement on Form N–5 under the Act and the Securities Act of 1933. The registration statement was declared effective December 7, 1960. Applicant made subsequent public offerings of its shares in 1962, 1965, and 1973.

2. Applicant was organized under the laws of the state of Connecticut on March 21, 1960, and was granted a license to operate as a small business investment company ("SBIC") under the Small Business Investment Act of 1958 ("1958 Act").

3. As an SBIC, applicant's principal investment activities involved (a) making loans to small business concerns within the meaning of the 1958 Act, which loans were secured exclusively or primarily by real estate owned by the borrower; (b) making equity investments in small business concerns; and (c) purchasing debt securities issued by small business concerns.

4. On August 15, 1990, applicant filed a petition for relief under Chapter 11 of the federal Bankruptcy Code, and on October 18, 1991, applicant filed with the bankruptcy court a plan of reorganization (the "Plan"), which the court confirmed on January 9, 1992. Liquidity problems caused by a sharp downturn in the business climate in applicant's market area necessitated the filing. The downturn had a severe impact on the real estate industry in New England, where many of applicant's small business borrowers were involved, and led to a decline in the value of the real estate collateral that secures most of applicant's loans. The Plan generally provides for payment in full, with interest, of all of applicant's creditors, except the SBA. The SBA's claims against applicant were reduced from $27,950,000 plus interest to $10,000,000, with repayment of principal by monthly payments, without interest, over a seven year period commencing the next calendar month after the last payments due to the other creditors have been paid. A second lien on all of applicant's assets secures the SBA.

5. The Plan imposes numerous restrictions on applicant's business and investment activities, including a prohibition on making new loans prior to January 10, 1994. Thereafter, provided there is no "event of default," as defined in the Plan, applicant may make new loans only if it has met or exceeded its payments to certain creditors as described in the Plan, and only from certain specified funds.

6. The Plan required applicant to surrender its license to operate as a regulated SPIC, which applicant did as of January 9, 1992. Applicant has not conducted any business or investment activity since that date other than maintaining its existing loan portfolio, foreclosing on loans that are in default, and selling collateral acquired through the foreclosure and workout process.

7. Applicant's board of directors concluded that it would be in the best interest of applicant to be authorized to engage in other business activities, subject to restrictions imposed by the Plan and the law. Applicant's board of directors approved the filing of this application by resolutions adopted at a special meeting of the board of directors on June 4, 1992. Applicant believes that engaging in new business activities would provide the best method by which applicant could operate successfully.

8. At applicant's annual meeting held on January 20, 1993, applicant's shareholders approved a resolution authorizing applicant to engage in other business activities; to change its fundamental investment policies; and to deregister as an investment company under the Act. The percentage of shares voting for and against the resolution was 56.69 percent for and 2.4 percent against, with 40.91 percent of the stockholders not responding to the proxy solicitation for votes regarding the resolution.

9. Applicant's management also obtained stockholder approval of a resolution that authorized applicant to amend and restate its Certificate of Incorporation and by-laws to permit applicant to engage in new business activities and to change applicant's name to "First Connecticut Capital Corporation," among other things. The percentage of shares voting for and against the resolution was 54.35 percent for and 4.12 percent against, with 41.53 percent of the stockholders not responding to the proxy solicitation for votes regarding the resolution.

10. Applicant believes it is excepted from the definition of "investment company" pursuant to section 3(c)(5)(C) of the Act, because it is engaged primarily in purchasing or otherwise acquiring mortgages and other liens or other interests in real estate, and because it is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates. Applicant, therefore, seeks an order from the SEC pursuant to section 8(f) of the Act declaring that it has ceased to be an investment company.

11. Applicant's total assets, reflected in its unaudited financial reports for the

six month period ended September 30, 1992, totalled, $42,064,349 consisting of $28,637,493 in loans to small business concerns (taking into account a $288,407 accounting adjustment for unamortized loan origination fees and costs); $581,830 in equity investments in such concerns; $253,683 in debt securities of such concerns; $4,710,684 in receivables due from the sale of acquired assets; $4,198,050 in net assets acquired in foreclosures; $273,849 in notes receivables; $2,322,250 in cash and cash equivalents; $840,961 in accrued interest receivable; and $245,545 in other assets.

12. As of September 30, 1992, approximately 83 percent of applicant's assets are attributable to loans secured exclusively by mortgages or deeds of trust on real estate or fee ownership of real estate. Approximately 7 percent of applicant's total assets are attributable to loans secured primarily but not exclusively by mortgages or deeds of trust on real estate. Approximately 10 percent of applicant's total assets are miscellaneous investments, such as loans and other investments that are not secured by real estate, cash and cash equivalents, accrued interest receivable, and other assets. Accordingly, approximately 90 percent of applicant's assets consist of loans secured primarily or exclusively by mortgages or other liens on one or more parcels of real estate and other real estate interests, and approximately 10 percent of applicant's assets are not related to real estate. Additionally, 100 percent of the principal amount of the loans included in the 90 percent figure were secured by real estate at the time or origination (other than fee interests acquired by applicant through foreclosure proceedings, which constitute "interests in real estate"), and 100 percent of the fair market value of those loans (other than the fee interests acquired by applicant through foreclosure proceedings) were secured by real estate at the time the company received the loan.

13. Applicant's income consists primarily of (a) interest and fees it received for making loans to small business concerns prior to August 15, 1990, when applicant filed its bankruptcy petition, and (b) income from the sale of foreclosure real estate properties and write-offs of existing loans. Applicant has made no new loans since August 1990, resulting in a substantial loss of potential fee and interest income.

14. Applicant intends to operate in the future as a business corporation under the laws of the state of Connecticut. After January 10, 1994, provided there is no event of default as defined in the Plan, the Plan allows applicant to make new loans if it has met or exceeded its payments to certain creditors, but only from funds that exceed requirements specified in the Plan.

15. After the restrictions imposed by the Plan have been lifted in accordance with the Plan's terms, applicant may, with the approval of its board of directors, and its stockholders (to the extent required by law), engage in any business or investment activity in which corporations organized under Connecticut law may lawfully engage. These may include, but are not limited to the making, acquisition, management, brokerage and/or sale of real estate investments or mortgage loans; the acquisition, development, construction, leasing, management and disposition of real estate and improvements thereon; and other real estate related activities. However, applicant will seek to obtain all licensing and governmental approvals necessary to conduct its future business, and will refrain from engaging in activities that would subject applicant to regulation as an investment company under the Act.

16. If applicant is deregistered under the Act, it would continue to be publicly-held company and would be subject to the reporting and other requirements of the Securities Exchange Act of 1934.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–13465 Filed 6–7–93; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

**[Public Notice 1817]**

### Shipping Coordinating Committee, Subcommittee on Standards of Training and Watchkeeping; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on June 29, 1993, in room 6319 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. The purpose of the meeting is to review the decisions taken by the twenty-fourth session of the International Maritime Organization (IMO) Subcommittee on Standards of Training and Watchkeeping (STW), and review the items on the agenda for the twenty-fifth session of STW scheduled for January 17–21, 1994, in London.

The major item on the STW work program is the comprehensive review of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) and the consolidation of proposed amendments. This will be discussed in detail at the SHC meeting.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G–MVP–4), room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–0229.

Dated: May 27, 1993.

**Geoffrey Ogden,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 93–13366 Filed 6–7–93; 8:45 am]

BILLING CODE 4710–7–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

**DATES:** The meeting will be held on June 23, 1993 at 9 a.m. Arrange for oral presentations by June 16, 1993.

**ADDRESSES:** The meeting will be held at Air Transport Association of America, 1301 Pennsylvania Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held on June 23, 1993, at Air Transport Association of America, 1301 Pennsylvania Avenue, NW., Washington, DC. The agenda for the meeting will include:

- Opening Remarks.
- Review of Action Items.
- Reports of working groups.
- Discussion of harmonization and working group schedules.
- Status of harmonization activities and organization of working groups.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by June 16, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on June 1, 1993.

**William J. Sullivan,**

*Assistant Executive Director for Transport Airplane and Engine Issues, Aviation Rulemaking Advisory Committee.*

[FR Doc. 93-13440 Filed 6-7-93; 8:45 am]

BILLING CODE 4910-13-M

## Federal Transit Administration

### FTA Sections 3 and 9 Grant Obligations

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Department of Transportation and Related Agencies Appropriations Act, 1993, Public Law 102-338, contains a provision requiring the Federal Transit Administration (FTA) to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

**FOR FURTHER INFORMATION CONTACT:** Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal Transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9305, Washington, DC 20590, (202) 366-2053.

**SUPPLEMENTARY INFORMATION:** The section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Section 9 grants reported may include flexible funds transferred from the Federal Highway Administration to the FTA for use in transit projects in urbanized areas. These flexible funds are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to be used for highway or transit purposes. Pursuant to the statute FTA reports the following grant information.

SECTION 3 GRANTS

| Transit property | Grant No. | Grant amount | Obligation date |
|---|---|---|---|
| Commuter Rail Division of the Regional Transportation Authority, Chicago, IL-IN | IL-03-0131-03 | $21,936,000 | 3/31/93 |
| Commuter Rail Division of the Regional Transportation Authority, Chicago, IL-IN | IL-03-0168-00 | 15,236,982 | 3/31/93 |
| Chicago Transit Authority, Chicago, IL-IN | IL-03-0169-00 | 52,694,781 | 3/31/93 |
| New Jersey Transit Corporation, New York, NY-Northeastern NJ | NJ-03-0089-00 | 100,580,000 | 4/21/93 |
| New Jersey Transit Corporation, New York, NY-Northeastern NJ | NJ-03-0095-00 | 5,000,000 | 4/09/93 |
| Metropolitan Transit Authority of Harris County, Houston, TX | TX-03-00150-01 | 188,600,000 | 4/29/93 |
| Wisconsin Dept. of Transportation-Bureau of Transit, Wisconsin | WI-03-0052-00 | 14,644,433 | 4/05/93 |

SECTION 9 GRANTS

| Transit property | Grant No. | Grant amount | Obligation date |
|---|---|---|---|
| City of Corona, Riverside—San Bernardino, CA | CA-90-X547-01 | $270,000 | 4/06/93 |
| Housatonic Area Regional Transit District, Danbury, CT-NY | CT-90-X203-01 | 100,038 | 4/08/93 |
| Greater New Haven Transit District, New Haven-Meriden, CT | CT-90-X209-01 | 39,566 | 3/31/93 |
| Greater Waterbury Transit District, Waterbury, CT | CT-90-X219-00 | 305,000 | 4/06/93 |
| City of Stamford Commission on Aging Stamford, CT-NY | CT-90-X221-00 | 213,259 | 4/09/93 |
| City of Decatur, Decatur, IL | IL-90-X213-00 | 630,000 | 4/15/93 |
| Commuter Rail Division of the Regional Transportation Authority, Chicago, IL-IN | IL-90-X215-00 | 12,700,921 | 3/31/93 |
| Chicago Transit Authority, Chicago, IL-IN | IL-90-X216-00 | 39,943,872 | 3/31/93 |
| Champaign-Urbana Mass Transit District, Champaign-Urbana, IL | IL-90-X217-00 | 1,091,401 | 4/02/93 |
| Suburban Bus Division-RTA, Chicago, IL-IN | IL-90-X218-00 | 13,510,400 | 4/06/93 |
| Regional Transportation Authority, Chicago, IL-IN | IL-90-X219-00 | 49,319,339 | 4/06/93 |
| South Bend Public Transportation Corporation, South Bend-Mishawaka, IN-MI | IN-90-X166-00 | 1,384,174 | 4/15/93 |
| City of Anderson, Anderson, IN | IN-90-X179-00 | 351,816 | 3/31/93 |
| Bloomington Public Transportation Corporation, Bloomington, IN | IN-90-X180-00 | 503,477 | 3/31/93 |
| City of Terre Haute, Terre Haute, IN | IN-90-X181-00 | 478,000 | 3/31/93 |
| Northwestern Indiana Regional Planning Commission, Indiana | IN-90-X182-00 | 1,215,674 | 3/31/93 |
| Northern Indiana Commuter Transportation District, Indiana | IN-90-X183-00 | 2,000,989 | 3/31/93 |
| Greater Attleboro-Taunton Regional Transit District, Taunton, MA | MA-90-X145-01 | 60,000 | 3/31/93 |
| Southeastern Regional Transit Authority, New Bedford, MA | MA-90-X146-01 | 35,000 | 3/31/93 |
| Worcester Regional Transit Authority, Worcester, MA-CT | MA-90-X147-00 | 197,120 | 4/06/93 |
| Pioneer Valley Transit Authority, Springfield, MA-CT | MA-90-X151-01 | 16,000 | 3/31/93 |
| Massachusetts Bay Transportation Authority, Boston, MA | MA-90-X154-00 | 8,097,016 | 4/06/93 |
| Berkshire Regional Transit Authority, Pittsfield, MA | MA-90-X155-00 | 281,581 | 3/31/93 |
| Brockton Area Transit Authority, Brockton, MA | MA-90-X156-00 | 985,019 | 3/31/93 |

SECTION 9 GRANTS—Continued

| Transit property | Grant No. | Grant amount | Obligation date |
|---|---|---|---|
| Mass Transit Administration, Baltimore, MD | MD–90–X049–02 | 10,514,949 | 3/31/93 |
| Maine Department of Transportation, Maine | ME–90–X063–00 | 81,486 | 3/31/93 |
| Suburban Mobility Authority for Regional Transportation, Detroit, MI | MI–90–X167–00 | 7,802,996 | 4/15/93 |
| Bay County Metropolitan Transportation Authority, Bay City, MI | MI–90–X171–00 | 412,674 | 3/31/93 |
| County of Muskegon System, Michigan | MI–90–X173–00 | 814,708 | 4/06/93 |
| Capital Area Transportation Authority, Lansing-East Lansing, MI | MI–90–X174–00 | 1,483,239 | 3/31/93 |
| Flint Mass Transportation Authority, Flint, MI | MI–90–X175–00 | 1,509,235 | 3/31/93 |
| Battle Creek Transit System, Battle Creek, MI | MI–90–X176–00 | 361,654 | 3/31/93 |
| St. Cloud Metropolitan Transit Commission, St. Cloud, MN | MN–90–X067–00 | 456,103 | 4/06/93 |
| City of Fargo, Fargo-Moorhead, ND-MN | ND–90–X029–00 | 601,500 | 4/05/93 |
| City of Grand Forks, Grand Forks, ND-MN | ND–90–X030–00 | 500,600 | 4/05/93 |
| Omaha Metro Area Transit, Omaha, NE-IA | NE–90–X033–00 | 4,432,129 | 4/28/93 |
| City of Nashua, Nashua, NH | NH–90–X033–01 | 90,000 | 3/31/93 |
| Cooperative Alliance for Seacoast Transportation, New Hampshire | NH–90–X036–00 | 17,630 | 3/31/93 |
| New Jersey Transit Corporation, New York, NY-Northeastern NJ | NJ–90–X037–00 | 80,312,369 | 4/22/93 |
| Metro Regional Transit Authority, Akron, OH | OH–90–X184–00 | 788,574 | 4/12/93 |
| Western Reserve Transit Authority, Youngstown-Warren, OH | OH–90–X186–00 | 1,395,656 | 4/06/93 |
| Tri-County Metropolitan Transportation District of Oregon, Portland-Vancouver, OR-WA | OR–90–X046–00 | 4,388,378 | 4/02/93 |
| York County Transportation Authority, York, PA | PA–90–X251–00 | 1,074,841 | 3/30/93 |
| Cambria County Transit Authority, Johnstown, PA | PA–90–X252–00 | 456,946 | 3/30/93 |
| Rhode Island Department of Transportation, Providence-Pawtucket, RI-MA | RI–90–X021–01 | 360,000 | 4/09/93 |
| Jackson Transit Authority, Jackson, TN | TN–90–X101–01 | 24,000 | 4/15/93 |
| City of Appleton, Appleton-Neenah, WI | WI–90–X175–00 | 740,214 | 3/31/93 |
| City of Waukesha, Milwaukee, WI | WI–90–X176–00 | 1,184,965 | 3/31/93 |
| Oshkosh Transit System, Oshkosh, WI | WI–90–X177–00 | 441,242 | 3/31/93 |
| City of Madison, Madison, WI | WI–90–X178–00 | 984,441 | 4/05/93 |
| Janesville City Planning Dept.-Metropolitan Planning Organization, Janesville, WI | WI–90–X179–00 | 277,909 | 3/31/93 |
| City of Wausau, Wausau, WI | WI–90–X180–00 | 351,139 | 3/31/93 |
| City of Sheboygan, Sheboygan, WI | WI–90–X181–00 | 498,848 | 3/31/93 |
| Kanawha Valley Regional Transportation Authority, Charleston, WV | WV–90–X053–00 | 913,965 | 3/31/93 |

Issued on: June 3, 1993.

**Robert H. McManus,**

*Acting Administration.*

[FR Doc. 93–13456 Filed 6–7–93; 8:45 am]

BILLING CODE 4910–57–M

## National Highway Traffic Safety Administration

**[Docket No. 93–23; Notice 2]**

## General Motors; Grant of Petition for Determination of Inconsequential Noncompliance

General Motors (GM) of Warren, Michigan, determined that some of its vehicles fail to comply with 49 CFR 571.115, "Vehicle Identification Number-Basic Requirements" (Federal Motor Vehicle Safety Standard No. 115), and has filed an appropriate report pursuant to 49 CFR part 573. GM also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice grants the petition. Notice of receipt of the petition was published on April 7, 1993, and an opportunity afforded for comment (58 FR 18134).

During the 1993 model year, GM manufactured 429 Chevrolet Camaros and 201 Pontiac Firebirds that did comply with the lettering height requirements of Standard No. 115. The vehicle identification (VIN) characters on the subject vehicles are 3.55 millimeters (mm) in height. S5.6 of Standard No. 115 requires that "[e]ach character in the VIN * * * shall a minimum height of 4 mm."

GM supported its petition for inconsequential noncompliance with the following:

> Although technically not in compliance with the 4 mm requirement of FMVSS 115 S4.6, [GM believes] the subject VIN-characters are no less legible than those meeting the 4 mm height requirement. Consequently, they could be clearly viewed from the specified position by an observer outside the vehicle adjacent to the left windshield pillar. Three GM engineers from our Auto Safety Engineering group were able to read without difficulty the subject VINs of 18 vehicles selected at random in the field under clear, cloudy, and foggy weather conditions. None of the windshields in the survey was cleaned or wiped prior to viewing the VINs checked.
>
> The cost of windshield and VIN plate removal and replacement for the 1993 Firebirds and Camaros is currently estimated at about $300 per vehicle. The perceived risk the noncompliant VIN format poses to vehicle safety is at worst negligible, and at best nonexistent. The amount of customer inconvenience, on the other hand, would be considerable, and not likely to be viewed by the customer as providing a benefit commensurate with that inconvenience.
>
> In light of these considerations, we don't believe that an agency ruling requiring recall and remedy of the affected vehicles would serve the best interest of the motoring public, GM, or GM's customers. It would instead impose a substantial burden of cost and inconvenience on the manufacturer and the customer with no demonstrable benefit to vehicle safety.
>
> FMVSS 115 specifies the general physical requirements for a VIN "to simplify vehicle information retrieval and to reduce the incidence of accidents by increasing the accuracy and efficiency of vehicle recall campaigns." The reduced height of the subject VIN-characters in no way hinders or compromises the achievement of this purpose. In fact, the reduced height format seems to enhance rather than degrade the general legibility of the subject VINs. It seems that the laser-etching software program automatically provides more generous spacing and broader individual strokes for 3.55 mm characters than for those at 4 mm in order to achieve equivalency of legibility and visibility throughout the character-height range for VIN plate formatting.
>
> On the basis of these observations, and the absence of any field reports or complaints from vehicle owners, car dealers, rental agencies, the law enforcement community, etc., GM has concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and therefore requests that the affected vehicles be

exempted from the recall and remedy provisions of section 151 of the Safety Act.

No comments were received on the petition.

The VIN characters on the vehicles in question fail by 0.45 mm to meet the minimum height requirements of Standard No. 115. Although representatives of NHTSA have not verified GM's arguments by direct observation of a noncompliant VIN, it is willing to accept the petitioner's arguments that the VINs are legible even though reduced in height, and that the purposes of Standard No. 115 are not compromised by the noncompliance.

Accordingly, the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 510.8)

Issued on June 1, 1993.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 93–13470 Filed 6–7–93; 8:45 am]

BILLING CODE 4910–59–M

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[Docket No. 93–37; Notice 1]

## Panoz Auto Development Company; Receipt of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Panoz Auto Development Company of Braselton, Georgia, has petitioned for a temporary exemption from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection. The basis of the petition is that compliance will cause it substantial economic hardship.

This notice of receipt of the petition is published in accordance with agency regulations on the subject (49 CFR 555.7(a)), and does not represent any agency judgement on the merits of the petition.

Petitioner seeks an exemption until January 25, 1995, of its Panoz Roadster from paragraph S4.1.4 of Motor Vehicle Safety Standard No. 208. The basis for the petition is that immediate compliance with the automatic restraint requirements of Standard No. 208 will cause the petitioner substantial economic hardship, within the meaning of 49 CFR 555.6(a). Petitioner has not yet produced any motor vehicles, and the company's income statement reflects a net loss of $277,011 in calendar year 1992. Its cumulative net losses from incorporation on January 25, 1989, through 1992 total $1,265,176.

The Panoz is a two-seat convertible sports car. It features a front engine—rear drive configuration, with a body/chassis described as "triangulated stainless steel space frame, vacuum-formed aluminum body panels attached with 3M aerospace bonding process." During 1990, Panoz began to study the installation of restraint systems when prototyping began. To date, it has expended 750 man hours and $15,000 on the project, and has concluded that an automatic belt system would require design changes that would substantially affect the character of the vehicle "as a true convertible sportscar in the tradition of the classic older models." For this reason, Panoz has decided to engineer a driver side airbag to meet the Federal requirements. It has determined that "a Ford airbag system" would be best "since the majority of components (power train, primary mechanical, and electrical) are produced by Ford or based on Ford systems." The modifications required to adapt the Ford system into the Panoz require expenditures that total $325,000. The company intends to engineer a passengerside airbag concurrently, which will require an additional expenditure estimated as $147,000, for a total cost of $472,000. An exemption would permit the company to spread its development costs, and to sell vehicles to help fund the compliance program. Without an exemption, the company "will most likely have to discontinue the Panoz Roadster development project." The company estimates that it will achieve full compliance with Standard No. 208 by April 5, 1995.

According to the petitioner, a temporary exemption would be in the public interest because the car is produced in the United States "utilizing 100% U.S. components." It currently has 8 full time employees, and estimates that 200 employees from 80 different companies are involved in the project. The car will be marketed nationally which will provide "jobs through marketing, advertising, and service activities." An exemption would be consistent with the objectives of the National Traffic and Motor Vehicle Safety Act as the car fully complies with the remaining Federal Motor Vehicle Safety Standards including the 1997 side impact requirements. During the exemption period, the Panoz will be equipped with three-point belt systems.

Finally, the company points out that its product will be "the only vehicle to utilize molded aluminum body panels for the entire car." The new technology is said to reduce vehicle weight, and improve body strength and fuel efficiency.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the Docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh St. SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 8, 1993.

(15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.)

Issued on June 3, 1993.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 93–13472 Filed 6–7–93; 8:45 am]

BILLING CODE 4910–59–M

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## Research and Special Programs Administration

## International Standards on the Transport of Dangerous Goods; Public Meeting

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice is to advise interested persons that RSPA will conduct a public meeting (1) to exchange views on proposals submitted to the seventh session of the United Nations' Sub-Committee of Experts on the Transport of Dangerous Goods, and (2) to report the results of the International Civil Aviation Organization's (ICAO) Dangerous Panel (DGP) Working Group.

**DATES:** July 8, 1993 at 9:30 a.m.

**ADDRESSES:** Room 3200, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366–0656.

**SUPPLEMENTARY INFORMATION:** This meeting will be held in preparation for the seventh session of the Sub-Committee of Exports on the Transport

of Dangerous Goods to be held July 12 to 21, 1993, in Geneva. The Sub-Committee is responsible for the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) which forms the basis for international modal regulations on the transport of dangerous goods. During this meeting the U.S. position on proposals submitted to the seventh session of the Sub-Committee will be discussed. Topics to be covered include packaging requirements for explosives, revision of the manual for tests and criteria for explosives and other substances, classification criteria for environmentally hazardous substances, requirements for infectious substances, requirements for multimodal tanks, requirements for intermediate bulk containers, classification of specific dangerous goods and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods.

A second purpose for the meeting will be to review the results of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) Working Group meeting held in April 1993. Agreed amendments to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air will be discussed.

The public is invited to attend without prior notification.

**Documents**

Copies of documents submitted to the seventh session of the UN Sub-Committee meeting may be obtained from RSPA. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an on-line request form on the HMIX or by contacting RSPA's Dockets Unit (202–366–4453). For more information on the use of the HMIX system, contact the HMIX information center; 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 830 a.m. to 5 p.m. Central time.

After the meeting, a summary of the public meeting will also be available from the Hazardous Materials Advisory Council, suite 250, 1110 Vermont Ave., NW., Washington, DC 20005; telephone number (202) 728–1460.

Issued in Washington, DC, on June 2, 1993.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 93–13390 Filed 6–7–93; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

June 2, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0034.
*Form Number:* IRS Form 942 and Form 942PR.
*Type of Review:* Extension.
*Title:* Employer's Quarterly Tax Return for Household Employees (942). Planilla Para la Declaracion Trimestral Del Patrono De Empleados Domesticos (942PR).
*Description:* Form 942 is used by household employers to report social security and Medicare taxes on their household employees. Household employers can also use this form to report any income tax withheld. Form 942PR is for household employers in Puerto Rico.
*Respondents:* Individuals or households.
*Estimated Number of Respondents/ Recordkeepers:* 389,344.
*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | Minutes | |
|---|---|---|
| | Form 942 | Form 942PR |
| Recordkeeping ..... | 20 | 7 |
| Learning about the law or the form ..... | 20 | 19 |
| Preparing the form ... | 32 | 24 |
| Copying, assembling, and sending the form to the IRS ..... | 20 | 14 |

*Frequency of Response:* Quarterly.
*Estimated Total Reporting/ Recordkeeping Burden:* 2,407,931 hours.
*OMB Number:* 1545–0162.
*Form Number:* IRS Form 4136.
*Type of Review:* Extension.
*Title:* Credit for Federal Tax Paid on Fuels.
*Description:* Internal Revenue Code (IRC) Section 34 allows a credit for Federal excise tax for certain fuels used. This form is used to figure the amount of income tax credit. Data is used to verify the validity of the claims for the type of use.
*Respondents:* Individuals or households, farms, businesses or other for-profit, small businesses organizations.
*Estimated Number of Respondents/ Recordkeepers:* 910,000.
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—7 hours, 25
Preparing and sending the form to the IRS—7
*Frequency of Response:* Annually.
*Estimated Total Reporting/ Recordkeeping Burden:* 6,852,300 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 93–13455 Filed 6–7–93; 8:45 am]

BILLING CODE 4830–01–M

## Customs Service

**[T.D. 93–38]**

### Recordation of Trade Names: "U.S. ROPE," U.S. ROPE CO.," "UNITED STATES ROPE COMPANY," and "UNITED STATES ROPE"

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**SUMMARY:** On Friday, March 5, 1993, notices of application for the recordations under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade names "U.S. ROPE," "U.S. ROPE CO.", "UNITED STATES ROPE COMPANY," and "UNITED STATES ROPE," used by United States Rope Company, a Corporation organized under the laws of the State of California, located at 709 Hamilton Avenue, Menlo Park, California 94025 were published in the **Federal Register** (58 FR 12629 and 12630). The notices advised that before final action was taken on the applications, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordations and received not later than May 4, 1993. No responses were received in opposition to the notices.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the names "U.S. ROPE," "U.S. ROPE CO., UNITED STATES ROPE," and "UNITED STATES ROPE COMPANY" are recorded as the trade names used by United States Rope Company, located at 709 Hamilton Avenue, Menlo Park, California 94025. The trade names are used in connection with the sale of rope and other cordage, including rope made of polypropylene, nylon, polyester, Mylar and blended materials, they are of three-stranded twisted and of braided construction.

The merchandise is manufactured in the United States.

**EFFECTIVE DATE:** July 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, DC 20229 (202–482–6960).

Dated: May 28, 1993.

**John F. Atwood,**

*Chief, Intellectual Property Rights Branch.*

[FR Doc. 93–13389 Filed 6–7–93; 8:45 am]

BILLING CODE 4820–02–M

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 108
Tuesday, June 8, 1993

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).

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Tuesday, June 29, 1993.

**PLACE:** 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission,*

[FR Doc. 93–1352 Filed 6–4–93; 1:24 pm]

BILLING CODE 6351–01–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 10:30 a.m., Tuesday, June 29, 1993.

**PLACE:** 2033 K St., NW, Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Rule enforcement review.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 93–13530 Filed 6–4–93; 1:24 pm]

BILLING CODE 6351–01–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 10:00 a.m., Tuesday, June 19, 1993.

**PLACE:** 2033 K St., NW., Washington, DC, Lower Lobby Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

—Final rule concerning Composition of Various Self-Regulatory Organization Governing Boards and Major Disciplinary Committees

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6315.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 93–13531 Filed 6–4–93; 1:24 pm]

BILLING CODE 6351–01–M

**FARM CREDIT ADMINISTRATION**

Farm Credit Administration Board; Regular Meeting

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 10, 1993, from 10:30 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

*B. New Business*

1. Regulations

a. Distressed Borrower Notification (Proposed)

2. Other

a. Farm Credit Bank of Springfield's Technical Assistance and Financially Related Services Policy

b. Merger of FICB Jackson and FCB of Columbia

**Closed Session** [1]

*A. Reports*

1. Office of Secondary Market Oversight Quarterly Report

*B. New Business*

1. Enforcement Actions

Dated: June 3, 1993.

**Curtis M. Anderson,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 93–13539 Filed 6–4–93; 1:25 pm]

BILLING CODE 6705–01–P

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 11:00 a.m., Monday, June 14, 1993.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 4, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–13632 Filed 6–4–93; 3:56 pm]

BILLING CODE 6210–01–P

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

[USITC SE–93–16A; Emergency Notice]

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 58FR30086—dated May 25, 1993.

**AMENDMENT TO THE AGENDA:**

5.2 AD–93–003, Distribution and printing of USITC publications

In conformity with 19 CFR 201.37(b), Commissioners Nuzum, Crawford, Brunsdale, Rohr, Watson, and Newquist determined that Commission business required the amendment to the agenda for the meeting of June 2, 1993, to include in item 5 (Outstanding action jackets) an additional action jacket.

**CONTACT PERSON FOR MORE INFORMATION:** Paul R. Bardos, Acting Secretary, (202) 205–2000.

Dated: May 28, 1993.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 93–13528 Filed 6–4–93; 1:26 pm]

BILLING CODE 7020–02–P

**NATIONAL SCIENCE BOARD**

**DATE AND TIME:**
June 17, 1993—8:00 a.m. Closed Session
June 17, 1993—1:30 p.m. Open Session
June 18, 1993—8:00 a.m. Open Session

**PLACE:** National Science Foundation, 1800 G Street, NW, Rm. 540, Washington, DC 20550.

**STATUS:**

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8), (9) and (10).

Part of this meeting will be open to the public.
Part of this meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

Thursday, June 17, 1993.

*Closed Session (8:00 a.m.–8:20 a.m.)*

1. Minutes of May 1993 Meeting
2. NSF Budget

*Open Session (1:30 p.m.–5:00 p.m)*

3. Long-Range Planning

Friday, June 18, 1993

*Open Session (8:00 a.m.–11:30 a.m.)*

4. Minutes—May 1993 Meeting
5. Chairman's Report
6. Acting Director's Report
7. Long-Range Planning
8. Other Business/Adjourn

**Marta Cehelsky,**

*Executive Officer.*

[FR Doc. 93–13615 Filed 6–4–93; 3:51 pm]

BILLING CODE 7555–01–M

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**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of June 7, 14, 21, and 28, 1993.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of June 7**

*Thursday, June 10*

11:00 a.m.
Briefing by EPRI on Policy, Technical, and Licensing Issues Pertaining to Evolutionary and Advanced Light-Water Reactor (ALWR) Design (Public Meeting) (Contact: Gary Vine, 202–293–6347)

12:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of June 14—Tentative**

*Thursday, June 17*

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of June 21—Tentative**

*Thursday, June 24*

8:30 a.m.
Briefing on Status of Pacific Northwest Laboratories (PNL) Study of Decommissioning Costs (Public Meeting) (Contact: Cheryl Trottier, 301–492–3640)

10:00 a.m.
Briefing on Status of Design basis Threat Reevaluation (Public Meeting) (Contact: Robert Burnett, 301–504–3365)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing on Internal Management Review of NRC Program for Medical Use of Byproduct Material (Public Meeting) (Contact: Carl Paperiello, 301–504–2659)

*Friday, June 25*

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: William Bateman, 301–504–1711)

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 and 6)

**Week of June 28—Tentative**

There Are No Meetings Scheduled for the Week of June 28.

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill, (301) 504–1661.

Dated: June 3, 1993.

**Andrew L. Bates,**

*Chief, Operations Branch, Office of the Secretary.*

[FR Doc. 93–13532 Filed 6–4–93; 1:26 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
June 8, 1993

Part II

# Environmental Protection Agency

40 CFR Part 192
Health and Environmental Standards for Uranium and Thorium Mill Tailings; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 192**

**[FRL–4212–8]**

**RIN 2020–AB23**

## Health and Environmental Standards for Uranium and Thorium Mill Tailings

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing minor amendments to its general environmental regulations pertaining to uranium mill tailings disposal sites pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978. An advanced notice of proposed rulemaking describing the preliminary basis for this action was published on December 31, 1991. The proposed amendments clarify the current rule by ensuring timely emplacement of a permanent radon barrier and by requiring appropriate monitoring for nonoperational uranium mill tailings disposal sites that are licensed by the Nuclear Regulatory Commission (NRC) or one of its Agreement States (affected Agreement States). These affected Agreement States are Colorado, Washington, and Texas, which are the states that license sites to manage uranium byproduct materials pursuant to the Atomic Energy Act (AEA). This action is related to another action by EPA to rescind its National Emissions Standard for Hazardous Air Pollutants (NESHAPs) for radon emissions from the disposal of uranium mill tailings at nonoperational sites which was promulgated on December 15, 1989, as it applies to sites licensed by the NRC or an affected Agreement State.

**DATES:** Comments concerning this proposed rule must be received by EPA on or before July 21, 1993. A public hearing will be held on June 21, 1993.

**ADDRESSES:** Comments should be submitted (in duplicate if possible) to: Central Docket Section LE–131, Environmental Protection Agency, Attn: Air Docket No. A–91–67, Washington, DC 20460. Requests to participate in the public hearing to be held at the Sheraton Crystal City Hotel, Arlington, VA from 10 a.m. to 4 p.m. on June 21, 1993, should be made in writing to the Director, Criteria and Standards Division, 6602J, Office of Radiation and Indoor Air, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments and requests to participate in the hearing may also be faxed to EPA at (202) 233–9629.

**FOR FURTHER INFORMATION CONTACT:** Gale Bonanno, Air Standards and Economics Branch, Criteria and Standards Division, 6602J, Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (202) 233–9219.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

### *A. Description of Uranium Mill Tailings*

Uranium mill tailings are sand-like wastes that result from the processing of uranium ore. Tailings are stored in large surface impoundments, called piles, in amounts from less than one million tons to over thirty million tons, over areas that may cover hundreds of acres. Most piles are located in the Western United States and all piles emit radon gas, a decay product of the waste material processed at the uranium mills.

To deal specifically with the risks associated with these piles, Congress passed the Uranium Mill Tailings Radiation Control Act (UMTRCA) in 1978 (42 U.S.C. 2022, 7901–7942). In enacting UMTRCA, Congress found that uranium mill tailings may pose a potential and significant radiation health hazard to the public, and that every reasonable effort should be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings. See 42 U.S.C. 7901(a). Under UMTRCA, two programs were established to protect public health and the environment from the hazards associated with uranium mill tailings. One program (Title I) required the Department of Energy (DOE) to conduct the necessary remedial actions at designated inactive uranium mill tailing sites to achieve compliance with the general environmental standards to be promulgated by EPA. These sites were generally abandoned uranium processing sites for which a license issued by the NRC or its predecessor, the Atomic Energy Commission (AEC), was not in effect on January 1, 1978.

The other program (Title II) pertained to active sites, which are those that are licensed by the NRC or an affected Agreement State. Requirements for licensed sites include the final disposal of tailings, including the control of radon after milling operations cease. UMTRCA also required that EPA promulgate standards for these licensed sites, including standards that protect human health and the environment in a manner consistent with standards established under subtitle C of the Solid Waste Disposal Act, as amended. The NRC, or the licensing Agreement State, is responsible for implementing the EPA standards at licensed uranium milling sites.

As part of NRC's 1982 authorization and appropriations, Congress amended UMTRCA on January 4, 1983. Public Law 97–415, sections 18(a) and 22(b), *reprinted in* 2 1982 U.S. Code Cong. & Admin. News at 96 Stat. 2077 and 2080. As partially amended thereby, EPA's rulemaking authority for these sites is such that the Administrator must, by rule, propose, and within 11 months thereafter promulgate in final form, standards of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material, e.g., uranium mill tailings. Requirements established by the NRC with respect to byproduct material must conform to the EPA standards. Any requirements of such standards adopted by the NRC shall be amended as the NRC deems necessary to conform to EPA's standards. In

establishing such standards, the Administrator must consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate. See 42 U.S.C. 2022(b)(1).

*B. EPA and NRC's UMTRCA Rulemakings*

EPA is authorized to promulgate general environmental standards to govern the remediation process. 42 U.S.C. 2022(a) and 7918 (as to DOE sites); 42 U.S.C. 2014 and 2022(b) (as to NRC-licensed sites). On January 5, 1983, EPA promulgated final rules for the disposal and cleanup of the inactive uranium mill tailings sites under UMTRCA title I (48 FR 605). Title I requires the Department of Energy (DOE) to conduct remedial action at inactive uranium mill tailings sites to ensure compliance with EPA's regulations for properly managing uranium byproduct materials. The program for inactive sites requires the disposal of tailings and the clean-up of on-site locations contaminated with tailings. DOE is responsible for implementing the standards established by EPA, with the concurrence of the NRC, and in cooperation with the host states. The requirements developed to implement the title I program are not the subject of today's proposed rulemaking.

On April 29, 1983, EPA proposed general environmental standards for title II uranium and thorium mill tailings sites (48 FR 19584). These rules were promulgated on September 30, 1983 (48 FR 45926), and are codified at 40 CFR part 192, subparts D and E. Title II applies to currently operating uranium mill tailings facilities licensed by the NRC or an Agreement State. The Title II program established requirements for the final disposal of tailings, the control of effluents into ground water, and radon emissions [1] during and after milling operations. The requirements are divided into two parts. The first part applies to the management of tailings during the active life of the pile and during the subsequent closure period, which begins after cessation of milling operations but prior to completion of final disposal, including the period of time when the tailings are drying out. The second part of the requirements specifies the standards that must be met once the piles are closed. These standards govern the design of disposal systems, and therefore guide the activities carried out during the closure period to ensure the adequacy of the final cover. For NRC licensed mill tailings sites that are being closed, Subpart D calls for reclamation plans designed to control radon emissions to a flux not to exceed an average release rate of 20 pCi/m$^2$-s for 1000 years to the extent reasonably achievable, but in any event for at least 200 years. 40 CFR 192.32(b)(1) (i) and (ii).

Both the UMTRCA title I and title II standards were challenged by several parties in the Tenth Circuit Court of Appeals. On September 3, 1985, the court upheld all aspects of EPA's standards, excepting the ground water provisions of the title I regulations at 40 CFR 192.20(a)(2)-(3). *American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985), *cert. denied* 426 U.S. 1158 (1986). On September 24, 1987, EPA proposed new regulations to replace those set aside (40 CFR part 192, subpart C, 52 FR 36000). The final rulemaking action is pending and is not affected by today's action.

On October 16, 1985, NRC promulgated rules at 10 CFR part 40 to conform the previous NRC regulations issued five years earlier to the provisions of EPA's general UMTRCA standards at 40 CFR part 192, as it affected matters other than ground water protection (50 FR 41852). On November 13, 1987, NRC promulgated final rules for ground water protection at uranium mill tailings sites that conformed to provisions of EPA's standards for ground water protection at 40 CFR part 192, subparts D and E (52 FR 43553).

Under the NRC regulations, uranium milling operations that mine, process or dispose of uranium and thorium, and their byproduct materials, must apply to the NRC for a license. In its application for an NRC license, the owner or operator of the mill must demonstrate the expected compliance with the technical, financial, ownership and long-term surveillance requirements of NRC's implementing regulations during the siting and construction of the mill, its operation, the decontamination and decommissioning of the mill after operations cease, and the reclamation of the milling facility and its surrounding environs. In accordance with 10 CFR 40.41(e), the NRC may incorporate in any license or later amend the license to include additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of source or byproduct material as it deems appropriate or necessary to protect health or to minimize danger of life or property.

*C. EPA's Clean Air Act Rulemaking*

Both the UMTRCA standards promulgated by EPA in 1983 and the implementing NRC standards promulgated in 1985, failed to require or otherwise establish compliance schedules to ensure that the tailings piles would be expeditiously closed, and that the 20 pCi/m$^2$-s standard would be met, within a reasonable period of time. Moreover, the NRC criteria also failed to require monitoring to verify compliance with the flux standard (50 FR 41852). In response to the separate requirements of the Clean Air Act, and in light of the shortcomings to the current UMTRCA program for NRC-licensed uranium mill tailings sites, EPA promulgated standards under the Clean Air Act to ensure that the piles would be closed in a timely manner. These NESHAPs were published on December 15, 1989 (54 FR 51654) codified at 40 CFR part 61, subpart T (nonoperational) and subpart W (operational).

The NESHAP for nonoperational uranium mill tailings, codified at 40 CFR part 61, subpart T, applies to both title I and title II sites. The standard has three primary requirements. First, it imposes an emission limit of 20 pCi/m$^2$-s of radon-222 from a disposed pile, consistent with the UMTRCA standard. Second, it requires that, once a uranium mill tailings pile or impoundment ceases to be operational, it must be disposed of and brought into compliance with the emission limit within two years of the effective date of the standard (by December 15, 1991) or within two years of the day it ceases to be operational, whichever is later. If it was not physically possible for a mill owner or operator to complete disposal within that time, EPA contemplated a negotiated compliance agreement with the mill owner or operator pursuant to EPA's enforcement authority to assure that disposal will be completed as quickly as possible. Third, it requires monitoring of the disposed pile to demonstrate compliance with the radon emission limit.

As noted earlier, the numerical radon emission limit, is the same as the UMTRCA standard at 40 CFR part 192, subpart D (subpart D) (although under UMTRCA, the limit is to be met through proper design of the disposal impoundment, and is to be implemented by DOE and NRC for the individual sites, while under the CAA, the standard is a straight emissions limit). However, the two year disposal requirement and the radon monitoring

[1] The term "release" is used in 40 CFR part 192, subpart D. EPA intends "release" as used in today's proposed amendments to subpart D and this rulemaking to mean "emission" as that term is used in 40 CFR part 61, subpart T.

requirement are not separately required by the existing UMTRCA regulations.

## II Challenge to Subpart T

### *A. Petitions for Reconsideration*

After promulgating subpart T, EPA received several petitions for reconsideration, the most notably filed by NRC and the American Mining Congress (AMC). Among other concerns set forth in these petitions is the argument that the overlap between EPA's subpart D of UMTRCA and subpart T of the CAA NESHAP has resulted in regulations that are unnecessarily burdensome and duplicative. It was also alleged that subpart T was unlawful because it was physically impossible to come into compliance with subpart T in the time required. While these petitions remain pending before EPA (at least in part), EPA has taken several actions to address the issues they raise.

### *B. Section 112(d)(9) of the Clean Air Act Amendments of 1990 (the "Simpson Amendment")*

In November 1990, Congress amended the CAA and included a new section, section 112(d)(9), which authorized EPA to decline to regulate radionuclide emissions from NRC-licensees under the CAA provided that EPA found, by rule, after consultation with NRC, that the regulatory scheme implemented by NRC protects the public health with an ample margin of safety. Today's action is needed to assist EPA in making the "Simpson Amendment" finding for NRC-licensed uranium mill tailings disposal sites, as it seeks to fill the timing gaps and other concerns that underlie EPA's 1989 decision to promulgate subpart T.

### *C. Memorandum of Understanding between EPA and NRC*

In July of 1991, EPA, NRC and the affected Agreement States entered into discussions over the dual regulatory programs established under UMTRCA and the CAA. In October 1991, those discussions resulted in a Memorandum of Understanding (MOU) between EPA, NRC and the Agreement States which outlines the steps each party will take to both eliminate regulatory redundancy and to ensure uranium mill tailings piles are closed as expeditiously as practicable. See 56 FR 55434 (MOU reproduced as part of proposal to stay subpart T); see also 56 FR 67537 (final rule to stay subpart T). The primary purpose of the MOU is to ensure that owners of uranium mill tailings disposal sites that have ceased operation, and owners of sites that will cease operation in the future, bring those piles into compliance with the 20 pCi/m$^2$-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) with the goal that all current disposal sites be closed and in compliance with the radon emission standard by the end of 1997, or within seven years of the date on which existing operations and standby sites enter disposal status. This goal comports with Congress's concern over timing as reflected in CAA section 112(i)(3), as amended.

In accordance with the MOU, the NRC and affected Agreement States have agreed to amend the licenses of all sites whose milling operations have ceased and whose tailings piles remain partially or totally uncovered. The amended licenses would require each mill operator to establish a detailed (radon) tailings closure plan to include key closure milestones and a schedule for timely emplacement of a permanent radon barrier on all nonoperational tailings impoundments to ensure that radon emissions do not exceed a flux of 20 pCi/m$^2$-s. The licenses must be amended as soon as practicable, but in any event no later than September 1993.

### *D. Current Regulatory Proceedings*

On December 31, 1991, EPA took several steps towards fulfilling its responsibilities under the MOU and in implementing the "Simpson Amendment" by publishing three **Federal Register** (FR) notices. In the first notice (56 FR 67537), EPA published a final rule to stay the effectiveness of 40 CFR part 61, subpart T, as it applies to owners and operators of nonoperational uranium mill tailings disposal sites. The stay will remain in effect until the Agency rescinds the uranium mill tailings NESHAP at 40 CFR part 61, subpart T, and amends the UMTRCA standards at 40 CFR part 192 to ensure that the remaining rules are as protective of public health with an ample margin of safety, as would implementation of the CAA rule being rescinded. If EPA fails to complete these rulemakings by June 30, 1994, the stay will expire and the requirements of subpart T will become effective.

In a second notice published on December 31, 1991, the Agency proposed to rescind the NESHAPs for radionuclides that appear at 40 CFR part 61, subpart T, as they apply to nonoperational uranium mill tailings disposal sites licensed by the NRC or an Agreement State (56 FR 67561).

In the third notice, EPA published an advanced notice of proposed rulemaking to amend 40 CFR part 192, subpart D (56 FR 67569) to provide for site closure to occur as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee), and appropriate monitoring requirements for nonoperational uranium mill tailings piles. These amendments would ensure timely compliance and add monitoring requirements currently lacking in the UMTRCA regulations.

EPA has tentatively concluded that with the modifications to the general UMTRCA regulations proposed today, as properly implemented by the NRC and the Agreement States to ensure specific, enforceable closure deadlines and monitoring requirements, the NRC's regulatory program for nonoperational uranium mill tailings piles would protect the public health with an ample margin of safety. However, prior to finalizing its rule to rescind subpart T, and after EPA takes final action herein, NRC conforms its regulations to the UMTRCA rules if modified, and all nonoperational site licenses are modified in accordance therewith, EPA currently intends to propose a finding in the **Federal Register** and provide an additional 30 day comment period on whether the NRC regulatory program protects public health with an ample margin of safety. After this occurs, EPA will take final action on its proposal to rescind 40 CFR part 61, subpart T.

Consistent with their responsibilities under the MOU, as well as EPA's proposal to rescind the NESHAP at 40 CFR part 61, subpart T, NRC and the affected Agreement States have agreed to amend the licenses of all nonoperational uranium mill tailings sites to ensure inclusion of schedules for emplacing a permanent radon barrier on the tailings impoundments, as well as interim milestones. To this end, NRC and the Agreement States have already requested the licensees to voluntarily seek amended licenses and have processed those requests. Moreover, NRC and the affected Agreement States have agreed to enforce the provisions of the amended licenses to ensure compliance with the new schedules for emplacing a permanent radon barrier, including interim milestones, and to ensure (and verify) compliance with the 20 pCi/m$^2$-s flux standard.

## III. Legal Basis for Proposal

### *A. Statutory Authority for Proposal*

#### 1. Emphasis Upon Expeditious Radon Control

The crux of today's proposal is additional regulatory means to ensure expeditious and permanent control of radon emissions from uranium mill

tailings piles after active milling operations have ceased. The importance of timeliness is inherent to UMTRCA. It is evidenced by Congress' action in amending UMTRCA to require prompt EPA rulemaking action, and by the actual terms of title II. It is also evidenced by the legislative history for title II, contained in UMTRCA's two-part House Report, which confirms UMTRCA's purpose to require expeditious public health protection. See H.Rep. 95–1480(I) (Aug. 11, 1978) ("HR 1") (Interior and Insular Affairs Committee) and H.Rep. 95–1480(II) (Sept. 30, 1978) ("HR 2") (Interstate and Foreign Commerce Committee), *reprinted in* 6 1978 U.S. Code Cong. & Admin. News at 7433–7478 (UMTRCA passed the House on October 14, 1978, and was signed into law on Nov. 8, 1978).

Both parts of the House Report mirror UMTRCA's statutory language by: (1) Making clear that UMTRCA is primarily directed to health risks associated with radon–222 releases into the environment from uranium mill tailings disposal; and (2) calling for "every reasonable effort * * * to provide for the disposal, stabilization and control in a safe and environmentally sound manner of such (uranium mill) tailings." HR 1 at 11, HR 2 at 25; HR 1 at 13. Expeditious control of disposed tailings was paramount. At title I sites, DOE (in consultation with EPA, NRC and the host State) was required to quickly remediate disposed tailings sites "in accord with necessity for reducing the most threatening hazards first." HR 1 at 15. The same expeditiousness was expected of title II disposal sites, which should "in all cases be controlled and regulated by States and the Commission, to the maximum extent allowed by the state of the art, to insure that the public and the environment will be protected from the hazards from the tailings for as long as they remain a hazard." *Id.* at 17–18. To further underscore the urgent purpose, the Report states:

> The committee is convinced that all tailings pose a potential and significant radiation health hazard to the public. Legislation is needed now to stabilize and control all such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public * * *.
>
> The committee, however, is also convinced that it would be a grievous and costly mistake to authorize a remedial program for inactive mill sites without also enacting regulatory legislation to control the *even more serious problem at active (i.e., Title II) mill sites.*

HR 2 at 29 (emphasis added).

This intent is implemented by provisions in title II. For instance, NRC implements EPA's general standards for title II through licensing of active tailings sites, which licenses must be timely modified to conform to environmental standards. NRC licenses issued or renewed after enactment of UMTRCA must contain the terms and conditions which the NRC determines to be necessary to assure that, prior to termination of the license the licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the NRC consistent with EPA's general standards. Any license in effect on the enactment date of 42 U.S.C. 2113(a) must either contain the terms and conditions of renewal, or comply with paragraphs (1) and (2) of section 2113(a) upon the termination of the license, whichever first occurs. See 42 U.S.C. 2113(a). This provision, which went into effect upon enactment, meant that Congress expected action at each title II site within three, or at the most five years of enactment:

> For each licensee, such period (for implementing UMTRCA requirements) would be 3 years following enactment, or until the time at which the licensee's license would first be required to be renewed, whichever is the longer period * * *. In no case may such grace period be longer than 5 years following enactment of (UMTRCA).

HR 1 at 22; see also id. at 23 (authorizing immediate expenditures by DOE and NRC on remediation).

Moreover, while timely implementation of title II could financially or otherwise burden licensees, rather than delay implementation, Congress recognized these burdens and instructed NRC to take such hardships into account. H. Rep. No. 95–1480(I) at 44. While NRC was provided some authority to reasonably implement EPA's regulations on a site-by-site basis, it was assumed that in general the regulations would be implemented expeditiously.

The statute placed deadlines upon EPA, NRC and the Agreement States to promulgate and conform their respective regulations. See 42 U.S.C. 2021 and 2022. As noted above, EPA delay in promulgating standards led to UMTRCA's amendment in 1983, which added language requiring that EPA promulgate final title II standards by October 1983 or lose the right to do so. 42 U.S.C. 2022(b) (as amended by Pub. L. 97–415); see H. Conf. Rep. No. 97–884 at 44–45, *reprinted in* 4 1982 U.S. Code Cong. & Admin. News at 3614–15 (expressing concern over EPA delay and emphasizing the importance of timeliness).

During the time period for NRC to conform its regulations to EPA's, NRC is not expected to "suspend the implementation or enforcement of its regulations." H. Conf. Rep. No. 97–884 at 45. Congress further made clear its view that UMTRCA implementation proceed immediately, going so far as to note that for title I sites "the '7-year clock' for the completion of cleanup * * * begins to run (for DOE) October 1, 1982." *Id.* As to title II sites, during the transition period for EPA to propose and promulgate regulations (and although its rules would be suspended during that period) "NRC is authorized to take such action as it may deem necessary, on a licensee-by-licensee basis, to protect public health, safety, and the environment." *Id.* at 47.

Thus, the legislative scheme is one of urgency. EPA is to promptly promulgate regulations that will promptly be implemented at each site through licensing by NRC. Radon emissions are identified as the primary threat to public health, and all tailings are to be controlled without exception.

In its February 1983 proposal for the existing UMTRCA rules, EPA took note of the January 1983 amendments to UMTRCA calling for EPA to promulgate rules or lose its authority to do so: "WE (sic) are therefore proceeding to establish these standards expeditiously." 48 FR 19585. EPA noted that of the 27 licensed uranium mills, only 16 were operating, 8 had recently closed, and others had been closed for some time. *Id.* EPA mirrored Congress in referencing radon emissions as the primary source of public health risk from these sites, and noted that radon emissions rates are currently at their peak. *Id.* EPA then listed the panoply of existing guidance materials, including the ALARA principle (that radiation exposure be limited to a level "as low as reasonably achievable"), and proposed that its UMTRCA standards "supplement" the existing guidance in a manner that

> (1) take(s) account of the tradeoffs between health, safety, and environmental and economic costs and benefits in a way the assures adequate protection of the public health, safety, and the environment; (2) can be implemented using *presently available techniques and measuring instruments;* and (3) are reasonable in terms of overall costs and benefits.

*Id.* at 19587 (emphasis added). In soliciting comment, EPA explicitly stated that it "*assumed (a) 15-year operating and 5-year* dry-out" period, and that the Agency was concerned about potentially significant risks to public health during those periods. *Id.* at 19600. Taken together—by basing its

regulations on "presently available" means, and by expressing concern over the transition periods—EPA was assuming that compliance would occur expeditiously, without delay. While EPA recognized that there would be some lag in time before final closure could occur (i.e., to allow the tailings to dry), EPA certainly was not contemplating a period of additional or indefinite delay between ceased operations and final closure.

These purposes and assumptions were further augmented by EPA in taking final action on the rules. In listing the major provisions, EPA stated that the rule "(4) (r)equires that disposal of uranium mill tailings piles be designed so that, after disposal, radon emissions will be limited to 20 ($pCi/m^2$-s)." 48 FR 45927. The tone is one of immediacy, suggesting that the requirements will apply as soon as possible, without any more delay than is necessary to implement the design standard. This is emphasized by EPA noting the danger of lung cancer from inhaling radon emissions, a danger that exists as much today as it will later in time. *Id.* at 45928:

> Tailings pose a *present* hazard to human health. Beyond this *immediate* but generally limited health threat, the tailings are vulnerable to human misuse and to dispersal by natural forces for an essentially indefinite period.

Thus, EPA acted to immediately limit the present hazards and immediately halt hazards in the future by requiring that final closure expeditiously occur following ceased operations.

2. UMTRCA's Scheme and Purposes are Consistent With Today's Proposal Which Clarifies and Better Implements EPA's Existing Regulations

Today's proposal is intended to fill gaps and otherwise clarify EPA's existing regulations in order to ensure the expeditious, effective, and permanent control of radon emissions. By making minor amendments to EPA's existing regulations to explicitly require emplacement of a radon barrier as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee), interim milestones toward emplacement, and monitoring to assure that the design of the radon barrier is effective, EPA is better fulfilling Congress' purposes in enacting UMTRCA for Title II sites. As set forth above, Congress quite clearly was seeking, through UMTRCA, to protect public health from the dangers associated with radon emissions, both today and into the future, and has taken measures to require that EPA and the implementing agencies (DOE and NRC) do so expeditiously. Nothing in today's proposal is intended to modify the essential purposes or the essential aspects of the existing regulatory scheme; rather, EPA intends to better fulfill Congress' mandates by clarifying the existing requirements.

In promulgating the 1983 regulations, EPA intended and expected expeditious progress toward radon control once an active site ceased milling operations. EPA "assumed * * * (a) 5-year dry-out" period after milling operations had ceased, and based its regulations on that assumption. EPA did not, however, explicitly mandate a set period for drying out, in part due to the variable circumstances at each site, and also because expeditiousness was implicit to regulatory and statutory schemes, viewed as a whole.

Today's proposal does not seek to change EPA's rationale or scheme set forth in its 1983 rule. Rather, through minor amendments, it seeks to clarify and supplement that scheme in a manner that will better support its initial intent. Without setting forth mandatory schedules, EPA generally requires that once a site becomes nonoperational (i.e., milling operations cease), a barrier to control radon will be emplaced as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Interim milestones toward emplacement will support and better assure this progress, and post-emplacement monitoring will serve as confirmation that the design of the cover is working as intended.

*B. Interpretive Caselaw*

Judicial review of EPA's and NRC's regulations has resulted in several written opinions by the United States Court of Appeals for the 10th Circuit. Those opinions interpret UMTRCA in much the same manner as does EPA—radon control is paramount, and Congress intends that EPA and NRC promulgate regulations to protect public health in a manner that has immediate and long lasting effect. More particularly, with exception only as to matters not at issue today, the courts upheld EPA's and NRC's regulations, including the agencies' consideration of costs and benefits.

It is worthwhile to review the four opinions interpreting UMTRCA:

(1) *American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985) ("*AMC I*") (addressing EPA's UMTRCA inactive site regulations);

(2) *AMC* v. *Thomas*, 772 F.2d 640 (10th Cir. 1985) ("*AMC II*") (addressing EPA's UMTRCA active site regulations);

(3) *Quivira Mining Co.* v. *NRC*, 902 F.2d 781 (10th Cir. 1989) (addressing NRC's implementing criteria); and

(4) *AMC* v. *NRC*, 902 F.2d 781 (10th Cir. 1990) ("*AMC III*") (addressing amendments to NRC's implementing criteria).

1. AMC I and AMC II

The inactive site regulations at issue in *AMC I* are codified at 40 CFR part 192, subparts A–C; the active site regulations at issue in *AMC II* are codified at 40 CFR part 192, subpart D, and are the subject of today's proposal. Stated generally, the court in *AMC I* upheld EPA's inactive site regulations under UMTRCA, except as regards a failure to adopt provisions to protect surface and groundwater. The court in *AMC II* likewise upheld EPA's active site regulations (including the groundwater protection provisions), and in so doing relied upon the extensive statutory interpretation set forth in *AMC I*.

The court in *AMC I* began its analysis with UTMRCA's statutory purposes and structure, quoting the Congressional findings at 42 U.S.C. 7901(a) (set forth above). 772 F.2d. at 621. The court also noted that the 1982 UMTRCA amendments meant that Congress strongly desired that the public health protection regulations quickly go into effect: "Anxious to institute standards for the mill tailings, Congress also provided that should the EPA miss the extended deadline, remedial action would commence using the proposed standards." *Id.* at 623 (citations omitted).

The court addressed the contention that a prerequisite to any regulations is that EPA find that uranium mill tailings present a significant risk to public health. *Id.* at 627. The court disagreed, finding that Congress had already spoken strongly on this issue:

> It would be disingenuous to hold, after reading Congress' own statement of its findings and purposes, that the EPA must make its own determination of whether radon emissions present a risk significant to warrant regulation under the UMTRCA.

*Id.* The court also reviewed the legislative history, and concluded that "Congress chose to consider protecting future generations by enacting the UMTRCA and requiring the *immediate stabilization and disposal of those tailings.*" *Id.* (emphasis added).

After dispensing with other less pertinent issues, the court then addressed EPA's consideration of costs and benefits. In drawing a middle course between cost-benefit "optimization" (advanced by industry), and feasibility analysis (advanced by

environmental groups), the court determined only that "EPA must consider the costs involved in the regulations and, with the guidance of Congress' intent, find that these costs bear a reasonable relationship to the benefits derived." *Id.* at 632.

In *AMC II*, the court applied its analysis to the subpart D active site regulations (that EPA is proposing today to clarify and otherwise amend). 772 F.2d at 643. The court upheld EPA's regulations in their entirety, commenting that even though EPA's cost estimates were "significant" (if accurate), "Congress placed the responsibility for evaluating them upon the EPA without imposing a specific cost-benefit requirement." *Id.* at 646.

2. Quivira Mining and AMC III

The *Quivira Mining* case involved industry challenges to NRC's 1985 UMTRCA criteria, which conform their 1980 criteria to EPA's UMTRCA regulations for active sites as promulgated in 1983 and upheld in *AMC I* and *AMC II*, discussed above (the underlying EPA regulations are the subject of today's proposal). Industry primarily argued that NRC had failed to properly consider costs and benefits in promulgating its 1985 criteria. 866 F.2d at 1249. The court disagreed and upheld NRC's 1985 criteria, finding that NRC's consideration of costs in its 1980 rulemaking, coupled with EPA's consideration of costs in its 1983 active site rulemaking, adequately fulfilled the relatively deferential "cost-benefit rationalization" required by UMTRCA. *Id.* at 1250, 1257–58.

Regarding NRC's reliance upon EPA's earlier consideration of costs, the court acknowledged ambiguity as to whether UMTRCA requires that NRC consider costs "anew." *Id.* at 1257. The court resolved the ambiguity in favor of NRC, deferring to the agency's reasonable construction: "It is a permissible construction of the 'due consideration' command for the NRC to accept the EPA cost-benefit analysis for the revised criteria." *Id.* at 1258.

The court in *AMC III* addressed renewed industry challenges, this time to 1987 amendments to NRC's UMTRCA criteria. 902 F.2d at 782. Among other things, industry again pressed its argument that NRC had failed to adequately consider costs and benefits under UMTRCA. *Id.* at 783. And again the court held that because EPA had properly considered costs and benefits in 1983, "NRC performed its due consideration obligation here when it conformed to the EPA's regulations it was required to adopt." *Id.* at 784.

3.Caselaw Supports The Proposed Action

The judicial interpretations set forth above are relevant to today's proposal in two ways: (1) The *AMC I* and *AMC II* decisions affirm Congress' strong interest in the expeditious control of radon at active (i.e., NRC-licensed) uranium mill tailing disposal sites; and (2) the *Quivira Mining* and *AMC III* decisions set forth the scope of cost-benefit considerations, including the propriety of relying upon earlier efforts to the extent the regulations are not charting a new course.

This proposal is directed at clarifying and better effecting EPA's intent in promulgating the 1983 rules that there not be any undue delay in controlling radon emissions once a disposal site ceases milling operations. The proposed regulatory language, including interim milestones of progress towards control and monitoring provisions, fulfill Congress' intent regarding expeditious public health protection, and are intended to better implement EPA's 1983 rules.

EPA has duly considered costs in its draft Background Information Document (BID) which addresses EPA's consideration of costs and benefits. Few if any additional costs will be incurred by site owners or operators as a result of this proposal, since timely radon control has always been required. Moreover, the cost analysis which EPA conducted for its 1983 rulemaking remains relevant, since today's proposal encompasses amendments to the UMTRCA regulations to clarify and enhance implementation of the fundamental regulatory scheme contained in EPA's 1983 UMTRCA rules.

*C. Settlement Agreement*

Two additional items further explain the legal basis and rationale for today's proposal:

(1) Clean Air Act section 112 (including EPA rulemaking thereunder); and

(2) A litigation settlement agreement thereunder, recently entered into by EPA and the affected industry and environmental groups.

In response to the risks associated with litigation, in light of the Simpson Amendment and in order to foster a consensus approach to regulation in this area, EPA commenced discussions with NRC, the American Mining Congress ("AMC"), Homestake Mining Co., the Environmental Defense Fund ("EDF") and the Natural Resources Defense Counsel ("NRDC"). Each has a direct interest in the matter, all but NRC had challenged EPA's promulgation and/or stay of subpart T and each had historically found little common ground in this area.

As a result (and as discussed above), in October 1991, a Memorandum of Understanding ("MOU") was signed by EPA and NRC setting forth the outline to a regulatory approach that would best resolve the differences between EPA and NRC. As contemplated by the MOU, on December 31, 1991, EPA took final action to stay and propose rescission of subpart T under the Simpson Amendment, and to issue an advance notice of proposed rulemaking under UMTRCA. See 55 FR 67537, 67561 and 67569. In order to preserve its rights, EDF filed a lawsuit challenging the legality of the stay. *EDF* v. *Reilly*, No. 92–1082 (D.C. Cir.). Litigation had previously been filed by EDF, NRDC, AMC, Homestake and others, challenging subpart T. *AMC, et al.* v. *EPA*, Nos. 90–1058, 90–1063, 90–1068, and 90–1074 (D.C. Cir.). NRC, AMC and Homestake had also filed an administrative petition for reconsideration of subpart T.

Discussions continued with the litigants and NRC, and in February 1993, final agreement was reached to settle the pending litigation and the administrative proceeding, avoid potential future litigation, and otherwise agree to a consensus approach to regulations of NRC-licensed nonoperational uranium mill tailings disposal sites. See 58 FR 17230 (April 1, 1993) (notice announcing settlement agreement under CAA section 113(g)). A copy of the settlement agreement is also in the docket to this action.

The settlement agreement adds comprehensive detail to, and thereby continues, the approach set forth in the MOU. If implemented, the agreement will result in the expeditious control of radon-222 emissions at nonoperational uranium mill tailings disposal sites without the delays and resource expenditures engendered by litigation and contentious administrative process. It will enable EPA to fulfill the Simpson Amendment requirement that EPA find, by rule, that the NRC regulatory program protects public health with an ample margin of safety. It does this, in part, by conforming EPA's UMTRCA regulations to the CAA such that public health will be as well protected under UMTRCA as would implementation of Subpart T under the CAA.

Under the agreement, the pending litigation will not be dismissed until after certain terms in the agreement are fulfilled. Moreover, the agreement does not legally bind or otherwise restrict EPA's rights or obligations under law;

rather, by its terms (paragraph 12), there is no recourse for a court order to implement the agreement. Indeed, the only remedy for failure to meet the terms of the final agreement is activation of the underlying litigation.

This proposal is consistent with the settlement agreement. By clarifying and filling gaps in EPA's UMTRCA regulations, EPA may, after the other elements in the settlement agreement are also implemented, be able to make the finding necessary to rescind subpart T under the Simpson Amendment. If properly implemented, a unified regulatory scheme under UMTRCA has the advantage of avoiding confusing and unnecessarily duplicative regulation, while also protecting public health with an ample margin of safety.

## IV. Proposed Rule to Amend 40 CFR Part 192, Subpart D

### *A. Limited Scope of this Action*

The proposed amendments to the general UMTRCA regulations for nonoperational uranium mill tailings disposal sites at 40 CFR part 192, subpart D (subpart D) fill specific regulatory gaps that currently exist in subpart D. While subpart D, as currently written, requires eventual compliance with the 20 pCi/m²-s flux standard, it does not mandate that compliance occur by a specific date. Rather, as promulgated by EPA under subpart D and implemented by NRC pursuant to its regulations at 10 CFR part 40, appendix A, a title II site licensed by NRC or an Agreement State, could indefinitely continue to emit radon at the same numerical emission limit as allowed under the CAA. It was this possibility which compelled EPA to promulgate subpart T under CAA section 112. In addition, the current UMTRCA regulations call for an impoundment design that will likely achieve compliance with the 20 pCi/m²-s flux standard for 1000, or at least 200 years, but they do not include any requirement that monitoring occur to verify the efficacy of the design. This proposal would also fill this gap.

The amendments are not intended to substantively alter the current regulatory scheme; instead, they are merely intended to fill these regulatory gaps with respect to timely compliance and appropriate monitoring which presently exists. Once these gaps are filled by today's proposed amendments and are implemented by NRC, EPA may then have the basis for rescinding subpart T, thereby avoiding unnecessarily duplicative and burdensome regulation.

The Agency's finding, pursuant to section 112(d)(9) of the Clean Air Act Amendments of 1990, that NRC's regulatory program protects the public health with an ample margin of safety must include a finding that NRC and the affected Agreement States are implementing and enforcing, in significant part, the regulations governing disposal of tailings and the operating license requirements that establish milestones for emplacement of a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard on a programmatic and a site-specific basis. In other words, the Agency must find that NRC or an affected Agreement State has not failed to implement and enforce the requirements in a manner that may reasonably be expected to materially (i.e., more than de minimis) interfere with compliance with the 20 pCi/m²-s standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee).

### *B. Closure Requirements*

EPA proposes to amend 40 CFR Part 192, subpart D to require:

(1) Emplacement of a permanent radon barrier constructed to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard by all sites that, absent rescission, would be subject to subpart T;

(2) Interim milestones to assure appropriate progress in emplacing the final radon barrier; and

(3) That site closure occur as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) after the impoundments cease operation, with a goal that this occur by December 31, 1997, for those nonoperational uranium mill tailings piles listed in the MOU between EPA and NRC (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles.

EPA recognizes that the UMTRCA regulatory scheme encompasses a design standard. EPA is today proposing minor amendments to this scheme to better facilitate implementation of the regulation without fundamentally altering the current method of compliance. Sites are required to construct a permanent radon barrier pursuant to a design to achieve compliance with the 20 pCi/m²-s flux standard. The proposed new requirement for demonstrating the flux standard with monitoring is only meant to assure the efficacy of the design of the permanent radon barrier following construction and is not intended to relieve licensees of other existing requirements.

Site control shall be carried out in accordance with a written (radon) tailings closure plan, and in a manner which ensures that closure activities are initiated as expeditiously as practicable considering technological feasibility (including factors beyond the control of licensees). The (radon) tailings closure plan, either as originally written or subsequently amended, will be incorporated into the individual site licenses, including provisions for and amendments to the milestones for control, after NRC or an affected Agreement State finds that the schedule reflects compliance as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Under the Settlement Agreement, to which NRC has agreed in principle to uphold, such finding will constitute final agency action. The compliance schedules are to be developed consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site with a goal that final closure occur by December 31, 1997, for those nonoperational uranium mill tailings piles listed in the MOU between EPA and NRC (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles. These schedules must include key closure milestones and other milestones which are reasonably calculated to promote timely compliance with the 20 pCi/m²-s standard. The phrase "milestones" refers to enforceable dates by which action, or the occurrence of an event, is required for purposes of achieving compliance with the 20 pCi/m²-s flux standard.

Milestones which are not reasonably calculated to advance timely compliance with the radon air emissions standard, e.g. installation of erosion protection and groundwater corrective actions, are not relevant to the (radon) tailings closure plans. In addition, today's proposed regulations, if finalized, will require that licensees ensure that radon closure milestone activities, such as wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and radon barrier construction, are constructed and undertaken to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility.

The goal of this regulation is for existing sites, or those that become nonoperational in the future, to achieve compliance as expeditiously as practicable considering technological feasibility (including factors beyond the control of licensees) with the time periods set forth in the MOU, including Attachment A thereto, and for new sites to achieve compliance no later than seven years after becoming nonoperational. However, if the NRC or an Agreement State makes a finding that compliance with the 20 pCi/m²-s flux standard has been demonstrated through appropriate monitoring, and after providing an opportunity for public participation, the performance of the milestone(s) may be extended. Only under this circumstance and during the period of the extension must compliance with the 20 pCi/m²-s flux standard be demonstrated each year. Additionally, licensees may request, based upon cost, that the final compliance date for emplacement of the permanent radon barrier, or relevant milestone set forth in the applicable license or incorporated in the (radon) tailings closure plan, be extended. The NRC or an affected Agreement State may approve such a request if it finds, after providing the opportunity for public participation, that:

(1) The licensee is making good faith efforts to emplace a permanent radon barrier constructed to achieve the 20 pCi/m²-s flux standard;

(2) Such delay is consistent with the definition of "available technology;"; and

(3) Such delay will not result in radon emissions that are determined to result in significant incremental risk to the public health.

Such a finding should be accompanied by new deadlines which reasonably correspond to the target dates identified in attachment A of the MOU. (56 FR 67569)

EPA expects the NRC and Agreement States to act consistently with their commitment in the MOU and provide for public participation on proposals or requests to: (1) Incorporate radon tailings closure plans or other schedules for effecting emplacement of a permanent radon barrier into licenses, and (2) amend the radon tailings closure schedules as necessary or appropriate for reasons of technological feasibility (including factors beyond the control of the licensees). Under the terms of the MOU, NRC should do so with notice timely published in the **Federal Register**. In addition, consistent with the MOU, application may be made to NRC for public participation on these matters pursuant to 10 CFR 2.206. EPA also expects the Agreement States to provide comparable opportunities for public participation pursuant to their existing authorities. While EPA desires to keep the public informed and provide for public participation, such provisions are not intended to transform the licensing (and amendment) process into notice and comment rulemaking in accordance with Administrative Procedure Act (APA) requirements.

Under the existing regulatory scheme, NRC and the affected Agreement States may have the authority to allow, at a licensee's request, a portion of a site to remain accessible, either during the closure process or after placement of a permanent radon barrier, to accept byproduct material as defined in section 11(e)(2) of the AEA, (e.g., wastes from in-situ mining operations, or from groundwater corrective action programs), or to accept materials from other sources that are similar to the physical, chemical and radiological characteristics of the in-situ uranium mill tailings and associated wastes. Nothing in today's proposal alters, ratifies, or otherwise affects this authority. However, EPA notes that, consistent with the MOU and the Settlement Agreement, such authorization shall not to be used as a method to impede emplacement of the permanent radon barrier over the remainder of the site in a manner to achieve compliance with the 20 pCi/m²-s flux standard, averaged over the entire impoundment as demonstrated by the licensee's monitoring described below.

EPA does not intend to substantively alter the 1983 scheme with today's proposal, but instead seeks to clarify and supplement that scheme to fill a regulatory gap which currently exists. By acknowledging NRC's apparent authority to allow a portion of a site to remain accessible for disposal, EPA is acknowledging a current NRC practice. EPA believes that placement of "materials similar to the physical, chemical and radiological characteristics of uranium mill tailings and associated wastes from other sources" on a portion of an impoundment is consistent with on-going disposal activities currently authorized by NRC. See 57 FR 20525. For instance, mining uranium by using uranium solution extraction processes produces "discrete (radioactive) surface wastes" which, although they do not have the same physical form as uranium mill tailings, have historically been disposed of in uranium mill tailings impoundments. See Definition of "Byproduct Material" at 10 CFR 40.4 (a) through (i). In addition to wastes from in-situ uranium mining operations and groundwater corrective actions, wastes which arise from processing non-source material for its source material content may produce wastes which are physically and chemically similar to tailings, and may be disposed of in a tailings impoundment. For instance, the tailings produced from processing ore for its copper content may produce tailings containing greater than 0.05 percent uranium, a source material, and thus, would be subject to licensure by the NRC. See 57 FR at 20527. EPA understands that NRC's disposal of associated wastes and other byproduct materials in uranium mill tailings impoundments will not be used as a means of circumventing such other applicable regulations as 40 CFR part 61, subpart W. See 57 FR 20533. Moreover, while NRC may grant such authorization, licensees may not use this authorization to avoid emplacing a permanent radon barrier and complying with the 20 pCi/m²-s flux standard. In addition, under the Settlement Agreement NRC or an Agreement State may authorize a portion of a site to remain accessible for disposal of byproduct material after placement of a permanent radon barrier provided NRC or the Agreement State makes a finding, constituting final agency action and providing for public participation, that the site will continue to achieve the 20 pCi/m²-s flux standard when averaged over the entire impoundment. Even if a portion of a site is authorized to remain accessible for disposal of byproduct materials during the closure process or after placement of a permanent barrier consistent with the Settlement Agreement, as described above, this will not cause a nonoperational uranium mill tailings disposal site to revert to an operational site as defined by § 192.31(o).

As intended by EPA, the phrase "as expeditiously as practicable considering technological feasibility," means as quickly as possible considering: (1) The physical characteristics of the tailings and sites; (2) the limits of available technology; (3) the need for consistency with mandatory requirements of other regulatory programs; and (4) factors beyond the control of the licensee, as explained below. While this phrase does not preclude economic considerations to the extent provided by the phrase "available technology," it also does not contemplate utilization of a cost-benefit analysis in setting compliance schedules. The radon control compliance schedules are to be developed consistent with the targets set forth in the MOU as reasonably applied

to the specific circumstances of each site.

The term "available technology" includes technologies and methods for emplacing a permanent radon barrier on nonoperational uranium mill tailings disposal sites, but does not include extraordinary measures or techniques that would impose grossly excessive costs as measured by practice within the industry (or one that is reasonably analogous), and provided there is reasonable progress towards emplacement of the permanent radon barrier (such as, by way of illustration only, unreasonable overtime, staffing or transportation requirements, etc. considering normal practice in the industry; laser fusion of soils, etc.). To determine whether costs are grossly excessive, the closure cost estimate contained within the licensee's (radon) tailings closure plan may be used as a baseline. However, costs which are determined to be greater than the estimated costs contained in the plan will not automatically be considered grossly excessive.

The phrase "factors beyond the control of the licensee" includes factors causing delay in the schedule in the applicable license for timely emplacement of the permanent radon barrier to achieve compliance with the 20 $pCi/m^2$-s flux standard (and 10 CFR part 40, appendix A, Criterion 6) despite the best and good faith efforts of the licensee to achieve compliance. These factors may include, but are not limited to, physical conditions at the site; inclement weather or climatic conditions; an act of God; an act of war; a judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance; labor disturbances; any modifications, cessation or delay ordered by state, federal or local agencies; delays beyond the time reasonably required in obtaining necessary governmental permits, licenses, approvals or consent for activities described in the (radon) tailings closure plan proposed by the licensee that result from agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the tailings closure plan by NRC or the affected Agreement State; and an act or omission of any third party over whom the licensee has no control.

EPA considers the examples enumerated in the preceding definitions important in evaluating the scope of the definitions proposed.

*C. Appropriate Monitoring*

After emplacement of a permanent radon barrier designed and constructed to achieve compliance with, including attainment of, the 20 $pCi/m^2$-s flux standard, the licensee shall conduct appropriate monitoring and analysis of the radon flux through the barrier. This monitoring will verify that the design of the permanent radon barrier is effective in ensuring that emissions of radon-222 will not exceed compliance with the 20 $pCi/m^2$-s, as contemplated by 40 CFR 192.32(b)(1)(ii). Appropriate monitoring shall be conducted pursuant to the procedures described in 40 CFR part 61, appendix B, Method 115, or any other measurement method proposed by a licensee and approved by NRC or the affected Agreement State as being at least as effective as EPA Method 115 in demonstrating the effectiveness of the permanent radon barrier in achieving compliance with the 20 $pCi/m^2$-s flux standard.

EPA intends that the permanent radon barrier be designed to ensure sustained compliance with the 20 $pCi/m^2$-s flux standard by all sites, but does not propose continuous emissions monitoring. Rather, a single monitoring event should suffice to verify the design of the permanent radon barrier to ensure continued compliance.

If the NRC or an Agreement State extends the time for performance of milestones after making a finding that compliance with the 20 $pCi/m^2$-s flux standard has been demonstrated by appropriate monitoring, compliance with the 20 $pCi/m^2$-s flux standard must be demonstrated each year during the period of the extension.

When a site's (radon) tailings closure plan provides for phased installation of the radon barrier, the licensee will be allowed to conduct radon flux monitoring for each portion of the tailings area on which the radon barrier has been placed by conducting flux monitoring on the closed portion as described above.

## V. Discussion of Comments and Response to Comments from ANPR

A public hearing on the advanced notice of proposed rulemaking (ANPR) (56 FR 67569) was held in Washington, DC, on January 15, 1992, and in Santa Fe, New Mexico on January 21 and 22, 1992. Representatives from NRC, AMC, the Southwest Research and Information Center and private companies testified at the hearings. Written comments were also received from EDF, AMC, the Department of Energy and several private companies. To the extent they are specifically restricted to EPA's proposed modification to its UMTRCA regulations, the comments have been preliminarily evaluated by the Agency, and a summary and general response are set forth below. Those comments which are not directed to the ANPR to amend subpart D, but instead relate to the proposal to rescind 40 CFR part 61, subpart T (56 FR 67561) are not addressed here. Still other comments, that are also not addressed here, are directed to EPA's earlier promulgation of subpart T, a rulemaking decision that is not being revisited by the proposed amendment to subpart D. Those comments were made and responses provided by EPA, at the time the Agency promulgated subpart T, and have also been repeated in subsequent petitions to reconsider that action, which are pending before the Agency, but which might be addressed or otherwise resolved should 40 CFR part 61, subpart T be rescinded.

*General*

In response to the ANPR, EPA received comments generally supporting the proposed amendments to the regulations promulgated under the Uranium Mill Tailings Radiation Control Act (UMTRCA). While most commenters believe that the current regulatory program under UMTRCA is sufficient to allow EPA to find that it protects the public health with an ample margin of safety, they would support limited amendments to the EPA UMTRCA regulations if the EPA determines such amendments are necessary to support rescission. Most commenters stress that the EPA should limit its rulemaking to amend 40 CFR part 192, subpart D, to amendments that rectify the lack of assurance of timely control of radon, e.g. compliance schedules and monitoring requirements.

EPA maintains that the MOU standing alone is not a regulatory scheme and does not provide justification for the rescission at this time. Although there is an MOU between EPA and NRC, the MOU lists a series of actions to be taken by EPA and NRC in the future. These actions, coupled with NRC's commitment to enforce the amended licenses, are intended to provide the basis for EPA to make the requisite findings for rescission of subpart T under CAA Section 112(d)(9), as amended. Although both subpart T and 40 CFR part 192 impose the same 20 $pCi/m^2$-s flux standard, the timing issue was central in justifying the promulgation of subpart T.

As part of the existing regulatory program, NRC promulgated its own implementing regulations in the form of "criteria" to implement EPA's general UMTRCA standards for its licensees (as did its Agreement States). See generally 10 CFR part 40, Appendix A. While these criteria set forth a variety of specific requirements—financial, technical, and administrative—to govern the final reclamation (i.e., closure) design for each disposal site, they also provide for ("site-specific") flexibility by authorizing alternatives that are at least as stringent as EPA's general standards and NRC's criteria, ("to the extent practicable") as provided in Section 84c of the Atomic Energy Act of 1964, as amended. *Id.* at Introduction. NRC's implementation criteria set forth a rigorous program governing the reclamation of the disposal sites so that closure will:

(1) Last for 1,000 years to the extent reasonable, but in any event at least 200 years, and

(2) Limit radon release to 20 pCi/m²-s throughout that period.

Upon review, EPA believes the NRC criteria comprise a comprehensive response to EPA's general standards at 40 CFR part 192, subpart D. However, nothing in either EPA's general standards or NRC's implementing criteria compel sites to proceed toward final closure by a date certain. Moreover, neither EPA's general UMTRCA regulations, nor NRC's implementing criteria require appropriate monitoring to demonstrate the efficacy of the closure design to ensure compliance with the 20 pCi/m²-s standard. Thus, EPA believes that UMTRCA should be amended to include timing requirements and monitoring provisions. These changes might enable EPA to then find that the NRC program protects public health with an ample margin of safety pursuant to section 112(d)(9) of the CAA, as amended.

One commenter believes that it is not necessary to amend 40 CFR part 192, subpart D, since EPA made a finding in 1983 that the standards being promulgated under UMTRCA would provide the same degree of protection (i.e., an ample margin of safety) as required under section 112 of the Clean Air Act (CAA).

At the time of the 1983 promulgation of the UMTRCA standard, the Agency believed that such standard was comparable to the CAA standard established in the proposed NESHAP for radionuclides (48 FR 15076), since both standards were based on comparable considerations (48 FR 45939–40, October 7, 1983). However, the Agency subsequently withdrew its proposed NESHAP standards (49 FR 43906, October 31, 1984), and promulgated an Advanced Notice of Proposed Rulemaking for radon-222 emissions from licensed uranium mills. EPA promulgated a final rule under section 112 regulating radon-222 emissions from licensed uranium mill processing sites in September 1986 (51 FR 34056, September 24, 1986). In 1987, the Court of Appeals for the D.C. Circuit remanded a standard for vinyl chloride, a hazardous air pollutant which, like radionuclides, was regulated by section 112. In the vinyl chloride case, the court concluded that the Agency improperly considered costs and technological feasibility without first making a determination based exclusively on risk to health. The court required the Administrator to first determine a "safe" or "acceptable" level of risk considering only health factors, and then to determine a standard which would provide an "ample margin of safety," considering costs, feasibility and other relevant factors in addition to health. *NRDC* v. *EPA*, 824 F.2d 1146 (D.C. Cir. 1987). In the wake of the court decision, EPA requested a voluntary remand for its standard for licensed uranium mill tailings. EPA promulgated the NESHAP for the disposal of uranium mill tailings piles in December of 1989, even though there was already the UMTRCA standard with the same numerical limit of 20 pCi/m²-s. In promulgating subpart T, EPA noted that "(S)ome piles have remained uncovered for decades emitting radon. Although recent action has been taken to move toward disposal of these piles, some of them may still remain uncovered for years" (54 FR 51683, December 15, 1989).

EPA promulgated subpart T to address the timing issue, which was not addressed in the UMTRCA regulations. Although EPA has already determined that the UMTRCA standard would protect the public health with an ample margin of safety, EPA believes that the existing regulatory scheme does not ensure that sites will achieve the standard as soon as practicable considering technological feasibility. Thus, the Agency believes that UMTRCA should be amended to include timing requirements and monitoring provisions in order to find that the NRC program protects the public health with an ample margin of safety pursuant to section 112(d)(9) of the CAA, as amended.

*Compliance Schedules*

Many commenters cautioned that the compliance schedules must be sufficiently flexible to accommodate site-specific circumstances so that other environmental goals, such as groundwater restoration, are not compromised.

EPA believes the proposed regulations to be reasonable and requisite to a finding that the NRC program protects the public health with an ample margin of safety. EPA is maintaining the specific standard of compliance with the 20 pCi/m²-s standard, with a general goal of compliance by December 31, 1997, or within seven years after the date a pile ceases to be operational for all other piles. The details of implementing the compliance goal are left to the NRC, as is the monitoring requirement. The MOU and this rule are directed to timely compliance with the 20 pCi/m²-s standard and not erosion and groundwater remediation.

*Monitoring*

All commenters, except one, opposed a continuous monitoring requirement, noting that prolonged monitoring could result in degradation to the radon barrier by allowing excessive drying and/or erosion. One commenter contends that the one-time monitoring requirement envisioned by the EPA is inconsistent with the monitoring requirements in title V of the CAA.

The proposed amendments require that monitoring occur after construction of the permanent radon barrier. Subpart T currently requires monitoring to occur only once to demonstrate compliance with the standard. EPA believes that conducting a single test and analysis of the radon emissions through the radon barrier is sufficient to verify that the design of the permanent radon barrier is effective in ensuring that emissions of radon-222 do not exceed the 20 pCi/m²-s as required by § 192.32(b)(1)(ii).

*Evaporation Ponds*

Additionally, the Agency received many comments noting that evaporation ponds should be excluded from the expeditious cover requirement proposed today.

EPA does not intend that the expeditious radon cover requirement extend to areas where evaporation ponds are located, even if on the pile itself, to the extent that such evaporation pond is deemed by the implementing agency (NRC or an affected Agreement State) to be an appropriate aspect to the overall remedial program for the particular site. Rather, the evaporation pond area may be covered to control radon after it is no longer in use and ready for covering. EPA believes the overall public health interest in comprehensively resolving

the problems associated with each site is best served by requiring that the radon cover be expeditiously installed in a manner that does not require interruption of this aspect of remediation. Moreover, the ponds themselves serve as an effective radon barrier. Thus, this decision is bolstered by the absence of any evidence that there is a significant public health risk presented by the radon emissions from these evaporation ponds during the period they are employed as part of the overall remediation of the site. EPA believes that provided all other parts of the pile are covered with the radon barrier, compliance with the 20 pCi/$m^2$-s standard will result, and this will be maintained by covering the evaporation pond area when it is no longer in use.

*Opposition to Proposed Amendments—NRC Waiver Authority*

Two commenters contend that the MOU and this rulemaking will not ensure that the more protective EPA regulations apply, since the NRC has a waiver power under the AEA which may be exercised due to cost or technological feasibility. Although EPA believes that the NRC has authority under the AEA to waive for economic reasons strict compliance with the dual requirement that sites meet the 20 pCi/$m^2$-s standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee), the full exercise of this authority is not contemplated by the MOU. If this authority is used in a manner inconsistent with the purposes and objectives of the MOU, EPA will not rescind subpart T. If the waiver authority is used after subpart T is rescinded, the proposal to rescind subpart T includes procedural and substantive provisions designed to facilitate reconsideration of the rescission and possible reinstatement of that subpart.

The subpart T provisions were proposed in order to ensure that the NRC's waiver authority is not utilized to defeat the finding that the NRC regulatory program protects public health with an ample margin of safety. In this way, EPA may base its rescission finding upon its view of the NRC regulatory program contemplated by the MOU at the time of taking final action, while also providing some assurance that EPA will revisit that finding should NRC or the affected Agreement States substantially deviate from that program.

*Opposition to Amendments—Seven Year Compliance Goal*

Additionally, one commenter asserts that the seven year compliance goal fails to provide an ample margin of safety because there is no requirement that sources allot resources to meet a specific deadline. The EPA disagrees because the (radon) tailings closure plans which include schedules for final closure and which would require a source to invest resources, will be included in licenses amended by the NRC or affected Agreement States pursuant to the MOU. NRC and the Agreement States have already requested the licensees to voluntarily seek amended licenses and have processed those requests.

*Opposition to Proposed Amendments—Lack of Citizen Suit Provisions*

Two commenters also noted the lack of citizen suit provisions to enforce compliance if subpart T is rescinded and UMTRCA amended as proposed. One commenter believes that since UMTRCA does not provide authority for citizen suits, that it cannot provide the requisite ample margin of protection required under section 112 of the CAA, as amended. In addition, another commenter requested that the EPA include some legally enforceable means of compelling compliance with the UMTRCA requirements.

In enacting the "Simpson Amendment," Congress authorized EPA to decline to regulate radionuclide emissions from NRC-licensed facilities if EPA finds, by rule, after consultation with NRC, that the regulatory scheme implemented by NRC protects public health with an ample margin of safety. The Agency believes that Congress was aware that the legislative authority under the CAA provided for citizen suits while the AEA did not contain such provisions. Congress clearly envisioned that circumstances might be such that EPA would make the finding required by the Simpson Amendment. In making the ample margin of safety finding EPA must look at the specific circumstances and will consider whether NRC is implementing and enforcing, in significant part, the regulations governing disposal of tailings and the operating license requirements which establish milestones for emplacement of a permanent radon barrier that will achieve compliance with the standard on a programmatic and site-specific basis.

EPA is constrained by Congress in the scope of the UMTRCA amendments which the Agency may promulgate. EPA does not have the authority to provide for a legally enforceable means of compelling compliance with the UMTRCA requirements that are implemented by NRC. EPA has tentatively concluded that it is necessary to amend UMTRCA to include timing and monitoring provisions in order to enable the Agency to find that UMTRCA, as implemented by NRC, protects the public health with an ample margin of safety, thereby enabling EPA to rescind Subpart T. EPA's role in amending UMTRCA encompasses promulgating generally applicable standards without specifying any particular method of control. (H.R. Rep. No. 1480, 95th Cong., 2nd Sess., Pt. I, p. 17.) UMTRCA gives NRC and the Agreement States the responsibility to implement and enforce UMTRCA. If NRC or the Agreement States are not protecting the public health, the Settlement Agreement executed between EPA, EDF, NRDC and AMC, and EPA's proposed rescission of subpart T contain provisions which would allow EPA to reconsider its rescission of subpart T, and thus, possibly reinstate the CAA standards.

## VI. Request for Comments

EPA is soliciting public comments on today's proposed rule to amend 40 CFR part 192, subpart D. Please submit comments to the Docket listed above on or before July 21, 1993. EPA is especially interested in receiving information related to current radon emissions and installed radon emission control methods currently in use, and what generally applicable timing requirements EPA should impose to achieve compliance as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensees).

## VII. Miscellaneous

*A. Paperwork Reduction Act*

In light of NRC's conforming regulations and any recordkeeping regulations adopted thereunder, and the designation in UMTRCA of NRC and Agreement State authority to implement and enforce such regulations, any issues under the Paperwork Reduction Act are properly considered by NRC in its conforming regulations.

*B. Executive Order 12291*

Under Executive Order 12291, EPA is required to judge whether this regulation, if promulgated, would be a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that amending subpart D would not result in one of the adverse economic effects set forth in

section I of the Order as grounds for finding a regulation to be a "major rule." This regulation is not major because the nationwide compliance costs do not meet the $100 million threshold, the regulation does not significantly increase prices or production costs, and the regulation does not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets.

The Agency has not conducted a Regulatory Impact Analysis (RIA) of this purposed regulation because this action does not constitute a major rule. This regulation has been reviewed by the Office of Management and Budget and their written comments (if any) are available in the public docket.

*C. Regulatory Flexibility Analysis*

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of the proposed rule on small business entities. However, section 605(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

It was found in the 1989 rule for 40 CFR part 61, subpart T that there was no significant impact on small business entities. There has been no change in this finding, since no new tailings piles have been constructed since 1989. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 40 CFR Part 192**

Air pollution control, Environmental protection, Groundwater protection, Hazardous constituents, Hazardous materials, Radiation protection, Radium, Radon, Thorium, Uranium.

Dated: May 28, 1993.

**Carol M. Browner,**

*Administrator.*

Part 192 of chapter I, subchapter F of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

**Authority:** Sec. 275 of the Atomic Energy Act of 1954, 42 U.S.C. 2022, as added by the Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 95–604, as amended.

## Subpart D—[Amended]

2. Section 192.31 is amended by adding new paragraphs (k), (l), (m), (n), (o) and (p) to read as follows:

**§ 192.31 Definitions and cross-references.**

* * * * *

(k) *As expeditiously as practicable considering technological feasibility* means as quickly as possible considering: the physical characteristics of the tailings and the site; the limits of available technology; the need for consistency with mandatory requirements of other regulatory programs; and factors beyond the control of the licensee. The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term "available technology."

(l) *Available technology* means technologies and methods for emplacing a permanent radon barrier on uranium mill tailings piles or impoundments, which term shall not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry (or one that is reasonably analogous), and provided there is reasonable progress toward emplacement of a permanent radon barrier. To determine grossly excessive costs, the relevant baseline against which cost increases shall be compared is the cost estimate for tailings impoundment closure contained in the licensee's tailings closure plan, but costs beyond such estimates shall not automatically be considered grossly excessive.

(m) *(Radon) Tailings Closure Plan* means the Nuclear Regulatory Commission or Agreement State approved plan detailing activities to accomplish closure of the tailings impoundment through timely emplacement of a permanent radon barrier constructed to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard. A tailings closure plan shall include a schedule for key radon closure milestone activities such as wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and radon barrier construction to achieve compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee).

(n) *Factors beyond the control of the licensee* means factors proximately causing delay in the schedule in the applicable license for timely emplacement of the permanent radon barrier to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard notwithstanding the good faith efforts of the licensee to achieve compliance.

(o) *Operational* means that a uranium mill tailings pile or impoundment is being used for the continued placement of uranium byproduct material or is in standby status for such placement. A tailings pile or impoundment is operational from the day that uranium byproduct material is first placed in the pile or impoundment until the day final closure begins.

(p) *Milestone* means an enforceable date by which action, or the occurrence of an event, is required for purposes of achieving compliance with the 20 pCi/m²-s flux standard.

3. Section 192.32 is amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(5) and (a)(6), and by adding new paragraphs (a)(3) and (a)(4), to read as follows:

**§ 192.32 Standards.**

(a) * * *

(3)(i) Uranium mill tailings piles or impoundments that are nonoperational and subject to a license by the Nuclear Regulatory Commission or an Agreement State shall limit releases of radon-222 by emplacing a permanent radon barrier constructed to achieve compliance with, including attainment of, the limit on releases of radon-222 in § 192.32(b)(1)(ii). This permanent radon barrier shall be constructed as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) after the pile or impoundment ceases to be operational. Such control shall be carried out in accordance with a written (radon) tailings closure plan to be incorporated by the Nuclear Regulatory Commission or Agreement State into individual site licenses.

(ii) The Nuclear Regulatory Commission or Agreement State may approve a licensee's request to extend the time for performance of milestones if, after providing an opportunity for public participation, the Nuclear Regulatory Commission or Agreement State finds that compliance with the 20 pCi/m²-s flux standard has been demonstrated by the licensee in the manner required in § 192.32(a)(4)(i). Only under these circumstances and during the period of the extension must compliance with the 20 pCi/m²-s flux standard be demonstrated each year.

The Nuclear Regulatory Commission or Agreement State may extend the final compliance date for emplacement of the permanent radon barrier, or relevant milestone, based upon cost if the new date is established after a finding by the Nuclear Regulatory Commission or Agreement State, after providing an opportunity for public participation, that the licensee is making good faith efforts to emplace a permanent radon barrier constructed to achieve, including attainment of, the 20 pCi/m²-s flux standard; the delay is consistent with the definition of "available technology" in § 192.31(l); and the delay will not result in radon releases that are determined to result in significant incremental risk to the public health.

(iii) The Nuclear Regulatory Commission or Agreement State may, in response to a request from a licensee, authorize by license or license amendment a portion of the site to remain accessible to accept uranium byproduct material as defined in section 11(e)(2) of the Atomic Energy Act, 42 U.S.C. 2014(e)(2), or to accept such materials that are similar to the physical, chemical, or radiological characteristics of in-situ uranium mill tailings and associated wastes, from other sources, either during the closure process or after emplacement of a permanent radon barrier constructed to achieve compliance with, including attainment of, the limit on releases of radon-222 in § 192.32(b)(1)(ii), and the monitoring requirements of § 192.32(a)(4). No such authorization applicable during the closure process may be used as a means for delaying or otherwise impeding emplacement of the permanent radon barrier over the remainder of the site and in a manner that will achieve compliance with the 20 pCi/m²-s flux standard, averaged over the entire impoundment. Authorization to remain accessible or to accept materials after emplacement of a permanent radon barrier may only be made provided the Nuclear Regulatory Commission or Agreement State makes a finding, constituting final agency action and after providing an opportunity for public participation, that the site will continue to achieve the 20 pCi/m²-s flux standard when averaged over the entire impoundment.

(4)(i) Upon emplacement of the permanent radon barrier pursuant to § 192.32(a)(3), the licensee shall conduct appropriate monitoring and analysis of the radon-222 releases to demonstrate that the design of the permanent radon barrier is effective in limiting releases of radon-222 to a level not exceeding 20 pCi/m²-s as required by § 192.32(b)(1)(ii). This monitoring shall be conducted using the procedures described in 40 CFR part 61, appendix B, Method 115, or any other measurement method proposed by a licensee that the Nuclear Regulatory Commission or Agreement State approves as being at least as effective as EPA Method 115 in demonstrating the effectiveness of the permanent radon barrier in achieving compliance with the 20 pCi/m²-s flux standard.

(ii) When phased emplacement of the permanent radon barrier is included in the applicable (radon) tailings closure plan, then radon flux monitoring required under § 192.32(a)(4)(i) shall be conducted, however the licensee shall be allowed to conduct such monitoring for each portion of the pile or impoundment on which the radon barrier has been emplaced by conducting flux monitoring on the closed portion.

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4. Section 192.32(b)(1), footnote number 1 is revised to read as follows:

**§ 192.32 Standards.**

* * * * *

(b) * * *

(1) * * *

[1] The standard applies to design with a monitoring requirement.

[FR Doc. 93–13377 Filed 6–7–93; 8:45 am]

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Part III

# Department of Education

34 CFR Part 668
Student Assistance General Provisions;
Final Rule

## DEPARTMENT OF EDUCATION

### 34 CFR Part 668

**RIN 1840–AB19**

### Student Assistance General Provisions

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the Student Assistance General Provisions regulations. These regulations are needed to implement statutory changes, including changes required by the Omnibus Budget Reconciliation Act of 1989, the Department of Defense Authorization Act, 1987, and the Compact of Free Association. These regulations also make necessary technical modifications and enhance program integrity in the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs). These regulations seek to improve the efficiency of Federal student aid programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments with the exception of the amendments to §§ 668.7(a)(1)(ii), 668.22, 668.7(a)(6), 668.7(a)(9) and 668.34. The amendments to § 668.7(a)(1)(ii) are effective as of December 1, 1987. The amendments to §§ 668.7(a)(6), 668.7(a)(9) and 668.34 take effect on July 1, 1994. The amendments to § 668.22 take effect on September 30, 1993. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Wendy L. Macias, Program Specialist, General Provisions and Institutional Eligibility Section, Office of Student Financial Assistance Programs, U.S. Department of Education, 400 Maryland Avenue, SW (Regional Office Building 3, room 4318), Washington, DC 20202–5346. Telephone (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Student Assistance General Provisions regulations implement requirements that are common to the participation of postsecondary institutions in the Title IV, HEA programs. The Title IV, HEA programs include the Pell Grant, Stafford Loan (formerly Guaranteed Student Loan (GSL)), PLUS, Supplemental Loans for Students (SLS), Consolidation, State Student Incentive Grant (SSIG), Income Contingent Loan (ICL), Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs. The last three programs are known collectively as the "campus-based programs."

On December 23, 1991 the Secretary published a notice of proposed rulemaking (NPRM) for part 668 in the **Federal Register** (56 FR 66496). The NPRM included a discussion of the major issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

Amendment to General Definitions contained in § 668.2 to clarify the definition of several of the Title IV, HEA programs (page 66496);

Addition to the student eligibility provisions to provide for the eligibility of students enrolled in a teacher certification program (page 66496);

Clarification of the current status of Palau as the only Trust Territory of the Pacific Islands (page 66496);

Addition of the Perkins Loan Program to provisions relating to students who owe refunds due to an overpayment (pages 66496–66497);

Addition of the requirement that a student certify that he or she has not borrowed in excess of Title IV loan limits in order to be eligible for additional Title IV assistance (pages 66496–66497);

Clarification that defaulted loans that are fully repaid or rehabilitated are no longer considered in default for purposes of student eligibility (page 66497);

Clarification that a student who has defaulted on a Title IV loan that is discharged in bankruptcy is eligible for aid under the Title IV grant programs but ineligible for Title IV loan assistance unless the student makes satisfactory arrangements to repay the loan (56 FR 66497);

Modification of the circumstances under which a program of study by correspondence may qualify as an eligible program (56 FR 66498);

Addition of the requirement that an institution submit, upon request, an audited and certified financial statement (56 FR 66498);

Modification of the definition of institutional refund to exclude any unpaid balance owed to the institution by a student when the institution determines the amount the institution may retain for institutional charges (56 FR 66498–66500);

Addition of a new condition under which an institution may waive the requirement that a student file a Statement of Registration Status (56 FR 66500); and

Amendment to the Statement of Registration Status to clarify the current eligibility status of the residents of the Republic of Palau, the Federated States of Micronesia, and the Marshall Islands (56 FR 66500).

The Higher Education Amendments of 1992 (Pub. L. 102–325) (the Amendments) make changes that affect the following provisions of these final regulations:

- The December 23, 1991 NPRM proposed technical changes to § 668.2 to clarify the definitions of several of the Title IV, HEA programs. Proposed conforming changes were made throughout Part 668. The Amendments make changes to the names of many of these Title IV programs. Although these final regulations contain references to the new Federal Direct Loan Demonstration Program in §§ 668(a)(1)(ii) and 668.7(h), the term "Federal Direct Loan Demonstration Program" is not defined in these final regulations. To provide a greater degree of consistency in the changes to the Student Assistance General Provisions resulting from the Amendments, the definition of this term and the program name changes will be incorporated in regulations at a later date.
- The December 23, 1991 NPRM proposed to amend § 668.7(a)(1)(ii) to state that a student who is enrolled or accepted for enrollment at an eligible institution in a teacher certification program that is required for employment is eligible for assistance under the GSL programs (56 FR 66496). The Amendments revised section 484(b)(4) of the HEA to extend the eligibility for assistance to the Work-Study, Perkins Loan and the newly created Federal Direct Loan Demonstration programs. The Amendments state that this change is effective on and after December 1, 1987. The changes necessary to incorporate this provision into the regulations have been made to § 668.7(a)(1)(ii).
- The December 23, 1991 NPRM proposed a change to § 668.7(a)(9) to

require a student to certify that he or she has not borrowed in excess of Title IV loan limits in order to be eligible to receive additional Title IV, HEA program assistance (56 FR 66496–66497). The Amendments state that no student shall be eligible to receive Title IV assistance if the eligible institution determines that the student fraudulently borrowed in violation of Title IV loan limits. The Amendments further state that if the institution the student attends determines that the student inadvertently borrowed in excess of the Title IV loan limits, the institution must allow the student to repay any amount borrowed in excess of the limits prior to certifying the student's eligibility for further Title IV assistance. A new § 668.7(h), which states that an otherwise eligible student who has inadvertently borrowed in excess of Title IV loan limits is eligible to receive additional Title IV assistance upon full repayment of the excess amount, has been added to incorporate this change.

• In the preamble to the NPRM the Secretary requested comments on whether § 668.7(e) should be revised to establish the specific conditions under which a student who has previously defaulted on a Title IV loan may be eligible for additional assistance (56 FR 66497–66498). The Secretary suggested an amendment to § 668.7(e) in the preamble to the NPRM and stated that he would consider including this option in these final regulations. Alternatively, the Secretary stated that he would consider including an option proposed as a result of public comment in a subsequent NPRM. However, the Amendments contain a provision that would require guaranty agencies to establish a program that allows a borrower with defaulted Stafford, SLS or PLUS loans to re-establish his or her eligibility for additional Title IV assistance upon the borrower's making six consecutive monthly payments. In addition, the provision states that a guaranty agency shall not demand from a borrower as a monthly payment an amount that is more than is reasonable and affordable based upon the borrower's total financial circumstances. The enactment of this provision establishes the specific conditions under which a student who has previously defaulted on a Stafford, SLS, or PLUS loan may be eligible for additional Title IV assistance; an NPRM must be developed, using negotiated rulemaking, to implement the new standard. The Secretary will take any applicable comments received in response to the December 23, 1991 NPRM into consideration in the drafting of the proposed regulations to address satisfactory repayment arrangements. A detailed discussion of the comments received in response to the December 23, 1991 NPRM is found in the **Analysis of Comments and Changes.**

• The December 23, 1991 NPRM proposed a change to § 668.8 to modify the circumstances under which a program of study by correspondence qualifies as an eligible program at a vocational school (56 FR 66498). The Amendments include changes to the definition of a correspondence program. Additionally, the Amendments repealed the definition of "vocational school" as of July 23, 1992. Programs that were eligible under the definition of vocational school now must become eligible under a new institutional definition. This definition will be developed through the negotiated rulemaking process. Therefore, the proposed change to § 668.8 is not included in these final regulations.

• The December 23, 1991 NPRM proposed a change to § 668.13 to require that an institution submit, upon request, an audited and certified financial statement (56 FR 66498). Under this proposal, the Secretary would require an audited statement each time that an institution seeks initial or continued certification to participate in a Title IV, HEA program. The Amendments require the Secretary to prescribe regulations, as may be necessary, to require institutions to submit an audited and certified financial statement to the Secretary on at least an annual basis. The change resulting from the Amendments does not supersede the Secretary's ability to implement the audited financial statement requirement resulting from the December 23, 1991 NPRM. Further, the Secretary believes it is important to have the final regulations resulting from the December 23, 1991 NPRM in effect until final regulations resulting from the audited financial statement requirement in the Amendments become effective. Regulations implementing the requirement contained in the Amendments will be drafted through the negotiated rulemaking process.

• The Amendments require each institution participating in any Title IV, HEA program to have a fair and equitable refund policy under which the institution refunds unearned tuition, fees, room and board, and other charges to a student who received Title IV assistance (including PLUS loans received on the student's behalf) if the student does not register for the period of attendance for which assistance was intended or withdraws or otherwise fails to complete the period of enrollment for which assistance was provided. As this change does not directly affect the change proposed in the December 23, 1991 NPRM to § 668.22—a modification of the definition of institutional refund to exclude any unpaid balance owed to the institution by a student when the institution determines the amount the institution may retain for institutional charges (56 FR 66498–66500)—no change has been made to § 668.22 in this final regulation. Regulations implementing the refund requirement contained in the Amendments will be drafted through the negotiated rulemaking process.

• The December 23, 1991 NPRM proposed to amend § 668.33(b) to provide an additional condition under which an institution may waive the requirement that a student file a Statement of Registration Status (56 FR 66500). Although the Amendments did make changes to the Statement of Registration Status requirements, these changes do not directly affect the change proposed in the December 23, 1991, NPRM. No change has been made to § 668.33(b) in these final regulations as a result of the Amendments. Regulations implementing the changes to the Statement of Registration Status requirements contained in the Amendments will be drafted through the negotiated rulemaking process.

In addition to the changes resulting from the Amendments, changes have been made to the following provisions of these final regulations:

On March 13, 1992, the Secretary published as final regulations changes to § 668.7(a)(4)(iv) of the Student Assistance General Provisions regulations (57 FR 9004). The final regulations incorporated the changes to § 668.7(a)(4)(iv) as proposed in the December 23, 1991 NPRM (56 FR 66496) as well as changes to this section required by Public Law 100–369. Public Law 100–369 provides that residents (instead of citizens) of the Freely Associated States (the Federated States of Micronesia and the Marshall Islands) are eligible to receive assistance under the Pell Grant, Supplemental Educational Opportunity Grant, and College Work-Study Programs. Corresponding changes have been made in this final regulation to the Statement of Educational Purpose and Registration Status. A change also has been made to § 668.7(a)(4)(iii) to clarify the eligibility status of residents of Palau.

These regulations include the addition of paragraphs § 668.7(a)(12) and § 668.7(g) in accordance with the Federal Debt Collection Procedures Act of 1990 (Pub. L. 101–647). The Act provides that an individual whose

property is subject to a judgment lien for a debt to the United States generally is not eligible to receive any grant or loan made, insured, guaranteed, or financed by the United States, or to receive funds directly from the Government in any program (except funds to which the debtor is entitled as a beneficiary), until the judgment is paid in full or the individual has made satisfactory arrangements to pay the judgment.

These regulations amend § 668.14, Standards of administrative capability, to clarify the requirements of § 668.14(d)(2). Currently, § 668.14(d)(2) states that for the Secretary to consider an institution to be administratively capable, the institution must divide the functions of authorizing payments and disbursing funds so that no office has responsibility for both functions with respect to any particular student aided under the programs. The Secretary is amending this section to clarify that an institution must divide the functions of authorizing payments and disbursing or delivering funds as, in the case of Stafford and SLS loans, an institution delivers but does not disburse the funds.

The Secretary is amending § 668.33 to provide that the requirement that a student file a Statement of Registration Status does not apply to students who are 26 years old or older and have been discharged from active duty in the armed forces other than the reserves and National Guard. The December 23, 1991 NPRM proposed to revise § 668.33 to permit an institution to waive the requirement for a student to file a Statement of Registration Status if the student (a) failed to register with the Selective Service when required and is now 26 years old or older, and (b) provided to the institution an advisory opinion that he obtained from the Selective Service System that demonstrates that he did not knowingly and willfully fail to register. In response, commenters stated that they did not believe that students beyond the registration age should be required to obtain an advisory opinion from the Selective Service to establish aid eligibility. In addition, on February 21, 1992, the Secretary published a notice in the **Federal Register** requesting public comments on statutes and regulations that substantially impede economic growth, are no longer needed, or otherwise impose unnecessary costs or burdens. In response to this notice, one commenter suggested that students 26 years of age and older not be required to file a Statement of Registration Status, as the students are no longer required to be registered with the Selective Service. Because it is a statutory requirement that a student who has failed to register with the Selective Service is eligible for Title IV assistance only if he can demonstrate that he did not knowingly and willfully fail to register (The Military Selective Service Act (50 U.S.C. App. 462)), the Secretary may not exempt all students who are 26 years old or older and who failed to register from the requirement that they sign a Statement of Registration Status. However, to reduce administrative burden, the Secretary has decided that students 26 years old or older who have received a DD Form 214, "Certificate of Release or Discharge from Active Duty" showing military service with other than the reserve forces and National Guard should not be required to file a Statement of Registration Status or obtain an advisory opinion. These students have clearly demonstrated by their voluntary enlistment for active duty that they did not intend to avoid military service. The requirement that a student obtain an advisory opinion from the Selective Service that demonstrates that he did not knowingly and willfully fail to register is still applicable for all other students who are 26 years old or older who failed to register with the Selective Service when required. A detailed discussion of the comments is found in the **Analysis of Comments and Changes.**

These regulations also contain technical changes in §§ 668.7, 668.8, 668.12, 668.20, 668.22, 668.23, 668.32, 668.83, 668.94, and 668.95 that, with the exception of a technical change to § 668.7(a)(1)(ii)(A), are the result of changes made in response to comments regarding the use of the term "GSL programs" (see **Analysis of Comments and Changes**).

## Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 81 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are not addressed.

*Section 668.2 General Definitions*

*Comments:* Several commenters supported the proposed changes to the general definitions. One commenter recommended clarifying the definitions of the PLUS Program, Stafford Loan Program and the Supplemental Loans for Students Program by adding the phrase, "to help pay for the costs of the student's postsecondary education" at the end of the definitions.

*Discussion:* These definitions were amended to make them consistent with the definitions proposed in 34 CFR 682.100 of the November 20, 1990 Notice of Proposed Rulemaking for the Guaranteed Student Loan programs. The Secretary believes further clarification is unnecessary.

*Changes:* None.

*Section 668.7 Eligible Student*

*Comments:* One commenter contended that the use of the term "GSL programs" (which refers to the Stafford Loan, PLUS, SLS and Consolidation Programs) in § 668.7(a)(1)(ii), incorrectly indicates that a student must meet the requirements of this section in order to participate in the Consolidation Program. Additionally, a few commenters noted what they thought to be similarly confusing uses of the term "GSL programs" in other sections of the NPRM.

*Discussion:* The Secretary agrees that the proposed language may create confusion.

*Changes:* The proposed changes to §§ 668.7, 668.8, 668.12, 668.20, 668.22, 668.23, 668.32, 668.83, 668.94 and 668.95 adding the term "GSL programs" have been removed. The term "GSL" has been changed to "Stafford Loan" in the appropriate sections of §§ 668.7, 668.8, 668.12, 668.20, 668.22, 668.23, and 668.32. The term "Guaranteed Student Loan or PLUS" has been changed to the term "Stafford Loan, PLUS or SLS" in the appropriate sections of §§ 668.94 and 668.95. The words "any of the Guaranteed Student Loan Programs" have been changed to "the Stafford Loan, PLUS or SLS programs" in § 668.83(d)(3). The term "Guaranteed Student Loan and PLUS" has been changed to the term "Stafford Loan, PLUS and SLS" in § 668.94(c)(2).

*Comments:* Several commenters supported the proposed change to § 668.7(a)(1)(ii) that enables a student who is enrolled or accepted for enrollment at an eligible institution in a teacher certification program that is required for employment to be eligible for assistance under the Stafford Loan, PLUS, or SLS programs.

*Discussion:* This change was made in accordance with amended section 484(b) of the HEA. The Secretary agrees with the commenters that this is a desirable change.

*Changes:* Section 484(b)(1)(A) of the Amendments extends the eligibility for assistance to the Work-Study, Perkins Loan and the newly created Federal Direct Loan Demonstration programs.

The Amendments state that this change is effective on and after December 1, 1987. The changes necessary to implement this provision have been made to § 668.7(a)(1)(ii).

*Comments:* Several commenters supported the change to § 668.7(a)(6) that adds the requirement that a student does not owe, and certifies that he or she does not owe, a refund on a Perkins Loan due to an overpayment in order to be eligible to receive Title IV, HEA program assistance. A few commenters asked the Secretary to clarify whether a student whose overpayment has been removed from the student's account (*i.e.*, the student's account no longer indicates that these funds are due) because the funds have been returned to the program account by the institution, rather than the funds having been repaid by the student, is still liable for an overpayment for purposes of student eligibility. The commenters believed that students in this situation should be considered to owe funds to the institution and, therefore, not be liable for an overpayment of Title IV, HEA program funds. Two commenters recommended that the Secretary not require that changes be made to the certification statements until the next regularly scheduled reprinting of the applications.

*Discussion:* The Secretary wishes to clarify that when a student is liable for an overpayment of Title IV funds and the institution adjusts the student's account to remove the overpayment and restores the funds to the appropriate Title IV program account, the student is no longer liable for an overpayment of Title IV funds. Instead, in some cases, the student may owe funds to the institution. The Secretary agrees that requiring the reprinting and re-collection of the statements for the current academic year would be unduly costly and burdensome for institutions and their students.

*Changes:* An institution should revise the statements to reflect the changes made by these regulations for the next scheduled printing of these statements. All institutions are required to collect the amended statements beginning with the 1993–94 award year. Unamended statements signed by students prior to the reprinting of the statements will be acceptable for the determination of student eligibility until July 1, 1993.

*Comments:* Several commenters supported the student eligibility requirement in § 668.7(a)(9) that a student certify that he or she has not borrowed in excess of Title IV loan limits. Two commenters asserted that this requirement will make students more accountable, especially in cases where the student has borrowed Stafford or SLS loans that have been guaranteed by more than one guaranty agency. Several commenters felt that this requirement would cause confusion for students since most of them are unaware of the Title IV loan limits. Several commenters felt this would result in an additional burden for institutions since they will be required to assist the students in answering this question. Since institutions are already required to check this information as part of determining a student's eligibility, several commenters felt this requirement would be unnecessary. One commenter was concerned with the potential liability of an institution if it was held responsible for verifying the student's certification. One commenter believed the change would not enhance program integrity since the only method of verification of such information is at the institutional level. One commenter asserted that a student who has borrowed in excess of the loan limits would be required by the lender to repay the excess amount within 30 days. Failure to repay would trigger default which would then render the student ineligible for additional aid. The commenter did not see the added benefit of having the student sign the certification. Another commenter recommended that the certification be limited to a one-time collection when the student first enters the institution since the institution will track this information on its own for the remainder of the student's attendance. Several commenters noted that this information will be provided more reliably when the National Student Loan Data System is operational. A number of commenters recommended that the Secretary provide sufficient time for the changes to be made to the certification statements included on guaranty agency applications.

*Discussion:* The Secretary agrees with commenters that requiring a student to certify that he or she has not borrowed in excess of Title IV loan limits would make students more accountable. The Secretary believes that, as a part of a student borrower's obligation, the student should be aware of the amount he or she has borrowed and the loan limits. The Secretary views this as a preventive measure that will decrease the occurrence of default as a result of borrowing in excess of loan limits. Further, the Secretary does not believe a one-time collection of this certification would accomplish this goal. A student should be required to assess his or her loan situation each time he or she applies for Title IV assistance.

The Secretary does not believe it is unreasonable to expect institutions to provide clarification for students, upon request, of the loan limits. Pursuant to § 668.14(a), an institution must designate a capable individual to be responsible for administering all of the Title IV, HEA programs in which it participates. Further, pursuant to § 668.45(a), each institution is required to designate an employee or group of employees who must be available on a full-time basis to assist enrolled or prospective students in obtaining financial assistance and institutional information. Costs incurred by an institution as a result of compliance with this provision are considered to be ordinary costs of doing business. The Secretary does not believe that implementing this new certification provision creates a new liability since, under § 668.7(a)(9), the institution that the student attends is already required to determine that the student has not borrowed in excess of Title IV loan limits. As noted in the NPRM (56 FR 66497), this certification requirement is already included as part of the "Statement of Educational Purpose/ Certification Statement on Refunds and Default" found on all Student Aid Reports. This regulatory change merely codifies current practice. In order to assist students in understanding and meeting the certification requirement, the Department intends to publish the loan limits in a readily available source. The Secretary recognizes that, once it is operational, the National Student Loan Data System will provide this information to students and institutions; however, in the interim the Secretary believes it is important to implement this requirement. The Secretary notes that, in general, the Student Assistance General Provisions requirements apply to institutions that participate in the Title IV, HEA programs and not to guaranty agencies; however, the Secretary recognizes that the requirement that a student certify that he or she has not borrowed in excess of Title IV loan limits, as determined by the institution he or she attends, affects the publication of guaranty agency applications.

*Changes:* Statements should be revised to reflect the changes made by these regulations for the next scheduled printing of these statements. All institutions are required to collect the amended statements beginning with the 1993–94 award year. Unamended statements signed by students prior to the reprinting of the statements will be acceptable for the determination of student eligibility until July 1, 1993.

*Comments*: Two commenters supported the clarification in § 668.7(e) that a defaulted loan that has been fully repaid by the student no longer would be considered in default for purposes of student eligibility. One commenter felt it is important to provide a student who has defaulted on a loan a second opportunity to receive Title IV, HEA program funds to aid in the continuation of his or her education. Another commenter suggested that these provisions stipulate that the term "fully repay" includes payment of principal, capitalized interest, and other accrued interest. The commenter felt the holder of the defaulted loan should receive full compensation from the borrower who wishes to regain Title IV privileges. One commenter recommended that a student who has fully repaid his or her loan not be allowed to receive another loan for a specified period of time to ensure that the student is sincere in pursuing his or her educational objective. One commenter asked whether a student who has repaid his or her defaulted loan is eligible to receive further Title IV, HEA assistance if he or she had received aid at an institution while he or she was in default. Three commenters recommended that the loan be removed from the institution's cohort default rate once the student has entered repayment or fully repaid the loan.

*Discussion*: The Secretary believes that full repayment of a defaulted loan sufficiently demonstrates the student's awareness of his or her obligation to repay a loan and his or her sincerity in pursuing his or her educational objective. The Secretary would like to clarify that in a situation where, in a single award year, a student defaults on a student loan, receives Title IV aid after he or she defaulted, and repays or makes satisfactory arrangements to repay the loan within the award year, the student regains eligibility for the entire award year. If, however, in a single award year, the student defaults on a student loan and subsequently receives Title IV aid during the same award year, but does not repay or make satisfactory arrangements to repay the defaulted loan until a subsequent award year, the student would be ineligible for the entire award year in which he or she was in default; the student would have to return all Title IV, HEA program funds received for the award year in which he or she was ineligible for Title IV aid in order to regain eligibility under the Title IV, HEA programs. The Secretary does not believe that it is necessary to define the term "fully repay." Section 435(m) of the HEA includes in the cohort default rate only loans for which the Secretary or a guaranty agency has paid insurance claims. However, the statute provides for the exclusion of any loan that has been rehabilitated; the statute does not provide for, nor does it give the Secretary the authority to exclude from the cohort default rate, loans that have entered repayment or loans that have been paid in full. Additionally, § 668.7(e) of the December 23, 1991 NPRM inadvertently used the term "Stafford Loan" instead of the term "GSL programs loan" when referring to the defaulted loans for which the Secretary must determine that the student has made satisfactory arrangements to repay in order for the student to be eligible for further Title IV, aid. A GSL programs loan includes loans under the Stafford Loan, PLUS, SLS and Consolidation programs. The Secretary has corrected this in these final regulations.

*Changes*: Section 668.7(e)(1)(ii)(A) is amended by removing the term "Stafford Loan" and adding in its place the term "GSL programs loan."

*Comments*: One commenter opposed changing § 668.7 to provide that a borrower who has defaulted on a Title IV, HEA loan is ineligible for future Title IV loans without taking into consideration whether the loan was discharged in bankruptcy. The commenter stated that the Title IV loan programs were intended to be available for any applicant, without regard to his or her credit record or creditworthiness, that the Secretary lacks authority to restrict access to loans for those with bad credit histories, and that if such authority existed, this rule would illogically bar only those with defaulted loans discharged in bankruptcy, but not other bad credit risks.

*Discussion*: The proposal at issue would change current regulations by treating all Title IV, HEA loan defaulters in the same way, rather than favoring those whose loans had been discharged in bankruptcy. Quite the opposite of excluding only those defaulters who had received discharges, the new rule would cause all those with bad credit histories with regard to Title IV, HEA loans in particular including those whose loans were discharged, to be treated in the same way. The Secretary does not intend lenders to disregard other kinds of loan delinquencies of which they are aware. On March 10, 1993, the Secretary published an NPRM that proposes regulations to implement OMB Circular A–129 that will require Title IV, HEA loan applicants to disclose delinquencies on other Federally financed loans (58 FR 13356).

The contention that the Title IV, HEA loan programs are intended to be available for any applicant without regard to the credit risk posed by that applicant is a serious misconception of the basic nature of the loan programs and the kind of credit risk with which the programs have been designed to deal. The Secretary has always considered the Title IV, HEA student loan programs as intended to provide financing for those whom commercial lenders would regard as bad credit risks solely because of their insufficient or nonexistent credit histories and collateral. An insufficient credit history is quite different from an adverse credit history. The applicant for a Title IV loan must be willing to repay the requested loan, but default on a prior Title IV loan is clearly a strong indication that the applicant lacks the intention to repay a new Title IV loan. Prior defaulters accordingly have been restricted or barred from access to new loans under section 497 of the HEA, as enacted in 1976; under section 484 of the HEA, as enacted in 1980 and re-enacted, in expanded scope, in 1986; and under Department regulations in effect since 1979. See, e.g., 34 CFR 674.9(e); 45 CFR 177.201(a)(5), (b)(3)(1979), 45 CFR 190.76(a)(4), (g)(3) (1979) (discussing consideration, in particular, of defaulted loans discharged in bankruptcy). The statute similarly has barred or restricted access to grant and work-study assistance; that sanction naturally operates as a deterrent to loan default and an inducement to cure past defaults, as well as a judgment that the defaulter poses a credit risk for new loans. See 20 U.S.C. 1088f(e) (1977). The Secretary has for many years followed a policy of disqualifying applicants for new Title IV, HEA loans who previously have defaulted on Title IV, HEA loans. That policy not only rests on statutory directive, but also is consistent with the purposes of these programs.

*Changes*: None.

*Comments*: A commenter opposed adopting a change to § 668.7(f), arguing that to change the rule would contravene the intent of the Title IV, HEA loan programs by restricting access to further education for those who need that training to escape from poverty, and who, in some instances, have received a determination from a bankruptcy court that repayment of the defaulted student loan would pose an undue hardship for them. The commenter believed that in the statutory limits on loan discharge in the Bankruptcy Code, Congress prescribed the burdens borrowers must bear for past defaults; the commenter believed that this proposal would prolong that enforcement period.

*Discussion*: The proposed change to § 668.7(f), like the statutory directive in section 484(a) it implements, has several purposes: to deter defaults by current borrowers, to protect public funds against future losses on new loans to past defaulters, and, as interpreted by the Secretary in regulations, to motivate past defaulters to renew their commitment to honor their loan obligations. As the commenter observed, the purpose of the programs is to help needy individuals gain training to escape poverty. However, the existing rule, which disqualifies only those defaulters who have not received a discharge in bankruptcy, does not distinguish on the basis of need: It protects discharged defaulters and disqualifies only those defaulters who have not received discharges in bankruptcy, without regard to the current financial situation or vocational needs of the individual debtors. This is neither a necessary nor a useful distinction to retain in a rule intended to implement and achieve the several goals of section 484(a)(3). Past defaulters should, under these objectives, qualify for new loans only if they have demonstrated their intention to honor Title IV, HEA loan obligations.

Similarly, the restrictions placed on borrower discharge in bankruptcy pose some deterrent to potential defaulters, but otherwise bear no relation to the several goals of section 484(a)(3): A borrower who has defaulted has thereby caused a loss to the public and demonstrated a lack of creditworthiness. Statutory restrictions on discharge in bankruptcy of student loans simply embody the standards Congress intended defaulters to satisfy to escape further collection action on past loans. The Bankruptcy Code plainly treats current and future loan decisions very differently from collection actions on past loans, and a discharge reflects no judgment on the debtor's creditworthiness for future transactions. The Code does not allow debtors to insist that lenders honor loan commitments already made, and does not prohibit lenders from discriminating against a debtor who applies for a new loan; in so doing, Congress defined how the fresh start given the debtor by a bankruptcy discharge would operate for new loan transactions, even among private parties. The amended regulations would do no more than apply that same distinction between freedom from collection action and entitlement to new credit to Title IV, HEA lending.

*Changes:* None.

*Comments:* A commenter argued that section 484(a)(3) of the HEA, on which this proposal is based, does not bar new grants or loans to defaulters whose loans were discharged in bankruptcy, because those loans are no longer owed and therefore no longer in default within the meaning of that statute. The commenter further argued that there is no basis for regarding a student who has a loan discharged in bankruptcy as "in default" when determining the student's eligibility for a new loan, but not "in default" when determining the student's eligibility for new grant or work assistance. The same commenter argued that the proposed change to § 668.7(f) is an attempt prohibited by 11 U.S.C. 524 to force the borrower to repay a discharged debt. The commenter argued that *Goldrich* v. *New York State Higher Education Services Corporation*, 771 F.2d 28 (2d Cir. 1985), on which the Secretary relied in proposing this change, did not address this prohibition and does not support use of this kind of disqualification rule by the Secretary. The commenter argued that because guaranty agencies face potentially reduced reinsurance payments when their default claims grow, they have a legitimate interest in the creditworthiness of the borrower that supports their use of the kind of rule approved in *Goldrich*. The commenter argued that the Secretary, on the other hand, must reinsure or directly guaranty all loans to all applicants and cannot adopt a rule that takes credit risk into account.

*Discussion:* Because the Secretary and the public bear between 80 and 100 percent of the cost of borrower defaults under the GSL programs and, indirectly, a significant share of borrower defaults under the Perkins Loan program, the Secretary has a far stronger financial interest than guarantors or institutions in preventing those losses. As discussed with regard to an earlier comment, section 484 of the HEA requires the Secretary to take prior defaults into account in determining eligibility for new Title IV, HEA aid. Section 668.7 contains the various requirements for individual student eligibility common to all the Title IV, HEA assistance programs. Those prerequisites had been set forth in the various Title IV, HEA program regulations; as pertinent here, the proposed language would actually reinstate 45 CFR 177.201(b)(3), a provision adopted by the Secretary in 1979 but revised to adopt the current rule on January 21, 1981, 46 FR 6329. The Secretary explained the 1981 change by stating that the nondischargeability provisions of the new Bankruptcy Code had "decreased" the need for the prior rule. (46 FR 6323) But, losses from defaulted loans have increased almost tenfold since 1981, and that increase, and the increase in personal bankruptcy filings in recent years, provide more than ample cause to revisit and revise the 1981 determination that the rule was not necessary.

As the Secretary stated in proposing the instant change to § 668.7(f), when the current rule was adopted in 1981, no courts had interpreted the effect of the Bankruptcy Code on this kind of rule regarding past defaults. However, each of the three courts that have since ruled on State statutes or regulations that are similar, if not identical, to the proposed rule have approved the use of this kind of provision with prior defaulters who apply for new loans. (*Goldrich* v. *New York State Higher Education Services Corp.*, 771 F.2d 28 (2d Cir. 1985); *In re Richardson*, 27 B.R. 560 (E.D. Pa. 560); *Elter* v. *Great Lakes Higher Education Corp.*, 95 B.R. 618 (Bankr. E.D. Wis. 1989); see also *Handsome* v. *Rutgers University*, 445 F.Supp. 1362, 1367 (D. N.J. 1978)). Each of those cases recognizes, as did the Secretary under the 1979 rule, that even if a discharge was granted on a defaulted loan, the guaranty agency, under the several State rules at issue in those cases with terms closely resembling the proposed rule, could properly regard the borrower as remaining in default.

Not only has the case law now recognized that the Bankruptcy Code prohibition against discrimination in the award of government grants and licenses does not apply to credit transactions, including student loans, but also that adoption of this kind of nondiscriminatory rule—that a defaulter could qualify for a new loan only by agreeing to repay the defaulted loan—is not the kind of coercion to repay discharged debts that the Bankruptcy Code intended to prohibit. *Goldrich, supra*, at 31. Far from encouraging or condoning action by guarantors or institutions holding Perkins Loans to pursue collection of a loan discharged in bankruptcy, program regulations assume or explicitly require cessation of collection actions. See, e.g., 34 CFR 674.49(h). However, case authority now expressly recognizes that a lender may, without violating 11 U.S.C. 524, adopt and communicate to debtors a nondiscriminatory policy that defaulters do not qualify for new loans until defaulted loans are honored (*i.e.*, the student is no longer in default for purposes of eligibility for Title IV, HEA program assistance.) (See, e.g., *Brown* v. *Pennsylvania State Employees Credit Union*, 851 F.2d 81 (3d Cir. 1988)). The Secretary has used this policy in the

past, and in the proposed revision of § 668.7(f) would do nothing more than require Title IV, HEA lenders to resume the use of this nondiscriminatory rule.

Similarly, the distinction in proposed § 668.7(f) between grant applications and loan applications rests not on section 484(a)(3) itself, which makes no such distinction, but on the need to harmonize that statute with 11 U.S.C. 525, which expressly proscribes this kind of treatment in grant-making decisions; it just as clearly permits such treatment of defaulters in new credit transactions.

*Changes:* None.

*Comments:* Some commenters questioned whether the proposed rule would be workable within the limits of current record-retention requirements or whether this rule would require indefinite record retention. Several commenters objected to what they perceived as the administrative burden imposed on them by the proposed rule.

*Discussion:* Current regulations require guarantors to retain GSL program loan records for at least five years from the date on which a bankruptcy discharge is granted, 34 CFR 682.414(a)(2), and institutions to retain Perkins Loan records for the same five-year period. 34 CFR 674.19(e)(3)(ii). The proposed rule does not require either party to retain records for longer than five years, although the Secretary may consider whether a longer period would be useful, at least for those loans discharged in bankruptcy. By requiring the defaulting borrower to make satisfactory repayment arrangements with the holder of the loan, the rule does place a burden on that borrower; by operation of 11 U.S.C. 524, any repayment agreement a borrower makes on the loan after filing for, or receiving, a discharge in bankruptcy, is legally enforceable only if approved by the bankruptcy court. The debtor, not the holder of the loan, must secure that court approval, and can reasonably be expected to secure that approval with the assistance of the counsel previously retained to handle the bankruptcy. In return for the substantial benefit of renewed payments, the rule would require the holder of the loan to do no more than negotiate an acceptable repayment agreement. The institution or guarantor that holds the loan can rely on its own records in reaching the reaffirmed repayment agreement or, if those records are no longer retained, on the records of the debtor.

*Changes:* None.

*Comments:* Several commenters noted that prior court challenges to the denial of student loan credit to prior defaulters who had defaulted loans discharged in bankruptcy involved guarantors who denied new loan approval in reliance on a state statute; they feared that in the absence of a state statute, lender compliance with the proposed rule would be more likely to expose those holders to suits for violation of the anti-discrimination provisions of the Bankruptcy Code, and opposed adoption of the rule on that ground.

*Discussion:* Each of the reported cases describes guarantor denial of approval of a new loan in reliance on a state statute or regulation that generally barred new loans to defaulters, without specific reference to treatment of defaulters discharged in bankruptcy. In each case, the guarantor applied the formal rule to bar approval to a discharged defaulter; in each case, that administrative interpretation of the state law was approved. As the preamble to the NPRM discussed at length, the Secretary relied on a Federal statute, section 484(a)(3) of the HEA, in proposing this rule. Therefore, lenders in the Title IV, HEA programs that comply with this provision are not only complying with a Federal, rather than a state, statute, but one which closely resembles the statutes approved in the case precedent. Compliance with the proposed regulation, based on a Federal statute, by a lending institution or guarantor is at least as legally supportable as these comparable actions based on an interpretation of a similar state law.

*Changes:* None.

*Comments:* A few commenters supported the development in § 668.7(e) of a uniform standard of satisfactory arrangements to repay a defaulted loan as proposed by the Secretary in the preamble to the NPRM (56 FR 66497–66498). Several commenters opposed the development of a uniform standard of any type. Eleven commenters felt that the primary goal of satisfactory arrangements to repay should be to provide a mechanism for students to resume their education and, therefore, to improve their earning capacities and repay their loans. To this end, the commenters asserted that multiple policies provide flexibility and can be more effective as a collection tool since they encourage the development of repayment arrangements that meet the specific needs of each student. Three commenters expressed their support of payment in full as a satisfactory arrangement to repay, but did not believe such an arrangement should be required of all students.

A majority of the commenters supported the development of a uniform standard, but did not support the standard proposed by the Secretary. Many of these commenters felt that standardization would enable all students to be treated consistently; however, they felt that requiring a student to make at least 12 consecutive monthly payments would discourage a student from furthering his or her education. Many commenters contended that fewer consecutive monthly payments would permit a student defaulter to demonstrate his or her good faith and intention to repay the loan, and at the same time provide him or her with the opportunity to reenter his or her educational program. As an alternative, a few commenters recommended that a student defaulter be required to make six consecutive monthly payments, while several commenters supported three consecutive monthly payments. A number of commenters felt that, in addition to requiring the student to make three consecutive monthly payments, the Secretary should require the holder of the loan for which repayment arrangements have been made to notify the school if the student is at least 60 days delinquent on loan payments during the loan period for which the new loan is certified. The student would lose his or her remaining eligibility until the loan is paid in full. A few commenters suggested that a uniform standard be modeled on the requirements of the Loan Rehabilitation Program; *i.e.*, 12 consecutive full payments should be defined as the greater of (1) the monthly payment amount required to repay the loan in full within ten years from the date the first of the 12 consecutive payments is received by the holder; (2) an amount stipulated by the holder (possibly with the requirement of a creditworthy cosigner); or (3) $50. A few commenters supported requiring payment in full as a uniform policy. These commenters felt any other arrangement would not be in the best interest of the taxpayer and would be burdensome to monitor. A few commenters suggested that the holder of the loan be permitted to set the loan amount to be paid each month. One commenter recommended that a student be required to pay at least half the total amount of the defaulted loan to regain eligibility. Two commenters believed it would be appropriate for the Secretary to establish an appeals procedure to provide students with recourse if they are dissatisfied with a holder's decision regarding satisfactory repayment arrangements. One commenter contended that students often do not fully understand that it is their responsibility to obtain a statement from the holder of the loan to provide to the

institution informing the institution of any repayment arrangements. The commenter recommended that the guaranty agencies provide written notification to the institution, upon request, indicating that such satisfactory arrangements have been made. Another commenter felt it is critical that the lender be allowed to differentiate between borrowers who are unwilling to repay and those who are unable to repay in order to determine the appropriate satisfactory repayment arrangements. The commenter believed that the student should provide the documentation necessary to support the decision made by the holder of the loan regarding the repayment arrangements. The commenter felt the lender should be responsible for collecting the documentation supporting the student's ability to repay with respect to Stafford, SLS, and PLUS loans and the institution should be responsible for obtaining the documentation from borrowers who had defaulted on Perkins Loans. One commenter recommended that defaulted loans that the borrower is currently repaying be sold back to the lender to relieve the guarantor of the obligation of monitoring the repayment process. One commenter recommended that the Secretary require the guaranty agencies to notify their employees, collection contractors, and defaulted borrowers of the existence of repayment options. One commenter recommended, in addition to establishing a standard requiring 12 consecutive monthly payments, that the Secretary establish an exception allowing the holder of the loan to determine that satisfactory repayment arrangements have been made when the borrower has paid the amount of the loan that would have been past due if the loan had not been accelerated, in addition to four consecutive monthly payments of an agreed upon amount.

Several commenters believed a minimum standard should be established. The commenters felt a minimum standard would provide a degree of consistency while still providing the flexibility to take an individual student's circumstances into account. One commenter felt it should be established that a student should not have to pay his or her loan in full to regain eligibility for Title IV, HEA assistance.

*Discussion:* See the discussion under **SUPPLEMENTARY INFORMATION.**

*Changes:* None.

*Section 668.8 Eligible Program*

*Comments:* One commenter endorsed the standardization of time required to complete a course of study by correspondence stating that the requirement seemed reasonable when compared to coursework in a classroom setting.

*Discussion:* The Secretary appreciates the commenter's support.

*Changes:* As a result of changes made by the Higher Education Amendments of 1992, the proposed change to § 668.8 is not included in these final regulations. See the discussion under **SUPPLEMENTARY INFORMATION.**

*Section 668.13 Factors of Financial Responsibility*

*Comments:* A few commenters supported the changes in this section that require an institution to submit, upon the Secretary's request, an audited and certified financial statement of the institution for its latest two fiscal years. Three of these commenters asserted that the independence of the person certifying the financial statement is crucial to ensuring the credibility of the statement. Several commenters objected to these provisions. Many of those who objected felt that requiring institutions to submit an audited and certified financial statement will place an undue financial hardship on institutions. In particular, commenters believed the hardship would fall on small schools for which the cost of the required statement would have a serious economic impact, perhaps resulting in the closure of some institutions. One commenter contended that the proposed changes would not reduce abuse since the abuses have come from large and medium schools that could better afford the costs associated with the submission of an audited financial statement and, therefore, would not be affected substantially by the proposed changes. The commenter recommended that the Secretary require a reviewed statement for initial certification for all schools and for continued certification of schools with an annual income under $2 million; however, schools with an annual income of more than $2 million that are subject to continued certification would be required to submit an audited statement.

*Discussion:* The Secretary also believes the independence of the person certifying the financial statement is crucial to ensuring the credibility of the statement. The Secretary is aware that the requirements of this provision might increase the financial burdens for some institutions; however, he believes that this measure is necessary to reduce fraud and abuse. This provision also is necessary to prevent the loss of the taxpayers' money that results when institutions that are not financially sound are permitted to participate in the Title IV, HEA programs and subsequently go out of business, leaving students with uncompleted education programs and outstanding liabilities. As stated in the NPRM (56 FR 66498), one of the purposes of this provision is to standardize the Department's evaluation of the financial condition of institutions. The proposal that the Secretary review certain documents only for those institutions with an annual income of over $2 million is inconsistent with the Secretary's goal to standardize the Department's procedure for evaluating the financial condition of institutions so that all institutions may be judged on the same basis. As the Secretary has no evidence to suggest that fraud and abuse occur only at large and medium schools, it would be unfair to limit this provision to these sectors. The Secretary believes an audited statement gives a more accurate indication of the financial position of an institution, and he believes that abuses by institutions of all sizes will be reduced by this requirement.

*Changes:* None.

*Comments:* Several commenters requested that the effective date for implementation of this provision allow institutions the time to consult with their accountants and organize the financial recording mechanisms needed to produce audited financial statements. One commenter suggested the Secretary require statements to be submitted within four months of the end of an institution's fiscal year.

*Discussion:* The Secretary agrees that it would be unreasonable to expect institutions to provide the required documents without providing sufficient time to gather the necessary information. Therefore, institutions will be required to submit an audited and certified financial statement upon the request of the Secretary beginning with any year end statement of September 30, 1993. The Secretary agrees that, in most cases, four months from the end of an institution's fiscal year is a sufficient period of time for an institution to submit an audited and certified financial statement. However, the Secretary believes that the required period of time for submission may vary based on the individual circumstances of the institution. Therefore, the Secretary will make a determination of what is an acceptable period of time for submission of the audited and certified financial statement for an institution based on the examination of that institution's individual circumstances.

*Changes:* Section 668.13(e) has been amended to state that an institution shall submit, upon the request of the Secretary, an audited financial

statement within the time period specified by the Secretary.

*Comments:* Four commenters wanted to know what criteria the Secretary will use to determine which institutions will be required to submit an audited statement. The commenters wanted to ensure that the criteria are sufficient to prevent any differential treatment between proprietary and non-proprietary institutions. One commenter suggested that the Secretary require the submission of an audited statement from an institution whenever the institution undergoes a change of ownership or establishes a new branch. Two commenters recommended that all institutions be required to submit an audited statement on a regular basis to prevent differential treatment.

*Discussion:* As stated in the preamble to the NPRM (56 FR 66498), the Secretary will require an audited statement each time that an institution is subject to initial or continued certification to participate in a Title IV, HEA program. As in the past, the recertification process is triggered by a change of ownership resulting in a change of control or the addition of a new branch campus. The Higher Education Amendments of 1992 require the Secretary to prescribe regulations, as may be necessary, to require institutions to submit an audited and certified financial statement to the Secretary on at least an annual basis. An NPRM will be developed to implement the new provision.

*Changes:* None.

*Comments:* Two commenters were concerned that aid to students (and, consequently, the student's education) would be delayed while an institution prepares to submit the audited statement.

*Discussion:* Determination of an institution's financial responsibility under § 668.13 is a condition of certification. Therefore, for institutions subject to initial certification, Title IV, HEA aid will not be available until the financial statement is submitted and the institution is eligible to participate in the Title IV, HEA programs. The Secretary believes that any delay in the initial certification process is justified if it ensures that only financially sound schools participate in the Title IV, HEA programs. Further, an institution will not lose its eligibility for Title IV funds while it completes the process of recertification.

*Changes:* None.

*Comments:* One commenter was concerned that this provision would require each subsidiary institution of a public corporation to submit an audited financial statement. The commenter felt such a requirement would be prohibitively expensive. One commenter suggested that, for those in a corporate environment, the Secretary should require the submission of an audited statement from the parent institution, an unaudited Profit and Loss statement (attested to by the Chief Executive Officer (CEO) of the parent company) for each branch, and the unconditional guaranty of the parent company guaranteeing the performance and satisfaction of the individual institution's obligation to the Department. Another commenter suggested that, for schools under a corporate umbrella, the Secretary require the submission of an audited statement from the parent corporation as well as the school. Commenters also wanted to know what information from other sources may be used by the Secretary in the determination of financial responsibility.

*Discussion:* Section 668.13(d) states, in part, that the Secretary may determine an institution to be financially responsible if the institution submits any document requested by the Secretary that demonstrates that the institution has sufficient financial responsibility to begin or continue to participate in any Title IV, HEA program. Thus, the Secretary has the authority to require the items suggested by the commenters and any other documents from other sources pertaining to an institution's financial strength in determining an institution's financial responsibility. The provisions of § 668.13(e) do not make changes to this section. Therefore, although § 668.13(e) does not require each subsidiary institution of a public corporation to submit an audited financial statement, the Secretary may require the submission of such a document under § 668.13(d).

*Changes:* None.

*Comments:* One commenter questioned whether the provision that permits the Secretary to require the institution to submit the accountant's work papers was in conflict with the standard practice of requesting an accountant's work papers through a court subpoena.

*Discussion:* The Secretary is aware that the subpoena procedure to obtain an accountant's work papers may be necessary if the accountant does not submit his or her work papers voluntarily. This requirement does not represent a change from previous regulations.

*Changes:* None.

*Comments:* Several commenters suggested that proprietary institutions should be required to submit financial data to commercial credit reporting agencies instead of being required to submit an audited statement. These commenters suggested that the Secretary publish a format for the presentation of financial statements to permit the submission of financial information gathered by other agencies. Two commenters suggested that the Secretary require a reviewed statement (which creates working papers for every line item) from an institution or its parent school.

*Discussion:* The Department is responsible for monitoring the use of Title IV funds. The Secretary believes the determination of an institution's financial responsibility through the examination of an audited statement is crucial to carrying out this responsibility. As a part of this examination, the Secretary believes it may be necessary to look at the accountant's calculations and notes to the financial statement which a credit reporting agency would not necessarily keep on file. Further, since an institution would have to provide source documentation to the commercial credit reporting agencies (or any other outside agency), it would be just as easy for the institution to provide this documentation to the Department. A reviewed statement does not provide the degree of accountability and accuracy the Secretary believes is necessary to determine an institution's financial responsibility.

*Changes:* None.

*Comments:* Two commenters recommended that the Secretary require that an institution submit, upon the request of the Secretary, an audited statement for three complete years. The commenters noted that three years is generally regarded as the minimum period of time necessary to draw conclusions about historical trends in an entity's financial health.

*Discussion:* The Secretary believes the evaluation of a two year period of time is sufficient to determine an institution's financial strength. Further, pursuant to § 668.13(d), the Secretary may request that an institution submit any document that demonstrates that the institution has sufficient financial responsibility to begin or continue to participate in any Title IV, HEA program. Thus, the Secretary has the authority to look at other necessary financial information from previous years for those institutions.

*Changes:* None.

*Comments:* Three commenters asserted that guaranty agencies should have the authority to request that institutions submit audited statements. The commenters maintained that this

authority is necessary in order for guaranty agencies to conform to proposed § 682.401(b)(5) of the Guaranteed Student Loan regulations (published in the **Federal Register** November 20, 1990, 55 FR 48324) which requires guaranty agencies to determine a school's financial responsibility.

*Discussion:* The November 20, 1990 proposed Guaranteed Student Loan regulations mentioned by the commenters do not require guaranty agencies to determine a school's financial responsibility. Moreover, current regulations (as redesignated by the final regulations published in the **Federal Register** December 18, 1992, 57 FR 60280) permit a guaranty agency to establish standards and procedures for school participation in the program. 34 CFR 682.401(b)(17)(i)(B). The Secretary encourages agencies to use these standards and procedures to require schools to submit audited financial statements.

*Changes:* None.

*Comments:* Two commenters suggested that the term "fiscal year" be changed to "one-year accounting period" to avoid confusion among institutions who use calendar year accounting periods.

*Discussion:* An institution may define its fiscal year as any one year period it deems appropriate.

*Changes:* None.

*Comments:* One commenter recommended that the Secretary require the inclusion of a Statement of Changes in Financial Position in addition to a Balance Sheet and Income Statement.

*Discussion:* The Secretary has the authority to request these documents under § 668.13(e) as they are related statements of income, earnings, and cash flow.

*Changes:* None.

*Comments:* One commenter suggested that the Secretary require minimum capitalization of all schools. One commenter recommended that the Secretary consider an institution's net worth to debt ratio at approximately a rate of 3 or 4 to 1.

*Discussion:* Minimum capitalization and an institution's net worth to debt ratio are already addressed under §§ 668.13(c)(1) and 668.13(c)(2). The December 23, 1991 NPRM did not propose changes to these sections.

*Changes:* None.

*Section 668.22 Distribution Formula for Institutional Refund and for Repayments of Disbursements Made to the Student for Noninstitutional Costs*

*Comments:* Thirty commenters found the Secretary's rationale for the change (i.e., to address an inherent inequity between students who have paid all of their institutional charges prior to dropping out and students who have not paid all of their institutional charges) to be sound. Four commenters shared the Secretary's view that students who have made cash payments toward their education costs should not be penalized. One commenter commended the Department's efforts to provide detailed information and examples in the summary of changes. Many commenters felt the changes would require institutions to do away with any cash payment plans and demand payment up front from all students, regardless of their ability to pay. The commenters contended that this would create a hardship for students and the institution and would deny further access to education for students who cannot afford to pay in one lump sum. The commenters asserted that it is the very students that Title IV aid is supposed to help that will be harmed by this change. One commenter asserted that need analysis is intended to determine a student's appropriate contribution to educational expenses. The commenter felt that to use a complicated method such as the refund and repayment procedures is duplicative, contradictory to this belief, and reneges on the promise of access and choice, as well as causes inequities among students. The commenter was not certain that either the current or proposed methods can be adequately explained to enable them to be implemented in a fair and equitable manner. Several commenters asserted that the addition of extra steps to the refund procedures intensifies the frustration of dealing with already complicated procedures and creates additional burden for the institution. A few commenters asserted that the additional paperwork and the necessary internal audits would add cost. Two commenters urged the Secretary to extend the comment period.

*Discussion:* The Secretary believes the equity to the student provided by the change and the reaffirmation of the basic principle of financial aid that a family makes its contribution first before financial aid is expended, override the commenters' concerns and better serve the recipients of Title IV, HEA program assistance. The Secretary recognizes that some institutions utilize cash payment plans; however, this is an institutional decision over which the Secretary has no control. The costs incurred as a result of the execution of this provision are normal costs of doing business. The Secretary believes the intricacy of the present refund formula is due to the Department of Education's efforts to take into account institutional refund policies while ensuring that students are treated fairly and equitably. The Secretary received 47 comments on this section which he believes are representative of the public opinion and, therefore, he does not believe an extension of the comment period is warranted.

*Changes:* None.

*Comments:* Several commenters asked the Secretary to define more clearly "scheduled cash payment," in particular the point in time that the amount of the scheduled cash payment is determined and what is meant by "charges not covered by financial aid." Many commenters questioned how the requirement, which makes reference to payment periods, would be applicable to institutions without standard academic terms. One commenter asserted that the concept of "student contribution" is appropriate for the determination of financial eligibility, but not for the determination of a refund.

The commenter contended that if such an amount is used, it should be the same amount as has been determined in the Expected Family Contribution (EFC) calculation. Several commenters questioned whether late disbursements of GSL, Pell, or campus-based funds would be included as part of the scheduled cash payment. One commenter wanted to know whether late disbursements of aid other than Title IV aid would be included as part of the scheduled cash payment.

*Discussion:* The scheduled cash payment is determined when the student withdraws or drops out. At that point in time, the scheduled cash payment would be any institutional charges not already paid by financial aid for the payment period. The institution (including an institution without standard terms) must attribute by payment period any cash payments due as well as any cash payments received in order to determine the scheduled cash payment for the payment period in the same manner in which institutions attribute GSL proceeds. The definition of payment period for purposes of institutions without standard academic terms is found in § 668.22(c). The Secretary would like to clarify that the "scheduled cash payment" referred to in the regulation is not the same as a student's EFC. A student's EFC, under the campus-based and GSL programs, is derived as a result of the Congressional Methodology and is used to determine a student's financial need. However, the Secretary recognizes that it is not always possible to meet this need with outside

sources of aid. The Secretary refers to the unmet need for institutional costs along with the portion of the student's EFC contributed toward institutional cost as a student's scheduled cash payment. The Secretary agrees with the commenters that late disbursements of Title IV aid should be excluded from a student's scheduled cash payment for purposes of this calculation. The Secretary considers a late disbursement of Title IV aid to be any amount scheduled to be paid by financial aid that the student has been awarded that is payable to the student even though the student has withdrawn or, in the case of Stafford, SLS, or PLUS program funds, the amount for which the student is eligible under 34 CFR 682.207 of the Guaranteed Student Loan regulations. Section 682.207(d) of the Guaranteed Student Loan regulations provides, in part, that, under certain circumstances, a lender, with the prior approval of the guaranty agency, may disburse Stafford, SLS, or PLUS funds after the student has ceased to be enrolled on at least a half-time basis. Section 682.207 also provides that a guaranty agency may approve a lender's request to disburse under these circumstances only if the loan proceeds will be used to cover documented educational charges to the student that are normally included in a borrower's cost of attendance under section 472 of the HEA for a period of enrollment for which the loan was intended. However, for purposes of § 668.22, only the amount of the loan that will be paid for institutional charges for the payment period will be excluded from the determination of a student's scheduled cash payment under § 668.22(a)(3). The Secretary does not believe it is appropriate for an institution, in calculating the scheduled cash payment, to take into account aid that a student would have been eligible to receive but for which he or she delayed application or chose not to apply. Additionally, the Secretary does not believe it is appropriate to take into account late disbursements of aid other than Title IV aid as the Secretary does not have the authority to ensure that the provider of the aid will make the disbursement and will not require the borrower to refund the amount of the late disbursement. The Secretary believes it is necessary to clarify what is meant by the term "financial aid" for purposes of § 668.22. For purposes of this section, financial aid is assistance that a student has been or will be awarded from Federal, State, institutional or other scholarship, grant or loan programs.

*Changes:* Section 668.22(a)(3) has been amended to exclude late disbursements of Title IV, HEA program funds from the determination of a student's scheduled cash payment for a payment period. A new paragraph (f) has been added to provide a definition of "financial aid."

*Comments:* Three commenters felt a uniform tuition refund policy (for example, the *pro rata* refund formula) is necessary to prevent adversely affecting students who attend institutions with more liberal refund policies, while unjustly rewarding those who attend institutions with minimal refund policies.

*Discussion:* The Higher Education Amendments of 1992 require each institution participating in any Title IV, HEA program to have a fair and equitable refund policy under which the institution refunds unearned tuition, fees, room and board, and other charges to a student who received Title IV assistance (including PLUS loans received on the student's behalf) if the student does not register for the period of attendance for which assistance was intended or withdraws or otherwise fails to complete the period of enrollment for which assistance was provided. This statutory requirement is similar to the regulatory requirement of a fair and equitable refund policy that is applicable to the GSL programs only. An NPRM will be developed to implement the new provision.

*Changes:* None.

*Comments:* Two commenters recommended that the calculation used to determine how much of a refund is to be returned to the Title IV programs and the calculation to determine the institutional refund should be based on the same amount of Title IV aid. One commenter noted that currently, in order to determine how much of a refund is to be returned to the Title IV programs, a fraction is used that is based on the amount of Title IV funds *awarded*. However, in determining the amount of the refund, the school uses the actual amount paid for institutional charges.

*Discussion:* The Secretary agrees that an inconsistency exists. The Secretary agrees that it would be more equitable to use the amount of assistance received by the student, instead of the amount of assistance awarded to the student, in the determination of the portion of the refund that the institution shall return to the Title IV, HEA program(s). As in the past for purposes of this section, "assistance received" includes funds a parent receives on behalf of a student under the PLUS program.

*Changes:* The word "awarded" has been replaced with the word "received" in § 668.22(a)(6)(ii) which contains the fraction used to determine the portion of the refund that an institution shall return to the Title IV, HEA program(s). A conforming change has been made to § 668.22(b)(3)(ii) which contains the fraction used to determine the portion of an overpayment the institution shall return to the Title IV, HEA program(s).

*Comments:* One commenter recommended that this change not be required until the 1993–94 award year.

*Discussion:* The Secretary agrees that the implementation of this requirement warrants a later effective date than normally stipulated. The Secretary believes that, for purposes of this section, an effective date of September 30, 1993 will provide institutions with an adequate amount of time for implementation.

*Changes:* None. However, the "Effective Date" paragraph has been revised to reflect the effective date of September 30, 1993 for this section.

*Comments:* One commenter was concerned about limiting the discussion of educational costs to institutional charges since students also incur noninstitutional costs of education that are legitimately recognized components of the cost of attendance upon which aid is based.

*Discussion:* The Secretary recognizes that students incur noninstitutional costs of education that are legitimately recognized components of the cost of attendance upon which aid is based. The proposed changes apply to the refund calculation which only deals with institutional charges. The repayment of noninstitutional costs is handled under § 668.22(b).

*Changes:* None.

*Comments:* One commenter felt this change created an inequity between a student living on campus and a student living off campus.

*Discussion:* A difference in the refund determination will exist anytime the institution is calculating a refund for two students who are charged different amounts. The new regulations differ from the former regulations by taking into account the amount of the scheduled cash payment paid by the student.

*Changes:* None.

*Comments:* One commenter suggested the Secretary replace the term "payment period" with the term "period of enrollment for which the student is charged" throughout § 668.22.

*Discussion:* This issue was addressed in response to public comment in the December 1, 1987 final regulations (52 FR 45712). The provisions in § 668.22

were originally adopted to correct the situation where refunds for payment periods beyond the one in which the student withdrew (*i.e.*, refunds calculated based on a student's period of enrollment that encompassed more than one payment period) were included in the refund formula. In the December 1, 1987 regulations, the Secretary limited the "amount paid for institutional charges" and the "amount retained by the institution" to the amounts for the payment period in which the student withdrew.

*Changes:* None.

*Comments:* One commenter requested that the Secretary explain how the *pro rata* refund requirements of § 682.606 relate to § 668.22 since the two approaches sometimes seem to be in conflict. The commenter noted that institutions that are not subject to the *pro rata* calculation must attribute Stafford, SLS, and PLUS loans by payment periods because § 668.22 concerns only the payment period in which the student withdrew. The *pro rata* regulations refer to calculating the refund based upon the uncompleted portion of the period for which the student has been charged. The commenter questioned whether, in applying a *pro rata* refund, an institution that charges for an entire program up front would have to attribute GSL's by payment periods and whether this would skew the calculation. Under the pro rata refund requirements of § 682.606, it would appear that cash payments should not be attributed by payment periods although they are attributed by payment periods under the requirements in § 668.22. The commenter also wanted to know what becomes of the cash payment attributed to unattended payment periods and how the proposed rules would affect non-term institutions that charge up front for an entire program, especially when the student withdraws during the second payment period. The commenter asserted that the refund regulations are difficult to apply in those cases because the payment period concept does not correspond to the manner in which institutional costs are charged.

*Discussion:* The December 23, 1991 NPRM did not propose changes in this area. The Department has provided guidance on the implementation of the *pro rata* refund calculation in The Federal Student Financial Aid Handbook, Dear Colleague letters, and other literature. The Secretary does not believe it is necessary to revisit this issue in these final regulations.

*Changes:* None.

*Section 668.33 Statement of Registration Status*

*Comments:* Four commenters supported the addition of a new condition under which an institution may waive the requirement that a student file a Statement of Registration Status. Four commenters did not believe that students beyond the registration age should be required to obtain an advisory opinion from the Selective Service, stating whether a student's failure to register was knowing and willful, to establish aid eligibility. One commenter felt that the percentage of students who would admit that they did not register on purpose would be too small to justify the additional administrative burden created by this requirement. Three commenters preferred that a student who failed to register with the Selective Service and is now 26 years old or older be able to certify on the Statement of Registration Status that he is beyond registration age and establish eligibility accordingly.

*Discussion:* The Military Selective Service Act (50 U.S.C. App. 462) provides that any person who is required to register for the Selective Service and fails to do so shall be ineligible for Title IV assistance. The Act further provides that a person cannot be denied any Federal benefit if he failed to register with the Selective Service if he can demonstrate that he did not knowingly and willfully fail to register. Therefore, a student who was required to register pursuant to the Military Selective Service Act (50 U.S.C. App. 462) but who did not register with the Selective Service System and is now beyond the age at which he can register must provide an explanation for his failure to do so. Simply requiring a student to sign the Statement of Registration Status certifying that he is beyond the age at which he can register would not establish whether he knowingly and willfully failed to register. Further, information available to the Selective Service might not be available to the financial aid administrator. The Secretary believes that an advisory opinion is necessary for the financial aid administrator to make an accurate determination of the student's eligibility. Although the financial aid administrator is required to collect an advisory opinion, he or she will not have to collect a signed Statement of Registration Status from these students. Therefore, the Secretary believes this requirement does not impose a significant additional burden. However, to reduce administrative burden, the Secretary has decided that students 26 years old or older who have received a DD Form 214, "Certificate of Release or Discharge from Active Duty" showing military service with other than the reserve forces and National Guard should not be required to file a Statement of Registration Status or obtain an advisory opinion. These students have clearly demonstrated by their voluntary enlistment for active duty that they did not intend to avoid military service. See also the discussion under **SUPPLEMENTARY INFORMATION.**

*Changes:* The Secretary has amended § 668.33(b) to provide that the requirement that a student file a Statement of Registration Status does not apply to students who are 26 years old or older who have received a DD Form 214 showing release or discharge from active duty in the armed forces other than the reserve forces and National Guard.

*Section 668.34 Model Statement of Educational Purpose and Registration Status*

*Comments:* Two commenters recommended that the Secretary not require institutions to make the changes to the Statement of Educational Purpose and the Statement of Registration Status for the 1992–93 award year. One commenter was concerned that institutions would have to incur the additional cost of reprinting the award letters. One commenter asserted that requiring institutions to re-collect the statements from students would be confusing for students and burdensome for both the students and the institutions.

*Discussion:* The Secretary agrees that requiring institutions to reprint and re-collect the Statement of Educational Purpose and the Statement of Registration Status for the current academic year would be unduly costly to institutions and burdensome to institutions and their students.

*Changes:* An institution should revise the Statement of Educational Purpose and the Statement of Registration Status to reflect the changes made by these regulations for the next printing of these statements. All institutions are required to collect the amended statements beginning with the 1994–95 award year. Unamended statements signed by students prior to the effective date of these regulations (July 1, 1994) will be acceptable for the determination of student eligibility. Public Law 100–369 provides that residents (instead of citizens) of the Freely Associated States (the Federated States of Micronesia and the Marshall Islands) are eligible to receive assistance under the Pell Grant, Supplemental Educational Opportunity Grant, and College Work-Study

Programs. Corresponding changes have been made in this final regulation to the Statement of Educational Purpose and Registration Status. See also the discussion under **SUPPLEMENTARY INFORMATION.**

**Waiver of Rulemaking**

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, changes made in § 668.7(a)(12) and § 668.7(g) merely reflect changes made to bring the Student Assistance General Provisions regulations into conformity with the Federal Debt Collection Procedure Act of 1990 (Pub. L. 101–647). Changes made to § 668.34 conform to statutory changes made by Public Law 100–369. Changes made to § 668.7(a)(1)(ii) and § 668.7(h) reflect changes made to bring the Student Assistance General Provisions into conformity with the Higher Education Amendments of 1992 (Pub. L. 102–325). Public comment could have no effect on the content of these changes. The changes made to § 668.14(d)(2) and § 668.7(a)(1)(ii)(A) are technical changes to clarify existing procedures. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 668**

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: May 27, 1993.

**Richard W. Riley,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program; and 84.226 Income Contingent Loan Program).

The Secretary amends Part 668 of Title 34 of the Code of Federal Regulations as follows:

## PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

**Authority:** 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

**§ 668.1 [Amended]**

2. In § 668.1, remove the words "Guaranteed Student Loan (GSL)" from paragraph (c)(4) and add, in their place, the words "Stafford Loan"; and remove the word "Loan" from paragraph (c)(7).

3. Section 668.2(b) is amended by removing the name and definition of the "Guaranteed Student Loan (GSL) Program"; by revising the definitions of the PLUS Program and Supplemental Loans for Students (SLS) Program; by revising the name and definition of the Consolidation Loan Program; and by adding in alphabetical order new definitions for the "Guaranteed Student Loan Programs" and "Stafford Loan Program" to read as follows:

**§ 668.2 General definitions.**

* * * * *

*Consolidation Program:* The loan program authorized by Title IV–B, Section 428C, of the HEA which encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers while they were students, under the Stafford Loan, PLUS (as in effect prior to October 17, 1986), SLS, and Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of Title VII of the Public Health Service Act.

* * * * *

*Guaranteed Student Loan (GSL) programs:* The loan programs authorized under Title IV–B of the HEA, including the Stafford Loan, PLUS, Supplemental Loans for Students (SLS), and Consolidation programs, in which lenders use their own funds to make loans to enable students or their parents to pay the costs of the student's attendance at postsecondary institutions.

* * * * *

*PLUS Program:* The loan program, authorized by Title IV–B, Section 428B, of the HEA, which encourages the making of loans to parents of dependent students.

* * * * *

*Stafford Loan Program:* The loan program authorized by Title IV–B (exclusive of sections 428A, 428B, and 428C) which encourages the making of loans to undergraduate, graduate, and professional students.

* * * * *

*Supplemental Loans for Students (SLS) Program:* The loan program, authorized by Title IV–B, sections 428A, of the HEA, which encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

4. Section 668.7 is amended by revising paragraphs (a)(1)(ii), (a)(4)(iii), (a)(6), (a)(9) introductory text, (a)(10), (a)(11), (d) introductory text, (e) introductory text, (e)(1)(ii), (e)(2)(ii), and (f) and by adding new paragraphs (a)(12), (d)(3), (g) and (h) to read as follows:

**§ 668.7 Eligible student.**

(a) * * *

(1) * * *

(ii) For purposes of the Stafford Loan, PLUS, SLS, CWS, Perkins Loan, or Federal Direct Loan Demonstration programs—

(A) Enrolled, for no longer than one twelve-month period, as at least a half-time student in a course of study necessary for enrollment in an eligible program; and

(B) Enrolled or accepted for enrollment at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State;

* * * * *

(4) * * *

(iii) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau); or

* * * * *

(6) Except as provided in paragraph (d) of this section, does not owe, and certifies that he or she does not owe, a

refund on a grant or loan awarded under the Pell Grant, Perkins Loan, SEOG, or SSIG programs. A student owes a refund on a grant or loan if the student receives a grant or loan overpayment. A student receives a grant or loan overpayment if the student's grant or loan payments exceed the amount he or she is eligible to receive or use;

* * * * *

(9) Except as provided in paragraph (h) of this section, has not borrowed, and certifies that he or she has not borrowed, as determined by the institution that he or she attends—

* * * * *

(10) Has financial need, if applicable, in accordance with the requirements of the Title IV, HEA program under which he or she has applied for assistance;

(11) Meets the requirements of—

(i) For purposes of the ICL Program, 34 CFR 673.22;

(ii) For purposes of the Perkins Loan Program, 34 CFR 674.9;

(iii) For purposes of the CWS Program, 34 CFR 675.9;

(iv) For purposes of the SEOG Program, 34 CFR 676.9;

(v) For purposes of the Stafford, PLUS, or SLS programs, 34 CFR 682.201;

(vi) For purposes of the Pell Grant Program, 34 CFR 690.75; or

(vii) For purposes of the SSIG Program, 34 CFR 692.40; and

(12) Except as provided in paragraph (g) of this section, does not have property subject to a judgment lien for a debt owed to the United States.

* * * * *

(d) *Refund of a grant or loan overpayment.* Notwithstanding paragraph (a)(6) of this section, a student who owes a refund on a Pell Grant, Perkins Loan, SEOG, or SSIG due to an overpayment is eligible to receive assistance under a Title IV, HEA program under the following conditions:

* * * * *

(3) *Perkins Loan overpayment.* Except as provided in paragraph (h) of this section, if an institution makes a Perkins Loan overpayment to a student, that student is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment by adjusting financial aid payments in the same period in which the overpayment occurred.

* * * * *

(e) *Default on a loan.* Notwithstanding paragraph (a)(7) of this section, a student who is or has been in default on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, or GSL programs is eligible to receive assistance under a Title IV, HEA program under the following conditions—

(1) * * *

(ii)(A) The Secretary, for a federally insured GSL programs loan or a GSL programs loan that has been assigned to the Department of Education, or a guaranty agency, for a loan guaranteed by that agency, determines that the student has made satisfactory arrangements to repay that loan;

(B) The loan has been paid in full; or

(C) The loan has been rehabilitated and sold under section 428F of the HEA.

(2) * * *

(ii)(A) The institution that made the loan or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan; or

(B) The loan has been paid in full.

* * * * *

(f) *Effect of discharge of a Title IV, HEA program loan in bankruptcy.*

(1) For purposes of determining a student's eligibility for a grant under the Pell Grant, SEOG, and SSIG programs, and employment compensation provided under the CWS Program, the Secretary does not consider that a student is in default on a loan made under any Title IV, HEA program, if that loan is discharged in bankruptcy.

(2) For purposes of determining a student's eligibility for a loan under any Title IV, HEA program, the Secretary considers a student who has previously defaulted on a loan made under any of those programs and who has, while in default, filed for relief in bankruptcy or received a discharge for that loan in bankruptcy, to remain in default unless the student is considered eligible in accordance with paragraph (e) of this section.

(g) *Judgment for a debt.* Notwithstanding paragraph (a)(12) of this section, a student who has property subject to a judgment lien for a debt owed to the United States is eligible to receive assistance under a Title IV, HEA program under the following conditions:

(1) The student is otherwise eligible; and

(2) The student's institution has determined that the student has paid the judgment in full or made arrangements to repay the judgment that are satisfactory to the creditor.

(h) *Eligibility for further assistance when borrowing in excess of loan limits.* Notwithstanding paragraph (a)(9) of this section, a student who has inadvertently borrowed amounts in excess of annual or aggregate loan limits under the ICL, GSL, Perkins Loan or Federal Direct Loan Demonstration programs is eligible to receive assistance under a Title IV, HEA program if the student is otherwise eligible and has fully repaid any amount borrowed in excess of such limits.

* * * * *

(Authority: 20 U.S.C. 1070a-1070c-1, 1077, 1078, 1078–1–3, 1082, 1085, 1087a, 1087cc, and 1091; 28 U.S.C. 3201; 42 U.S.C. 2753; section 9 of Pub. L. 100–369).

5. Section 668.13 is amended by removing paragraph (f); redesignating paragraphs (g) through (k) as paragraphs (f) through (j) respectively; removing the term "(g)(1)" from redesignated paragraph (f)(2) and adding, in its place, the term "(f)(1)"; and revising paragraph (e) to read as follows:

**§ 668.13 Factors of financial responsibility.**

* * * * *

(e) The Secretary determines whether an institution is financially responsible in accordance with paragraphs (b), (c), and (d) of this section by evaluating documents submitted by the institution and information obtained from other sources, including outside sources of credit information. To enable the Secretary to make this determination, an institution shall, upon the request of the Secretary, and within the time period specified by the Secretary, submit for its two latest complete fiscal years a financial statement of the institution, prepared in accordance with generally accepted accounting principles and audited and certified by an independent, licensed, certified public accountant in accordance with generally accepted auditing standards. The statement must contain a balance sheet and the related statements of income, earnings, and cash flow. The Secretary may also require the institution to submit the accountant's work papers. The Secretary considers the audit requirement in this paragraph to be satisfied by an audit conducted in accordance with—

(1) The Single Audit Act (Chapter 75 of Title 31, United States Code); or

(2) Office of Management and Budget Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0537).

6. Section 668.14 is amended by revising paragraph (d)(2) to read as follows:

**§ 668.14 Standards of administrative capability**

* * * * *

(d) * * *

(2) Divides the functions of authorizing payments and disbursing or delivering funds so that no office has responsibility for both functions with respect to any particular student aided under the programs;

* * * * *

7. Section 668.22 is amended by revising paragraphs (a) and (b)(3)(ii) and adding a new paragraph (f) to read as follows:

**§ 668.22 Distribution formula for institutional refund and for repayments of disbursements made to the student for noninstitutional costs.**

(a) *Repayment of institutional refunds to Title IV, HEA programs.* (1) An institution shall return a portion of the refund owed to a student to the Title IV, HEA programs if—

(i) The student officially withdraws, drops out, or is expelled from the institution on or after his or her first day of class of a payment period; and

(ii) The student received assistance for the payment period under any Title IV, HEA program other than the CWS Program.

(2) For purposes of this section, an institutional refund means the amount paid for institutional charges for a payment period minus the amount that the institution may retain under paragraph (a)(4) of this section for the portion of the payment period that the student was actually enrolled at the institution.

(3) An institution may not include any unpaid amount of a scheduled cash payment in determining the amount that the institution may retain for institutional charges. A scheduled cash payment is the amount of institutional charges that has not been paid by financial aid for the payment period, exclusive of—

(i) Any amount scheduled to be paid by Title IV, HEA program assistance that the student has been awarded that is payable to the student even though the student has withdrawn; and

(ii) Late disbursements of loans made under the Stafford, SLS, and PLUS programs in accordance with 34 CFR 682.207(d).

(4) In determining the amount that the institution may retain for the portion of the payment period during which the student was actually enrolled, an institution shall—

(i) Compute the unpaid amount of a scheduled cash payment by subtracting the amount paid by the student for that payment period from the scheduled cash payment for the payment period; and

(ii) Subtract the unpaid amount of the scheduled cash payment from the amount that may be retained by the institution according to the institution's refund policy.

(5) An institution shall return the total amount of Title IV, HEA program assistance (other than amounts received from the CWS Program) paid for institutional charges for the payment period if the unpaid amount of the student's scheduled cash payment is greater than or equal to the amount which may be retained by the institution under the institution's refund policy.

(6) The portion of the refund that an institution shall return to the Title IV, HEA program(s) is the lesser of—

(i) The amount of assistance received under the Title IV, HEA programs other than under the CWS Program for the payment period; or

(ii) The amount obtained by multiplying the institutional refund by the following fraction:

Total amount of Title IV, HEA program assistance (exclusive of CWS Program earnings) received for the payment period.

---

Total amount of assistance (exclusive of all work earnings) received for the payment period.

* * * * *

(b) * * *

(3) * * *

(ii) The amount obtained by multiplying the overpayment by the following fraction:

Total amount of Title IV, HEA program assistance (exclusive of CWS and Stafford Loan, PLUS, and SLS loans) received for the payment period.

---

Total amount of assistance (exclusive of all work earnings and Stafford Loan, PLUS, and SLS loans) received for the payment period.

* * * * *

(f) For purposes of this section "financial aid" is assistance that a student has been or will be awarded (including PLUS loans received on the student's behalf) from Federal, State, institutional or other scholarship, grant or loan programs.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0537).

8. Section 668.33 is amended by revising paragraphs (a)(1)(ii) and (b) to read as follows:

**§ 668.33 Statement of Registration Status.**

(a) * * *

(1) * * *

(ii) Certify the institutional portion of the application under the Stafford Loan, PLUS or SLS programs.

* * * * *

(b) An institution may waive the requirement that a student file a Statement of Registration Status if the institution determines, based on clear and unambiguous evidence that—

(1) The student is or was not required to be registered with the Selective Service; or

(2) The student—

(i) Was required to be registered with the Selective Service prior to age 26;

(ii) Is now at least 26 years old or older;

(iii) Failed to register with the Selective Service prior to age 26; and

(iv)(A) Demonstrates to the institution that he did not knowingly and willfully fail to register with the Selective Service. The Secretary considers that a student satisfies this requirement by obtaining and presenting to the institution an advisory opinion from the Selective Service System that does not dispute the student's claim that he did not knowingly and willfully fail to register, and the institution does not have uncontroverted evidence that the student knowingly and willfully failed to register; or

(B) Served as a member of one of the U.S. Armed Forces on active duty and received a DD Form 214, "Certificate of Release or Discharge from Active Duty" showing military service with other than the reserve forces and National Guard.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0537).

**§ 668.34 [Amended]**

9. In § 668.34 the Statement of Educational Purpose is amended by removing the phrase ", or scholarship" and adding the word "or" before the words "work study". The Statement of Registration Status is amended by removing the phrase ", or the Republic of Palau" and adding the word "(Palau)" after the words "Pacific Islands"; by removing the comma after the words "Marshall Islands" and adding, in its place, the word "or"; and by removing the word "citizen" and adding, in its place, the word "resident".

(Approved by the Office of Management and Budget under control number 1840–0537).

**§§ 668.7, 668.8, 668.12, 668.15, 668.19, 668.20, 668.22, 668.23, 668.32 [Amended]**

10. In 34 CFR part 668 remove the term "GSL" and add, in its place, the words "Stafford Loan" in the following places:

a. Section 668.7 (a) introductory text, (a)(1)(ii), (a)(3)(ii)(B), (a)(9)(i); and (a)(11)(v), (c) introductory text;

b. Section 668.8 (a)(1)(iii) and (a)(2)(vi);

c. Section 668.12 (a)(1)(ii);
d. Section 668.15 (a)(1);
e. Section 668.19 (a)(4)(ii)(A), (c)(4), and (c)(10);
f. Section 668.20 (c) introductory text and (d)(2);
g. Section 668.22 (b)(1), (b)(3)(i), (c)(1), (c)(2), (e)(2), (e)(4), (e)(5) and (e)(6);
h. Section 668.23 (a) introductory text, (c)(1) and (f)(1)(iv); and
i. Section 668.32 (a) introductory text and (a)(2).

**§§ 668.15, 668.19, 668.90 [Amended]**

11. In 34 CFR part 668 remove the term "GSL" and add, in its place, the words "Stafford loan" in the following places:
a. Section 668.15 (b) introductory text, (b)(1)(i) and (ii) introductory text, and (e);
b. Section 668.19 (a)(3)(iii) and (iv), (a)(4)(i), (a)(4)(ii) introductory text, and (a)(4)(ii)(A); and
c. Section 668.90 (a)(3)(iii).

**§§ 668.94, 668.95 [Amended]**

12. In 34 CFR part 668 remove the term "Guaranteed Student Loan or PLUS" and add, in its place, the term "Stafford Loan, PLUS or SLS" in the following places:
a. Section 668.94 (a)(4); and
b. Section 668.95 (b)(1) introductory text.

**§ 668.7 [Amended]**

13. In § 668.7, paragraphs (a)(7), (a)(9)(ii), and (e) introductory text are amended by removing the term "GSL, PLUS, SLS, or Consolidation Loan" and adding, in its place, the term "or GSL".
14. In § 668.7, paragraph (e)(1) introductory text is amended by removing the terms ", *PLUS, SLS, or Consolidation Loan*" and ", PLUS, SLS, or Consolidation Loan".

**§ 668.19 [Amended]**

15. In § 668.19, paragraph (c)(4) is amended by removing the words "Consolidation Loan" and adding, in their place, the word "Consolidation".
16. In § 668.19 paragraph (a)(4)(ii)(B) is amended by removing the term "PLUS, SLS, Consolidation Loan,".

*Appendix D to 34 CFR Part 668 [Amended]*

17. In appendix D to 34 CFR part 668, the introductory paragraph is amended by removing the term "GSL" and adding, in its place, the words "Stafford Loan".
18. In appendix D to 34 CFR part 668, remove the term "GSL" and add, in its place, the word "Stafford" in the following places:
a. III.4.; and
b. III.5. (a)(3)(i)(B)
19. In appendix D to 34 CFR part 668, section III.5. (a) introductory text and (b) introductory text are amended by removing the term "GSL" and adding, in its place, the words "Stafford Loan".
20. In appendix D to 34 CFR part 668, section III.5. (a)(1) introductory text is amended by removing the term "GSL and SLS programs" and adding, in its place, the term "Stafford and SLS".
21. In appendix D to 34 CFR part 668, section III.5. (a)(2) introductory text is amended by removing the term "GSL and SLS loan" and adding, in its place, the term "Stafford Loan and SLS".
22. In appendix D to 34 CFR part 668, section III.5. (a)(3)(i)(A) is amended by removing the term "GSL or SLS" and adding, in its place, the term "Stafford Loan or SLS".

[FR Doc. 93–13119 Filed 6–7–93; 8:45 am]
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federal register

Tuesday,
June 8, 1993

Part IV

# Department of Education

## Technology, Educational Media, and Materials for Individuals With Disabilities Program; Notice

## DEPARTMENT OF EDUCATION

### Technology, Educational Media, and Materials for Individuals With Disabilities Program; Special Studies Program

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Funding Priorities for fiscal years 1994 and 1995.

**SUMMARY:** The Secretary proposes priorities for fiscal years 1994 and 1995 for two programs under the Office of Special Education and Rehabilitative Services. To ensure wide and effective use of program funds, the Secretary proposes to select from among these program priorities in order to fund the areas of greatest need for fiscal years 1994 and 1995. A separate competition will be established for each priority that is selected.

**DATES:** Comments must be received on or before July 8, 1993 for the Technology, Educational Media, and Materials for Individuals With Disabilities Program; and September 7, 1993 for the Special Studies Program.

**ADDRESSES:** All comments concerning these proposed priorities should be addressed to: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202–2641.

**FOR FURTHER INFORMATION CONTACT:** The name, address, and telephone number of the person at the Department to contact for information on a specific proposed priority is listed under each specific proposed priority.

**SUPPLEMENTARY INFORMATION:** This notice contains one proposed priority under the Technology, Educational Media, and Materials Program; and one proposed priority under the Special Studies Program. These programs are authorized under part G and section 618, respectively, of the Individuals With Disabilities Education Act. The purpose of each program is stated separately under the title of that program.

These proposed priorities support the National Education Goals by improving our understanding of how to enable children and youth with disabilities to reach the high levels of academic achievement called for by the Goals.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. Further, priorities proposed for FY 1995 could be affected by enactment of legislation reauthorizing this program. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, not does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

**Note:** This notice of proposed priorities does *not* solicit applications. Notices inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notices of final priorities.

#### Title of Program

Technology, Educational Media, and Materials for Individuals With Disabilities Program.

#### Purpose of Program

The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities. In creating part G of the Individuals With Disabilities Education Act, Congress expressed the intent that the projects and centers funded under that part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application.

#### Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

*Proposed Absolute Priority 1—Organizational Support and Professional Development in the Use of Technology, Media, and Materials With Children and Youth With Disabilities* (CFDA 84.180A)

Background

The purpose of this priority is to support projects to develop, demonstrate, evaluate, and disseminate innovative approaches for providing organizational support combined with professional development in the use of technology (including assistive technology), media, and materials in providing education and related services to children and youth with disabilities.

Technology, media, and materials cannot work in isolation to achieve better outcomes for students with disabilities. In order for these tools to be effective, service providers, such as special educators, regular educators, and related services personnel, must perform a number of functions. These functions include appropriately selecting tools, managing their use in educational settings, integrating tools with curricula and services, and preparing students to use tools effectively. Sustained professional development is needed to prepare service providers to perform these functions.

However, the issue is not solely a matter of professional development. Various forms of organizational support are also required, including not only material resources, but also human resources such as administrative leadership, collaboration, technical assistance, and coordination.

Organizational support and professional development, as discussed here, are not sufficiently available in today's schools. This is due in part to a lack of effective approaches that are feasible in typical educational settings. To be effective, approaches must address two fundamental challenges found by previous Office of Special Education Programs (OSEP)-sponsored projects. First, improved use of technology, media, and materials must address a broad spectrum of interrelated needs at the organizational and individual levels. Organizations need expanded resources, as well as new structures, policies, and perceptions. Teachers need a range of new competencies, as well as new understandings about the nature of learning and instruction. Second, the processes of organizational and professional change can be lengthy and can involve a progression through qualitatively different stages requiring different types of facilitation. Organizations must not only select and implement changes, but must also refine and institutionalize them. Teachers must not only acquire new competencies and understandings, but must also assimilate them into their teaching practice.

Proposed Priority

This proposed priority supports projects that—

(a) Develop and demonstrate innovative approaches that take into account the two challenges described above. Specifically, the approaches

must provide organizational support and professional development in a coordinated and mutually supportive combination to advance the use and effectiveness of technology, media, and materials in providing education and related services to children and youth with disabilities. Further, the approaches must be designed to sustain a meaningful process of change in a range of organizational and individual areas;

(b) Focus on specific segments of the service provider population; specific student disabilities or ages; specific types of technology, media, and materials; or any combination of the above;

(c) Evaluate the approaches they develop with regard to factors that include, but are not limited to: (1) Feasibility; (2) adaptability to other sites; (3) student outcomes; and (4) teacher effects on the use of technology, media, and materials in providing education and related services to children and youth with disabilities;

(d) Within the 36-month project period, disseminate information on innovative approaches for providing organizational support combined with professional development in the use of technology (including assistive technology), media, and materials in providing education and related services to children and youth with disabilities.

(e) Coordinate their activities, as appropriate, with recipients of grants under the Technology Related Assistance Act (Pub. L. 100–407).

During the third year of the project, the Department will determine whether or not to fund an optional six-month period. The purpose of the optional period would be for additional dissemination activities arranged with OSEP.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Malouf, U.S. Department of Education, 400 Maryland Avenue, SW., room 3521, Switzer Building, Washington, DC, 20202–2640. Telephone: (202) 205–8111. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**Applicable Program Regulations**

34 CFR part 333.

**Program Authority:** 20 U.S.C. 1461.

**Title of Program**

Special Studies Program.

**Purpose of Program**

To support studies to evaluate the impact of the Individuals with Disabilities Education Act (IDEA), including efforts to provide a free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities.

**Priority**

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

*Proposed Absolute Priority 1—Technical Assistance to State Agencies Participating in the State Agency-Federal Evaluation Studies Program* (CFDA 84.159D)

Background

Section 618(d)(1) of the Individuals with Disabilities Education Act (IDEA) authorizes cooperative agreements between State agencies and the U.S. Department of Education to evaluate the impact and effectiveness of programs provided for under the Act. These cooperative agreements are awarded on a competitive basis to State educational agencies or other State agencies that have been designated by the Governor in each State for the purpose of administering an early intervention program under part H of IDEA. The projects funded under the section 618(d)(1) authority are referred to as the State Agency-Federal Evaluation Studies projects.

To assist State agencies, section 618(d)(3) of IDEA authorizes the provision of technical assistance to State agencies in the implementation of the study design, analysis, and reporting procedures of studies funded by the State Agency-Federal Evaluation Studies projects.

The purpose of this priority is to establish a center for the provision of technical assistance to State agencies in carrying out evaluation studies funded by the State Agency-Federal Evaluation Studies projects competition (SAFES). The intent is to build an evaluation capacity within State agencies for the purpose of generating information that is usable for improving programs and services for children and youth with disabilities. The Secretary intends to make an award with a project period of up to 36 months. The Secretary may make continuation awards for two additional years, subject to the requirements of 34 CFR 75.253(a), and, under 34 CFR 75.234(a)(4), the Secretary will assess in particular the continued need for the center proposed in this priority.

Proposed Priority

The specific goal of the center is to support the development of State agencies' technical capacity to carry out evaluation studies funded under the State Agency-Federal Evaluation Studies.

The center must—

(a) Develop a diverse, overall portfolio of technical assistance services and products;

(b) Develop with each State agency an individual plan for technical assistance that—

(1) Specifies the technical assistance services and products to be provided and the method that will be used to deliver the technical assistance services and products. The methods of technical assistance must be based upon the needs identified in the individual technical assistance plans, and include, but not be limited to, identification and use of external, specialized consultants to serve the project throughout the project period, and networking among projects to encourage peer support and problem solving; and

(2) Considers the varying needs over the life of the project, from preliminary stakeholder involvement and State support for the study to dissemination and utilization of study results;

(c) Include services and products based on—

(1) An analysis of technical assistance needs of each State evaluation project;

(2) Relevant State evaluation project information such as project proposals and negotiation materials;

(3) An analysis and syntheses of cross-project needs; and

(4) An analysis of OSEP's need for information relevant to policy making;

(d) Arrange for the delivery of the technical assistance;

(e) Develop and disseminate technical assistance products;

(f) Disseminate cross-project dissemination products;

(g) Facilitate networking among projects and technical assistance providers;

(h) Conduct large and small group meetings to delivery technical assistance;

(i) Develop a technical assistance philosophy that is based upon consideration of—

(1) The environment in which State agencies are operating and the challenges in conducting evaluation studies in those environments; and

(2) The need of an Office of Special Education Programs for valid and

supportable study results in order to provide Congress with information for policy making; and

(j) Develop and implement an evaluation plan that addresses the effects of the center's activities related to its impact on audiences having direct contact with Center products, information, and activities, as well as its impact on the capacity of State agencies to evaluate the impact of special education programs and services.

**FOR FURTHER INFORMATION CONTACT:** Susan Sanchez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3528, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8119. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**Applicable Program Regulations**

34 CFR part 327. See in particular § 327.2(a) for eligible applicants under the technical assistance program described in § 327.10(d).

**Program Authority:** 20 U.S.C. 1418.

**Intergovernmental Review**

The Technology, Educational Media, and Materials for Individuals with Disabilities Program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3524, 300 C Street, SW., Washington, DC, between the hours of 8:30 and 4 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance Numbers: 84.180, Technology, Educational Media, and Materials for Individuals with Disabilities Program; and 84.159, Special Studies Program)

Dated: May 25, 1993.

**Richard Riley,**

*Secretary of Education.*

[FR Doc. 93–13425 Filed 6–7–93; 8:45 am]

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federal register

Tuesday
June 8, 1993

Part V

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Part 594**

**John Heinz Neighborhood Development Program; Proposed Rule and Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

### 24 CFR Part 594

[Docket No. R–93–1665; FR–3389–P–01]

RIN 2506–AB48

### John Heinz Neighborhood Development Program

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** Under section 832 of the Housing and Community Development Act of 1992, the John Heinz Neighborhood Development Program was established as a permanent program. Previously, the program had been administered by the Department as a demonstration program. The permanent program is being implemented for purposes of FY 1993 funds through a notice of funding availability (NOFA) published elsewhere in today's **Federal Register**. By this notice of proposed rulemaking, the Department is inviting comments on the process and requirements developed in the NOFA, upon which the Department will base a final rule for the program. The final rule will govern future funding competitions under this program. Applicants for FY 1993 program funds should refer to the NOFA published elsewhere in today's **Federal Register** for the complete requirements and deadlines that apply to the FY 1993 funding cycle.

**DATES:** August 9, 1993.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Gene Hix, Office of Community Planning and Development, Department of Housing and Urban Development, room 7218, 451 Seventh Street SW., Washington, DC 20410; telephone number (202) 708–2186. The TDD number is (202) 708–0564. (These are not toll free numbers.)

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collections described in this document is 2535–0084.

#### Background

Elsewhere in today's **Federal Register**, the Department is publishing a Notice of Funding Availability (NOFA) that sets out the requirements and procedures to be used for the FY 1993 funding round of the John Heinz Neighborhood Development Program. In implementing the program, the Department will make grants under that NOFA, in the form of matching funds, to eligible neighborhood development organizations. However, for purposes of future funding rounds, the Department will develop a final rule containing program regulations after considering comments on the requirements and procedures contained in the NOFA.

The text of those parts of the NOFA that may be of interest to commenters for purposes of developing the final program regulations is repeated below. Potential applicants for the FY 1993 funding round should refer to the NOFA published elsewhere in today's **Federal Register** for the procedural requirements and deadlines that apply to the FY 1993 funding cycle.

Text of NOFA for Purposes of Comments Only (Applicants for FY 1993 funds should refer to the NOFA published elsewhere in today's **Federal Register**):

#### "I. Purpose and Substantive Description

*"A. Authority*

Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note) (section 123), as amended by section 832 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 Act), authorizes the John Heinz Neighborhood Development Program. For Fiscal Year 1993, a total of $3 million has been appropriated for this program: an initial $2 million directly under the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1993 (106 Stat. 1584; see, under the heading "Annual Contributions for Assisted Housing," the proviso applicable to special projects in accordance with H. Rept. 102–902), and an additional $1 million from funds appropriated for the Community Development Block Grant program, as authorized under section 832(a) of the 1992 Act.

Section 123(e)(6)(D) permits the Secretary of Housing and Urban Development (Secretary) to use no more than five percent of the funds appropriated for administrative or other expenses in connection with the program. The remaining funds are to be used to match monetary support raised over a one-year grant period from individuals, businesses, and nonprofit or other organizations located within established neighborhood boundaries, and from neighborhood development funding organizations. For purposes of this NOFA the term "neighborhood development funding organization" means:

(1) A depository institution, the accounts of which are insured pursuant to the Federal Credit Union Act, and any subsidiary (as such term is defined in section 3(w) of the Federal Deposit Insurance Act) thereof;

(2) A depository institution holding company and any subsidiary (as such term is defined in section 3(w) of the Federal Deposit Insurance Act) thereof; or

(3) A company at least 75 percent of the common stock of which is owned by one or more insured depository institutions or depository institution holding companies.

The purpose of the program is to determine the ability of neighborhood organizations to support eligible neighborhood development activities using cooperative efforts and monetary contributions from local sources. The Federal funds are incentive funds to promote the development of this concept and encourage neighborhood organizations to become more self-sufficient in their development activities. Not more than 50 percent of the 1993 awards may be to previous grantees in the program; the remaining awards will be made to organizations selected from among new applicants. Applications will be selected for funding on the basis of evaluation criteria that reflect the program purposes and priorities and are contained in this notice.

The objectives of the Neighborhood Development Program are:

—To help neighborhood development organizations increase their capacities to carry out larger or more complex neighborhood development activities,

in cooperation with private and public institutions; and

—To assist neighborhood development organizations to achieve long-term financial support for their activities. The activities must benefit low- and moderate-income persons within the neighborhood. (Low- and moderate-income residents means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved.)

*"B. Allocation Amounts*

The Department will make grants, in the form of matching funds, to eligible neighborhood development organizations. Under section 123(e)(3), a grantee organization may receive no more than $50,000 in Federal matching funds in a single program year ($75,000, when the appropriations for the year exceed $3 million). The amount of Federal matching funds that an applicant receives during the program year will depend in part upon the amount of monetary contributions raised in the preceding quarter of the program year from individuals, businesses, and nonprofit and other organizations located within established neighborhood boundaries, and from neighborhood development funding organizations. Contributions attributable to organizations or persons not residing in or conducting business within the grantee's neighborhood, loans, in-kind services, contributions by owners of properties to be improved, fees for services, public funds, and any in-lieu-of-cash contributions cannot be used to match Federal funds. These contributions may, however, be used to carry out project activities. The neighborhood monetary contributions for matching purposes must be raised within the one-year grant period. However, grant activities may be programmed over a one- to three-year period.

A Federal matching ratio will be established for each participating applicant in accordance with the statutory requirement that the highest ratios be established for neighborhoods having the "smallest number of households or greatest degree of economic distress." Subject to the statutory maximum of $50,000, the Federal match for this program year will range from one to six Federal dollars for each qualifying dollar raised by the grantee. Applications selected to receive Federal funds will be rank-ordered and the matching ratios will be determined in accordance with these two criteria.

Any application selected for the award of Federal funds that proposed a matching funds ratio in excess of the ratio HUD determines for it will be offered an award of funds at the HUD determined ratio. However, any application selected for award that proposed a match below the maximum ratio HUD determines for it will be funded at the level proposed by the applicant.

Federal payments to participating neighborhood organizations will be made on a quarterly basis following receipt of quarterly performance and financial reports. The maximum Federal payment to an applicant will be governed by the amount of verified, qualifying monetary contributions received from local sources in the preceding quarter, multiplied by the matching funds ratio established for the neighborhood.

*"C. Eligibility*

"1. Eligible Applicants—Definition

An eligible neighborhood development organization must be located in and serve the neighborhood for which assistance is to be provided. It cannot be a city-wide organization, a multi-neighborhood consortium, or, in general, an organization serving a large area of the city. The applicant must meet all of the following statutory requirements:

(a) The applicant must be incorporated as a private, voluntary, nonprofit corporation under the laws of the State in which it operates;

(b) The applicant must be responsible through a governing body to the residents of the neighborhood it serves. Not less than 51 percent of the members of the governing body must be residents of the neighborhood;

(c) The applicant must have conducted business for at least one year before the date of its application;

(d) The applicant must operate within an area that meets at least one of the following criteria:

(i) The area meets the requirements for Federal assistance under section 119 of the Housing and Community Development Act of 1974 (Urban Development Action Grants);

(ii) The area is designated as an enterprise zone under Federal law (if enacted);

(iii) The area is designated as an enterprise zone under State law, and is recognized by the Secretary as a State enterprise zone for purposes of this section; or

(iv) The area is a qualified distressed community within the meaning of section 233(b)(1) of the Bank Enterprise Act of 1991; and

(e) The applicant must have conducted one or more eligible neighborhood development activities that primarily benefit low- and moderate-income persons, as defined in section 102(a)(20) of the Housing and Community Development Act of 1974. (Low- and moderate-income residents means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved.)

"2. Eligible Applicants—Other Threshold Requirements

In addition, an applicant must:

(a) Demonstrate measurable achievements in one or more of the activities listed in Section I.C(3), Eligible Activities, of this NOFA;

(b) Specify a business plan for accomplishing one or more of the activities listed in Section I.C(3), Eligible Activities, of this NOFA;

(c) Specify a strategy for achieving greater long-term private sector support, especially in cooperation with a neighborhood development funding organization. An applicant that is otherwise eligible will be deemed to have the full benefit of the cooperation of a neighborhood development funding organization if the eligible applicant:

(i) Is located in an area described in paragraph (d) of Section I.C(1) of this NOFA (Eligible Applicants—Definition) that does not contain a neighborhood development funding organization; or

(ii) Demonstrates that it has been unable to obtain the cooperation of any neighborhood development funding organization in the area despite having made a good faith effort to obtain such cooperation; and

(d) Specify a strategy for increasing the capacity of the applicant.

"3. Eligible Activities

Eligible activities include the following, but are not limited to the examples given:

(a) Developing economic development activities that include:

(i) Creating permanent jobs in the neighborhood; and

(ii) Establishing or expanding businesses within the neighborhood (such as a business incubator);

(b) Developing new housing, rehabilitating existing housing, or managing housing stock within the neighborhood;

(c) Developing delivery mechanisms for essential services that have lasting benefits to the neighborhood. Examples include fair housing counseling services, child care centers, youth training, and health services; or

(d) Planning, promoting, or financing voluntary neighborhood improvement efforts. Examples include establishing a neighborhood credit union, demolishing

abandoned buildings, removing abandoned cars, and establishing an on-going street alley cleanup program.

*"D. Selection Criteria/Ranking Factors*

Applications will be evaluated on the basis of the following factors:

(1) The degree of economic distress within the neighborhood. This is based on census data, including poverty level relative to population. Applicants with the highest poverty level relative to their populations will get higher points. (15 points)

(2) The record of past performance of the applicant in one or more of the activities specified under paragraph I.C(3), Eligible Activities, of this NOFA, and in promoting fair housing, equal employment opportunity, and minority-owned business and entrepreneurial opportunities. (10 points)

(3) The extent of neighborhood residents' participation in the activities of the applicant and the extent to which the households and businesses in the neighborhood are members of the applicant organization. (5 points)

(4) The extent to which the proposed activities will benefit persons of low- and moderate-income residing in the neighborhood served by the applicant. (15 points)

(5) The extent of monetary contributions that the applicant proposes as a match to the Federal funds, supported by reasonable evidence that private funding sources within the neighborhood have been realistically identified. This requirement shall be waived, and an application may be awarded the full points available under this factor, if the application is submitted by a small eligible organization, involves activities in a very low-income neighborhood, or is especially meritorious. (10 points)

(6) The extent to which the applicant has developed a strategy to increase its capacity to carry out larger or more complex project activities and to address its long-term financial and organizational development needs. (10 points)

(7) The extent of participation in the proposed activities by a neighborhood development funding organization. An eligible applicant shall be credited with the maximum score under this factor if the applicant demonstrates that it has made a good faith effort to obtain such participation, even if the applicant is not successful. (10 points).

(8) The quality of the management plan submitted for accomplishing the activities proposed by the applicant including evidence of sound financial management, the experience and capability of the applicant's director and staff, and the level of coordination efforts, including working relationships with local governments or neighborhood development funding organizations. (25 points)

*"E. Determination of Ratio for Federal Contribution*

The Secretary will determine the ratio by which Federal funds will be used to match monetary contributions made to each eligible applicant that is selected for funding under this NOFA. The ratio will be based on:

(1) The number of households in the neighborhood. Neighborhoods having the smallest number of households will be assigned higher ratios under this factor; and

(2) The degree of economic distress. Neighborhoods indicating the greatest degree of economic distress will be assigned higher ratios under this factor than those with lesser degrees of economic distress.

*"F. Environmental Reviews*

For all proposed actions or activities that are not considered a categorical exclusion as set forth in 24 CFR 50.20, HUD will perform the appropriate environmental reviews under the National Environmental Policy Act (NEPA). Whether the action or activity is categorically excluded from NEPA review or not, HUD will comply also with other appropriate requirements of environmental statutes, executive orders, and HUD standards listed in 24 CFR 50.4. The environmental reviews will be performed before award of a grant. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

**"II. Application Submissions Process**

(The procedural provisions of Section II of the NOFA are not repeated here, because those provisions do not include information subject to public comment.)

* * * * *

**"III. Checklist of Application Submission Requirements**

*"A. Preapplication Determination of Eligibility*

Before preparing an application, the applicant should carefully check the eligibility requirements described in Section I.C, Eligibility, of this NOFA. Applicants who are uncertain whether the city or urban county in which they are located meets the current minimum standards of physical and economic distress (used in determining which cities and urban counties were potentially eligible applicants under the Urban Development Action Grant Program) are advised to consult the following two notices published by the Department in the **Federal Register**: (1) "Urban Development Action Grant: Revised Minimum Standards for Small Cities" (52 FR 37876, October 9, 1987); and (2) "Urban Development Action Grant; Revised Minimum Standards for Large Cities and Urban Counties" (52 FR 38174, October 14, 1987).

Any applicant who needs additional help in determining its eligibility should contact the nearest Department of Housing and Urban Development Field Office (Community Planning and Development Division). If assistance is needed, the city or county community development office serving a neighborhood organization should be able to provide an applicant with the HUD Field Office contact number. If unable to obtain a local contact, the HUD Headquarters contact for this information is Mrs. Stella Hall, telephone number (202) 708–2186, or contact the TDD number: (202) 708–0564. (These are not toll free numbers.)

*"B. Application Checklist*

Each application must contain the following, as required by the Request for Grant Application:

(1) A signed copy of Standard Form SF–424;

(2) An abstract describing, among other things, the applicant and its achievements, the proposed project, its intended beneficiaries, its projected impact on the neighborhood, and the manner in which the proposed project will be carried out;

(3) A completed fact sheet that lists neighborhood and organizational characteristics;

(4) Evidence that the applicant meets eligibility criteria and provides the following data:

(a) A legible map, with street names, delineating the applicant's neighborhood boundaries and indicating where project activities will take place;

(b) Census tract, block, or enumeration district references and zip code references must also be delineated on the map or on other maps submitted;

(c) A copy of the applicant organization's corporate charter, along with the incorporation papers, bylaws, and a statement of purpose;

(d) Census data on the size of the neighborhood population, including the number of low- and moderate-income persons and the size of the minority population, broken down by ethnic, racial, and gender composition;

(e) A list of the names of the neighborhood governing board members

and their addresses (with zip codes) to show that at least 51% reside in the neighborhood. Separately indicate those who reside and those who conduct business in the neighborhood;

(f) The percentage of the members of the neighborhood organization who are neighborhood residents, the percentage of neighborhood residents who conduct business in the neighborhood, and the percentage of neighborhood businesses conducted by nonresidents;

(g) Identification of the applicant organization's past and current neighborhood projects, including those projects that are eligible neighborhood development activities as defined in Section I.C(3), Eligible Activities, of this NOFA;

(h) A description of the means by which the governing board members account to residents of the neighborhood, including the method and frequency of selection of members of the governing board, the consultation process with residents, the frequency of meetings, and a statement showing how the board is representative of the demographics of the neighborhood (i.e., a breakdown by tenants, homeowners, race, sex, ethnic composition, etc.);

(i) Evidence of the applicant's sound financial management system, determined from its financial statements or audits;

(j) A letter from the Chief Executive Officer of the unit of general local government in which assisted activities are to be carried out, certifying that the activities are not inconsistent with the government's comprehensive housing affordability strategy (CHAS), Section 104(m) of the Housing and Community Development Act of 1974, or the local government's housing and community development plans. (In lieu of this certification, evidence may be presented that the local government did not respond within 30 days of the applicant's request for such a letter)

(k) Evidence of cooperation with a neighborhood development funding organization. In lieu of this participation, evidence may be presented that the applicant:

(i) Has no neighborhood development funding organization within the applicable boundaries; or

(ii) Has been unsuccessful, despite having made a good faith effort, in obtaining this participation.

(l) A certification that the applicant will comply with the requirements of Federal law governing the application, acceptance, and use of Federal funds;

(m) A narrative statement defining how neighborhood matching funds will be raised and their anticipated sources; what neighborhood development activities will be funded; and a strategy for achieving greater long-term private sector support;

(n) A project management plan, including a schedule of tasks for both fund raising and project implementation;

(o) A project budget and budget narrative; and

(p) A certification that a potential grantee will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F; and

(5) Equal Opportunity Requirements. The neighborhood development organization must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of Title VIII of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 108, 109, 110, and 115; part 200, subpart M; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women' business enterprises in connection with activities funded under this notice.

(e) The prohibitions against discrimination and related requirements of section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309).

**"IV. Corrections to Deficient Applications**

(The provisions of Section IV of the NOFA are not repeated here, because those provisions do not include information subject to public comment.)

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**"V. Other Matters**

*"A. Reporting Requirements*

In addition to complying with relevant provisions of OMB Circulars A–110 and A–122, grantees will be required to submit quarterly performance and financial reports. These reports should inform HUD of any changes that may affect the outcome of the program, such as changes in any of the following: the governing board membership, staffing, working relationships with local government and private organizations, fund raising activities, volunteer efforts, the management plan, and the budget. The quarterly reports must also verify the amount of monetary contributions received from within the neighborhood, as a basis for Federal disbursement of matching funds. Grantees must certify that none of the monetary contributions originated through public funding sources.

Grantees will be required also to submit a final report at the completion of the grant period. This final report must describe fully the successes and failures associated with the project, including the reasons for the successes and failures. It should also describe possible improvements in the methods used. The quarterly and final reports will be used for evaluation purposes, reports to the Congress on the program, and a report on successful projects that will be distributed to other neighborhood organizations.

*"B. Other Federal Requirements*

In addition to the Equal Opportunity Requirements set forth in Section III.B(4) of this NOFA, grantees must comply with the following requirements:

(1) *Ineligible contractors.* The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) *Flood insurance.* No building proposed for acquisition, construction, reconstruction, repair, or improvement to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding such hazards, and the grantee ensures that flood insurance

on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(3) *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and implementing regulations at 24 CFR part 35.

(4) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 with respect to the acceptance and use of assistance by private nonprofit organizations.

(5) *Relocation and Real Property Acquisition.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, apply to the acquisition of real property for an assisted project and the displacement of any person (family, individual, business, nonprofit organization, or farm) as a direct result of acquisition, rehabilitation, or demolition for the project.

*"C. National Environmental Policy Act*

(The provisions of Sections V.C–V.H of the NOFA are not repeated here, because those provisions do not include information subject to public comment.)

* * * * *"

**Other Matters (Concerning this Proposed Rule)**

*Environmental Review*

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 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 Monday through Friday during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

*Major Rule*

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) have a significant adverse effect 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.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would establish program regulations for the award of grants to neighborhood development organizations for the purpose of supporting local efforts to improve opportunities relating to employment, business, housing, and services within the participating neighborhoods.

*D. Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The program that would be implemented by this rule would provide incentive funds to encourage neighborhood organizations to become more self-sufficient in their development activities.

*E. Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the program that would be implemented by this rule is to improve neighborhood opportunities relating to employment, business, housing, and the provision of essential services, all of which could benefit families significantly. However, because the impact on families would be indirect and would be beneficial, no further review is considered necessary.

*Regulatory Agenda*

This rule was listed as Item No. 1497 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24420) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Federal Domestic Assistance Catalog number for this program is 14.242.

**List of Subjects in 24 CFR Part 594**

Community development, Grant programs—housing and community development, Reporting and recordkeeping, Urban renewal.

Accordingly, the Department proposes to amend 24 CFR chapter V, by adding a new part 594 containing the program regulations based on the procedures and requirements as set forth in the NOFA for the John Heinz Neighborhood Development Program published in today's **Federal Register**.

**Authority:** Sec. 123, Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note); 42 U.S.C. 3535(d).

Dated: May 18, 1993.

**Don I. Patch,**

*Acting Deputy Assistant, Secretary for Grant Programs.*

[FR Doc. 93–13385 Filed 6–7–93; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–3620; FR–3388–N–01]

### NOFA for the John Heinz Neighborhood Development Program

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of funding availability for Fiscal Year 1993.

**SUMMARY:** This NOFA announces the availability of $2,850,000 in funding for the FY 1993 Neighborhood Development Program. Interested persons should apply for FY 1993 program funds according to the procedures and requirements set out in this NOFA.

Because this program is authorized as a permanent program for the first time by the Housing and Community Development Act of 1992, the Department is announcing by publication of a separate document in today's **Federal Register** that it will develop final regulations for the program that will be based on the process and requirements governing this NOFA. Although this NOFA and the deadline dates set out in this document will govern the FY 1993 funding round, for purposes of future funding rounds, interested persons are invited by the proposed rule published elsewhere in today's **Federal Register** to comment on the process and requirements developed in this NOFA.

In the body of this NOFA is information concerning:

(1) This year's round of funding for this program;

(2) The purposes and objectives of the program;

(3) The method of allocation and distribution of funds;

(4) Eligibility requirements for neighborhood development organizations;

(5) Eligible neighborhood development activities;

(6) Selection criteria for the award of funds;

(7) Application requirements for the funds;

(8) Grantee reporting requirements; and

(9) Other applicable administrative requirements associated with the program.

**DATES:** Applications may be requested beginning June 8, 1993. Completed applications must be submitted no later than August 11, 1993, by the time specified in the application kit. The application deadline will be 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.

**ADDRESSES:** To obtain a copy of the application kit, contact: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., room 7255, Washington, DC 20410. Completed applications should be returned to this same address. Requests for application kits must be in writing, but requests may be faxed to: (202) 708–3363 (this is not a toll-free number). Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to the Docket and FR numbers at the beginning of this notice.

**FOR FURTHER INFORMATION CONTACT:** Gene Hix, Office of Community Planning and Development, Department of Housing and Urban Development, room 7218, 451 Seventh Street SW., Washington, DC 20410; telephone number (202) 708–2186.

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collections described in this document is 2535–0084.

### I. Purpose and Substantive Description

*A. Authority*

Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note) (section 123), as amended by section 832 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 Act), authorizes the John Heinz Neighborhood Development Program. For Fiscal Year 1993, a total of $3 million has been appropriated for this program: an initial $2 million directly under the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1993 (106 Stat. 1584; see, under the heading "Annual Contributions for Assisted Housing," the proviso applicable to special projects in accordance with H. Rept. 102–902), and an additional $1 million from funds appropriated for the Community Development Block Grant program, as authorized under section 832(a) of the 1992 Act.

[**Note:** For purposes of future funding rounds, the Department is soliciting in a separate proposed rule comments on the process and requirements established in this NOFA. The proposed rule is published elsewhere in today's **Federal Register**. However, applications for FY 1993 funds will be subject to the requirements and deadlines in this NOFA; eligible applicants should not wait for the final rule to prepare and submit their FY 1993 applications.]

Section 123(e)(6)(D) permits the Secretary of Housing and Urban Development (Secretary) to use no more than five percent of the funds appropriated for administrative or other expenses in connection with the program. The remaining funds are to be used to match monetary support raised over a one-year grant period from individuals, businesses, and nonprofit or other organizations located within established neighborhood boundaries, and from neighborhood development funding organizations. For purposes of this NOFA the term "neighborhood development funding organization" means:

(1) A depository institution, the accounts of which are insured pursuant to the Federal Credit Union Act, and any subsidiary (as such term is defined in section 3(w) of the Federal Deposit Insurance Act) thereof;

(2) A depository institution holding company and any subsidiary (as such term is defined in section 3(w) of the Federal Deposit Insurance Act) thereof; or

(3) A company at least 75 percent of the common stock of which is owned by one or more insured depository institutions or depository institution holding companies.

The purpose of the program is to determine the ability of neighborhood organizations to support eligible neighborhood development activities using cooperative efforts and monetary contributions from local sources. The Federal funds are incentive funds to promote the development of this concept and encourage neighborhood organizations to become more self-sufficient in their development activities. Not more than 50 percent of the 1993 awards may be to previous grantees in the program; the remaining awards will be made to organizations

selected from among new applicants. Applications will be selected for funding on the basis of evaluation criteria that reflect the program purposes and priorities and are contained in this notice.

The objective of the Neighborhood Development Program are:

—To help neighborhood development organizations increase their capacities to carry out larger or more complex neighborhood development activities, in cooperation with private and public institutions; and

—To assist neighborhood development organizations to achieve long-term financial support for their activities. The activities must benefit low- and moderate-income persons within the neighborhood. (Low- and moderate-income residents means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved.)

*B. Allocation Amounts*

The Department will make grants, in the form of matching funds, to eligible neighborhood development organizations. Under Section 123(e)(3), a grantee organization may receive no more than $50,000 in Federal matching funds in a single program year ($75,000, when the appropriations for the year exceed $3 million). The amount of Federal matching funds that an applicant receives during the program year will depend in part upon the amount of monetary contributions raised in the preceding quarter of the program year from individuals, businesses, and nonprofit and other organizations located within established neighborhood boundaries, and from neighborhood development funding organizations. Contributions attributable to organizations or persons not residing in or conducting business within the grantee's neighborhood, loans, in-kind services, contributions by owners of properties to be improved, fees for services, public funds, and any in-lieu-of-cash contributions cannot be used to match Federal funds. These contributions may, however, be used to carry out project activities. The neighborhood monetary contributions for matching purposes must be raised within the one-year grant period. However, grant activities may be programmed over a one- to three-year period.

A Federal matching ratio will be established for each participating applicant in accordance with the statutory requirement that the highest ratios be established for neighborhoods having the "smallest number of households or greatest degree of economic distress." Subject to the statutory maximum of $50,000, the Federal match for this program year will range from one to six Federal dollars for each qualifying dollar raised by the grantee. Applications selected to receive Federal funds will be rank-ordered and the matching ratios will be determined in accordance with these two criteria.

Any application selected for the award of Federal funds that proposed a matching funds ratio in excess of the ratio HUD determines for it will be offered an award of funds at the HUD determined ratio. However, any application selected for award that proposed a match below the maximum ratio HUD determines for it will be funded at the level proposed by the applicant.

Federal payments to participating neighborhood organizations will be made on a quarterly basis following receipt of quarterly performance and financial reports. The maximum Federal payment to an applicant will be governed by the amount of verified, qualifying monetary contributions received from local sources in the preceding quarter, multiplied by the matching funds ratio established for the neighborhood.

*C. Eligibility*

1. Eligible Applicants—Definition

An eligible neighborhood development organization must be located in and serve the neighborhood for which assistance is to be provided. It cannot be a city-wide organization, a multi-neighborhood consortium, or, in general, an organization serving a large area of the city. The applicant must meet all of the following statutory requirements:

(a) The applicant must be incorporated as a private, voluntary, nonprofit corporation under the laws of the State in which it operates;

(b) The applicant must be responsible through a governing body to the residents of the neighborhood it serves. Not less than 51 percent of the members of the governing body must be residents of the neighborhood;

(c) The applicant must have conducted business for at least one year before the date of its application;

(d) The applicant must operate within an area that meets at least one of the following criteria:

(i) The area meets the requirements for Federal assistance under section 119 of the Housing and Community Development Act of 1974 (Urban Development Action Grants);

(ii) The area is designated an enterprise zone under Federal law (if enacted);

(iii) The area is designated as an enterprise zone under State law, and is recognized by the Secretary as a State enterprise zone for purposes of this section; or

(iv) The area is a qualified distressed community within the meaning of section 233(b)(1) of the Bank Enterprise Act of 1991; and

(e) The applicant must have conducted one or more eligible neighborhood development activities that primarily benefit low- and moderate-income persons, as defined in section 102(a)(20) of the Housing and Community Development Act of 1974. (Low- and moderate-income residents means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved.)

2. Eligible Applicants—Other Threshold Requirements

In addition, an applicant must:

(a) Demonstrate measurable achievements in one or more of the activities listed in Section I.C(3), Eligible Activities, of this NOFA;

(b) Specify a business plan for accomplishing one or more of the activities listed in Section I.C(3), Eligible Activities, of this NOFA;

(c) Specify a strategy for achieving greater long-term private sector support, especially in cooperation with a neighborhood development funding organization. An applicant that is otherwise eligible will be deemed to have the full benefit of the cooperation of a neighborhood development funding organization if the eligible applicant:

(i) Is located in an area described in paragraph (d) of Section I.C(1) of this NOFA (Eligible Applicants—Definition) that does not contain a neighborhood development funding organization; or

(ii) Demonstrates that it has been unable to obtain the cooperation of any neighborhood development funding organization in the area despite having good faith effort to obtain such cooperation; and

(d) Specify a strategy for increasing the capacity of the applicant.

3. Eligible Activities

Eligible activities include the following, but are not limited to the examples given:

(a) Developing economic development activities that include:

(i) Creating permanent jobs in the neighborhood; and

(ii) Establishing or expanding businesses within the neighborhood (such as a business incubator);

(b) Developing new housing, rehabilitating existing housing, or managing housing stock within the neighborhood;

(c) Developing delivery mechanisms for essential services that have lasting benefits to the neighborhood. Examples include fair housing counseling services, child care centers, youth training, and health services; or

(d) Planning, promoting, or financing voluntary neighborhood improvement efforts. Examples include establishing a neighborhood credit union, demolishing abandoned buildings, removing abandoned cars, and establishing an on-going street and alley cleanup program.

*D. Selection Criteria/Ranking Factors*

Applications will be evaluated on the basis of the following factors:

(1) The degree of economic distress within the neighborhood. This is based on census data, including poverty level relative to population. Applicants with the highest poverty level relative to their populations will get higher points. (15 points)

(2) The record of past performance of the applicant in one or more of the activities specified under paragraph I.C(3), Eligible Activities, of this NOFA, and in promoting fair housing, equal employment opportunity, and minority-owned business and entrepreneurial opportunities. (10 points)

(3) The extent of neighborhood residents' participation in the activities of the applicant and the extent to which the households and businesses in the neighborhood are members of the applicant organization. (5 points)

(4) The extent to which the proposed activities will benefit persons of low- and moderate-income residing in the neighborhood served by the applicant. (15 points)

(5) The extent of monetary contributions that the applicant proposes as a match to the Federal funds, supported by reasonable evidence that private funding sources within the neighborhood have been realistically identified. This requirement shall be waived, and an application may be awarded the full points available under this factor, if the application is submitted by a small eligible organization, involves activities in a very low-income neighborhood, or is especially meritorious. (10 points)

(6) The extent to which the applicant has developed a strategy to increase its capacity to carry out larger or more complex project activities and to address its long-term financial and organizational development needs. (10 points)

(7) The extent of participation in the proposed activities by a neighborhood development funding organization. An eligible applicant shall be credited with the maximum score under this factor if the applicant demonstrates that it has made a good faith effort to obtain such participation, even if the applicant is not successful. (10 points)

(8) The quality of the management plan submitted for accomplishing the activities proposed by the applicant including evidence of sound financial management, the experience and capability of the applicant's director and staff, and the level of coordination efforts, including working relationships with local governments or neighborhood development funding organizations. (25 points)

*E. Determination of Ratio for Federal Contribution*

The Secretary will determine the ratio by which Federal funds will be used to match monetary contributions made to each eligible applicant that is selected for funding under this NOFA. The ratio will be based on:

(1) The number of households in the neighborhood. Neighborhoods having the smallest number of households will be assigned higher ratios under this factor; and

(2) The degree of economic distress. Neighborhoods indicating the greatest degree of economic distress will be assigned higher ratios under this factor than those with lesser degrees of economic distress.

*F. Environmental Reviews*

For all proposed actions or activities that are not considered a categorical exclusion as set forth in 24 CFR 50.20, HUD will perform the appropriate environmental reviews under the National Environmental Policy Act (NEPA). Whether the action or activity is categorically excluded from NEPA review or not, HUD will comply also with other appropriate requirements of environmental statutes, executive orders, and HUD standards listed in 24 CFR 50.4. The environmental reviews will be performed before award of a grant. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

**II. Application Submissions Process**

*A. Obtaining Application*

For an application kit, contact the Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., room 7255, Washington, DC 20410. Requests for application kits (RFGAs) must be in writing, but the request may be faxed to (202) 708–3363. (This is not a toll-free number). Requests for application kits must include the applicant's name, mailing address (including zip code), a telephone number (including area code), and must refer to the Docket and FR numbers at the beginning of this notice. The Request For Grant Application (RFGA) contains the application, forms and other information regarding the application process and the administration of the program, including relevant provisions from OMB Circulars A–110 and A–122. (This NOFA summarizes major provision of the RFGA).

*B. Application Submission*

An original and three copies of an application must be submitted to: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., room 7255, Washington, DC 20410. HUD will accept only one application per neighborhood organization.

*C. Application Deadline*

Applications may be requested beginning June 8, 1993. Applications must be submitted no later than August 11, 1993, by the hour specified in the application kit. The application deadline will be 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.

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Before preparing an application, the applicant should carefully check the eligibility requirements described in Section I.C., Eligibility, of this NOFA. Applicants that are uncertain whether the city or urban county in which they are located meets the current minimum standards of physical and economic distress (used in determining which cities and urban counties were potentially eligible applicants under the Urban Development Action Grant Program) are advised to consult the following two notices published by the Department in the **Federal Register**: (1) "Urban Development Action Grant: Revised Minimum Standards for Small Cities" (52 FR 37876, October 9, 1987); and (2) "Urban Development Action

Grant; Revised Minimum Standards for Large Cities and Urban Counties" (52 FR 38174, October 14, 1987).

Any applicant that needs additional help in determining its eligibility should contact the nearest Department of Housing and Urban Development Field Office (Community Planning and Development Division). If assistance is needed, the city or county community development office serving a neighborhood organization should be able to provide an applicant with the HUD Field Office contact number. If unable to obtain a local contact, the HUD Headquarters contact for this information is Mrs. Stella Hall, telephone number (202) 708–2186, or contact the TDD number: (202) 708–0564. (These are not toll free numbers).

*B. Application Checklist*

Each application must contain the following, as required by the Request for Grant Application:

(1) A signed copy of Standard Form SF–424;

(2) An abstract describing, among other things, the applicant and its achievements, the proposed project, its intended beneficiaries, its projected impact on the neighborhood, and the manner in which the proposed project will be carried out;

(3) A completed fact sheet that lists neighborhood and organizational characteristics;

(4) Evidence that the applicant meets eligibility criteria and provides the following data:

(a) A legible map, with street names, delineating the applicant's neighborhood boundaries and indicating where project activities will take place;

(b) Census tract, block, or enumeration district references and zip code references must also be delineated on the map or on other maps submitted;

(c) A copy of the applicant organization's corporate charter, along with the incorporation papers, bylaws, and a statement of purpose;

(d) Census data on the size of the neighborhood population, including the number of low- and moderate-income persons and the size of the minority population, broken down by ethnic, racial, and gender composition;

(e) A list of the names of the neighborhood governing board members and their addresses (with zip codes) to show that at least 51% reside in the neighborhood. Separately indicate those who reside and those who conduct business in the neighborhood;

(f) The percentage of the members of the neighborhood organization who are neighborhood residents, the percentage of neighborhood residents who conduct business in the neighborhood, and the percentage of neighborhood businesses conducted by nonresidents;

(g) Identification of the applicant organization's past and current neighborhood projects, including those projects that are eligible neighborhood development activities as defined in Section I.C(3), Eligible Activities, of this NOFA;

(h) A description of the means by which the governing board members account to residents of the neighborhood, including the method and frequency of selection of members of the governing board, the consultation process with residents, the frequency of meetings, and a statement showing how the board is representative of the demographics of the neighborhood (i.e., a breakdown by tenants, homeowners, race, sex, ethnic composition, etc.);

(i) Evidence of the applicant's sound financial management system, determined from its financial statements or audits;

(j) A letter from the Chief Executive Officer of the unit of general local government in which assisted activities are to be carried out, certifying that the activities are not inconsistent with the government's comprehensive housing affordability strategy (CHAS), section 104(m) of the Housing and Community Development Act of 1974, or the local government's housing and community development plans. (In lieu of this certification, evidence may be presented that the local government did not respond within 30 days of the applicant's request for such a letter.)

(k) Evidence of cooperation with a neighborhood development funding organization. In lieu of this participation, evidence may be presented that the applicant:

(i) Has no neighborhood development funding organization within the applicable boundaries; or

(ii) Has been unsuccessful, despite having made a good faith effort, in obtaining this participation.

(l) A certification that the applicant will comply with the requirements of Federal law governing the application, acceptance, and use of Federal funds;

(m) A narrative statement defining how neighborhood matching funds will be raised and their anticipated sources; what neighborhood development activities will be funded; and a strategy for achieving greater long-term private sector support;

(n) A project management plan, including a schedule of tasks for both fund raising and project implementation;

(o) A project budget and budget narrative; and

(p) A certification that a potential grantee will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F; and

(5) Equal Opportunity Requirements. The neighborhood development organization must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of title VIII of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 108, 109, 110, and 115; part 200, Subpart M; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR Part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(e) The prohibitions against discrimination and related requirements of section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309).

**IV. Corrections to Deficient Applications**

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the

14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to nonsubstantive deficiencies or errors. Deficiencies capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

Examples of deficiencies that may be cured are:

—Omitted or improper signatures;
—Omitted certifications or assurances; and
—Omitted financial statements or audits.

## V. Other Matters

### *A. Reporting Requirements*

In addition to complying with relevant provisions of OMB Circulars A–110 and A–122, grantees will be required to submit quarterly performance and financial reports. These reports should inform HUD of any changes that may affect the outcome of the program, such as changes in any of the following: the governing board membership, staffing, working relationships with local government and private organizations, fund raising activities, volunteer efforts, the management plan, and the budget. The quarterly reports must also verify the amount of monetary contributions received from within the neighborhood, as a basis for Federal disbursement of matching funds. Grantees must certify that none of the monetary contributions originated through public funding sources.

Grantees will be required also to submit a final report at the completion of the grant period. This final report must describe fully the successes and failures associated with the project, including the reasons for the successes and failures. It should also describe possible improvements in the methods used. The quarterly and final reports will be used for evaluation purposes, reports to the Congress on the program, and a report on successful projects that will be distributed to other neighborhood organizations.

### *B. Other Federal Requirements*

In addition to the Equal Opportunity Requirements set forth in Section III.B(4) of this NOFA, grantees must comply with the following requirements:

(1) *Ineligible contractors.* The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) *Flood insurance.* No building proposed for acquisition, construction, reconstruction, repair, or improvement to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding such hazards, and the grantee ensures that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(3) *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and implementing regulations at 24 CFR part 35.

(4) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 with respect to the acceptance and use of assistance by private nonprofit organizations.

(5) *Relocation and Real Property Acquisition.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, apply to the acquisition of real property for an assisted project and the displacement of any person (family, individual, business, nonprofit organization, or farm) as a direct result of acquisition, rehabilitation, or demolition for the project.

### *C. National Environmental Policy Act*

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 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 Monday through Friday during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

### *D. Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice announces incentive funds to encourage neighborhood organizations to become more self-sufficient in their development activities.

### *E. Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the notice is to provide funding to improve neighborhood opportunities relating to employment, business, housing, and the provision of essential services, all of which could benefit families significantly. However, because the impact on families would be indirect and would be beneficial, no further review is considered necessary.

### *F. Section 102 HUD Reform Act: Documentation and Public Access Requirements*

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.)

### *G. Section 103 of the HUD Reform Act*

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on 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 restrained 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 questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

*H. Section 112 of the Reform Act*

Section 13 of the Department Housing and Urban Development Act (42 U.S.C. 3537b) 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.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD) (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

**Authority:** Sec. 123, Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note); 42 U.S.C. 3535(d).

Dated: May 18, 1993.

**Don I. Patch,**

*Acting Deputy Assistant Secretary for Grant Programs.*

[FR Doc. 93–13386 Filed 6–7–93; 8:45 am]

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Tuesday
June 8, 1993

Part VI

# Environmental Protection Agency

40 CFR Part 721

Pyridines; Proposed Modifications of Significant New Use Rules; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 721**

**[OPPTS–50584B; FRL–4082–6]**

## Pyridines; Proposed Modification of Significant New Use Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to modify the significant new use rules (SNURs) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 16 pyridine derivatives based on a modification to the 5(e) consent order regulating those substances. The original consent order and SNURs were developed in response to premanufacturing notices (PMNs) for these substances.

**DATES:** Written comments must be received by EPA on or before July 8, 1993.

**ADDRESSES:** All comments must be sent in triplicate, with additional sanitized copies if confidential business information (CBI) is involved, to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, room E–G99, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the chemical substances in this SNUR is OPPTS–50584B. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, TSCA Assistance Office (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 23, 1991 (56 FR 23766), EPA issued SNURs establishing significant new uses for certain pyridine substances. Because of the June 16, 1992, modification to the consent order for these substances, which was the basis for the original SNURs, EPA is proposing to modify those SNURs. The CFR cites which appeared in the final rule at 56 FR 23766 (May 23, 1991) have been redesignated. The following table lists the substances by PMN number and provides the redesignated cite as well as the cite which appeared in the final rule.

TABLE 1.—CHEMICALS SUBJECT TO THIS SIGNIFICANT NEW USE RULE

[Publication History]

| Chemical | Original CFR cite | FR ref., pub. date | Redesignated |
|---|---|---|---|
| P–83–237, P–83–1162 | 40 CFR 721.1858 | 56 FR 23766, 5/23/91 | 40 CFR 721.8700 |
| P–83–1163 P–85–216 P–85–535 P–85–536 | 40 CFR 721.1835 | 56 FR 23766, 5/23/91 | 40 CFR 721.8675 |
| P–86–838 | 40 CFR 721.1840 | 56 FR 23766, 5/23/91 | 40 CFR 721.8750 |
| P–84–1219, P–85–36, P–85–236, P–85–706, P–85–1184 | 40 CFR 721.1845 | 56 FR 23766, 5/23/91 | 40 CFR 721.8775 |
| P–88–1274 | 40 CFR 721.1880 | 56 FR 23766, 5/23/91 | 40 CFR 721.8850 |
| P–88–1273 | 40 CFR 721.1883 | 56 FR 23766, 5/23/91 | 40 CFR 721.8875 |
| P–88–1271, P–88–1272 | 40 CFR 721.1886 | 56 FR 23766, 5/23/91 | 40 CFR 721.8900 |

### I. Rulemaking Record

The record for these rules which EPA is proposing to modify was established at OPPTS–50584. This record includes information considered by the Agency in developing these rules and includes the modification to the consent order to which the Agency has responded with this proposal.

### II. Background

EPA is proposing to modify the significant new use requirements for the following chemical substances under 40 CFR part 721 subpart E. The Agency is proposing to modify the significant new use designation which requires notification if the PMN substances are not disposed of by *on-site* waste water treatment where primary, secondary, and tertiary treatment occurs and surface water calculations do not exceed the concentrations of concern. The modified rule would allow such disposal to occur at any site while still designating the performance-based water concentration ceilings. The Agency believes that off-site treatment of wastes under the specified conditions would not present an unreasonable risk to the environment. Further background information for the substances is contained in the rulemaking record referenced above in Unit I.

#### PMN Numbers P–83–237 and P–83–1162

*Chemical name:* (generic) Halogenated alkyl pyridine.
*CAS number:* Not available.
*Effective date of modification of section 5(e) consent order:* June 16, 1992.
*Basis for modification of section 5(e) consent order:* The Company requested that the Agency modify the restriction in the 5(e) consent order which required the Company to dispose of the PMN substances by on-site waste water treatment where primary, secondary, and tertiary treatment occurs and surface water calculations do not exceed the concentrations of concern. Given that the Company would still be required to meet the performance-based water concentration ceilings, the Agency determined that granting the Company's request to permit off-site treatment of wastes would not present an unreasonable risk to the environment.
*CFR citation:* 40 CFR 721.8700.

#### PMN Numbers P–83–1163, P–85–216, P–85–535, and P–85–536

*Chemical name:* (generic) Halogenated pyridine.
*CAS number:* Not available.
*Effective date of modification of section 5(e) consent order:* June 16, 1992.
*Basis for modification of section 5(e) consent order:* The Company has requested that the Agency modify the restriction in the 5(e) consent order which required the Company to dispose of the PMN substances by on-site waste water treatment where primary, secondary, and tertiary treatment occurs and surface water calculations do not exceed the concentrations of concern. Given that the Company would still be required to meet the performance-based water concentration ceilings, the Agency determined that granting the Company's request to permit off-site treatment of wastes would not present an unreasonable risk to the environment.

*CFR citation:* 40 CFR 721.8675.

**PMN Numbers P–84–1219, P–85–36, P–85–236, P–85–706, and P–85–1184**

*Chemical name:* (generic) Substituted pyridine.
*CAS number:* Not available.
*Effective date of modification of section 5(e) consent order:* June 16, 1992.
*Basis for modification of section 5(e) consent order:* The Company has requested that the Agency modify the restriction in the 5(e) consent order which required the Company to dispose of the PMN substances by on-site waste water treatment where primary, secondary, and tertiary treatment occurs and surface water calculations do not exceed the concentrations of concern. Given that the Company would still be required to meet the performance-based water concentration ceilings, the Agency determined that granting the Company's request to permit off-site treatment of wastes would not present an unreasonable risk to the environment.
*CFR citation:* 40 CFR 721.8775.

**PMN Number P–86–838**

*Chemical name:* (generic) Halogenated substituted pyridine.
*CAS number:* Not available.
*Effective date of modification of section 5(e) consent order:* June 16, 1992.
*Basis for modification of section 5(e) consent order:* The Company has requested that the Agency modify the restriction in the 5(e) consent order which required the Company to dispose of the PMN substances by on-site waste water treatment where primary, secondary, and tertiary treatment occurs and surface water calculations do not exceed the concentrations of concern. Given that the Company would still be required to meet the performance-based water concentration ceilings, the Agency determined that granting the Company's request to permit off-site treatment of wastes would not present an unreasonable risk to the environment.
*CFR citation:* 40 CFR 721.8750.

**PMN Numbers P–88–1271 and P–88–1272**

*Chemical name:* (generic) Substituted halogenated pyridinol, alkali salt.
*CAS number:* Not available.
*Effective date of modification of section 5(e) consent order:* June 16, 1992.
*Basis for modification of section 5(e) consent order:* The Company has requested that the Agency modify the restriction in the 5(e) consent order which required the Company to dispose of the PMN substances by on-site waste water treatment where primary, secondary, and tertiary treatment occurs and surface water calculations do not exceed the concentrations of concern. Given that the Company would still be required to meet the performance-based water concentration ceilings, the Agency determined that granting the Company's request to permit off-site treatment of wastes would not present an unreasonable risk to the environment.
*CFR citation:* 40 CFR 721.8900.

**PMN Number P–88–1273**

*Chemical name:* (generic) Substituted halogenated pyridinol.
*CAS number:* Not available.
*Effective date of modification of section 5(e) consent order:* June 16, 1992.
*Basis for modification of section 5(e) consent order:* The Company has requested that the Agency modify the restriction in the 5(e) consent order which required the Company to dispose of the PMN substances by on-site waste water treatment where primary, secondary, and tertiary treatment occurs and surface water calculations do not exceed the concentrations of concern. Given that the Company would still be required to meet the performance-based water concentration ceilings, the Agency determined that granting the Company's request to permit off-site treatment of wastes would not present an unreasonable risk to the environment.
*CFR citation:* 40 CFR 721.8875.

**PMN Number P–88–1274**

*Chemical name:* (generic) Disubstituted halogenated pyridinol.
*CAS number:* Not available.
*Effective date of modification of section 5(e) consent order:* June 16, 1992.
*Basis for modification of section 5(e) consent order:* The Company has requested that the Agency modify the restriction in the 5(e) consent order which required the Company to dispose of the PMN substances by on-site waste water treatment where primary, secondary, and tertiary treatment occurs and surface water calculations do not exceed the concentrations of concern. Given that the Company would still be required to meet the performance-based water concentration ceilings, the Agency determined that granting the Company's request to permit off-site treatment of wastes would not present an unreasonable risk to the environment.
*CFR citation:* 40 CFR 721.8850.

## III. Objectives and Rationale of Proposing Modification of the Rule

During review of the PMNs submitted for the chemical substances that are the subjects of this proposed modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substances, and EPA identified the tests considered necessary to evaluate the risks of the substances. The basis for such findings is in the rulemaking record referenced in Unit I. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and SNURs were promulgated for the substances at that time. One provision of the original section 5(e) order and SNUR required disposal of the substances only at the site of manufacture or processing. In light of the exposure control requirements in the section 5(e) order and these SNURs, the PMN submitter petitioned and EPA determined that this restriction was not necessary to protect human health and the environment. The modified section 5(e) order no longer requires on-site waste water treatment. The proposed modification of SNUR provisions for these substances designated herein is consistent with the modification of the section 5(e) order.

## IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

## V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this proposed rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

**List of Subjects in 40 CFR Part 721**

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 18, 1993.

**Susan H. Wayland,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

**PART 721—[AMENDED]**

1. The authority citation for part 721 would continue to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.8675 by revising paragraphs (a)(1)(i)(D) and (a)(2)(i)(D) to read as follows:

**§ 721.8675 Halogenated pyridines.**

(a) * * *
(1) * * *
(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 0.2 ppb), waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

* * * * *

(2) * * *
(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 0.2 ppb), waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

* * * * *

3. In § 721.8700 by revising paragraphs (a)(1)(i)(D) and (a)(2)(i)(D) to read as follows:

**§ 721.8700 Halogenated alkyl pyridines.**

(a) * * *
(1) * * *
(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 10 ppb), waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

* * * * *

(2) * * *
(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 0.2 ppb), waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

* * * * *

4. In § 721.8750 by revising paragraph (a)(2)(iv) to read as follows:

**§ 721.8750 Halogenated substituted pyridines.**

(a) * * *
(2) * * *

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 1 ppb), waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

* * * * *

5. In § 721.8775 by revising paragraphs (a)(1)(i)(D), (a)(2)(i)(D), (a)(3)(i)(D) and (a)(4)(i)(D) to read as follows:

**§ 721.8775 Substituted pyridines.**

(a) * * *
(1) * * *
(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 10 ppb), waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

* * * * *

(2) * * *
(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 0.2 ppb), waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

* * * * *

(3) * * *
(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 10 ppb), waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

* * * * *

(4) * * *
(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 1.3 ppb), waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

* * * * *

6. In § 721.8850 by revising paragraph (a)(2)(iv) to read as follows:

**§ 721.8850 Disubstituted halogenated pyridinol.**

(a) * * *
(2) * * *

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 44 ppb), waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

* * * * *

7. In § 721.8875 by revising paragraph (a)(2)(iv) to read as follows:

**§ 721.8875 Substituted halogenated pyridinol.**

(a) * * *
(2) * * *

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 44 ppb), waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day

per site is calculated after wastewater treatment).

* * * * *

8. In § 721.8900 by revising paragraphs (a)(2)(iv) to read as follows:

**§ 721.8900 Substituted halogenated pyridinol, alkali salt.**

(a) * * *

(2) * * *

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4)(concentration set at 44 ppb), waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

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Part VII

# Environmental Protection Agency

40 CFR Part 721
Significant New Uses of Certain Chemical Substances; Final Rule

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 721**

**[OPPTS–50608; FRL–4172–3]**

**RIN 2070–AB27**

### Significant New Uses of Certain Chemical Substances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 28 chemical substances which were the subject of premanufacture notices (PMNs) and some of which were subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires certain persons who intend to manufacture, import, or process any of these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by the SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating these SNURs using direct final procedures.

**EFFECTIVE DATES:** The effective date of this rule is August 9, 1993. This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on June 22, 1993.

If EPA receives notice before July 8, 1993 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the substance for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30–day period for public comment.

**ADDRESSES:** Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPPTS–50608 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate (with additional sanitized copies if confidential business information is involved) to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–201, 401 M St., SW., Washington, DC 20460.

Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. Unit X. of this preamble contains additional information on submitting comments containing CBI.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** These SNURs will require persons to notify EPA at least 90 days before commencing manufacturing or processing of a substance for any activity designated by the corresponding SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

### I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.25.

### II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the Federal Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

### III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for each such substance contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a

significant new use notice at least 90 days in advance. Data on potential exposures or releases of the substances, testing other than that specified in the section 5(e) order for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes. As stated in 40 CFR 721.1(c), Persons submitting a SNUN must comply with the same notice requirements as submitters of PMNs under 40 CFR part 720, including submission of test data on health and environmental effects as described in 40 CFR 720.50.

The earlier P–86–1315 section 5(e) order contains provisions that required wording changes in order to be converted into a SNUR to be issued under the expedited process. The SNUR text may contain more detail (e.g., the provision for a written hazard communication program in § 721.72(a) is more detailed than the hazard communication provisions in the order) or the SNUR text may be worded slightly differently (e.g., the provision for dermal protection in § 721.63(a)(1) and (a)(3) is worded differently from dermal protection provisions in the order). In such cases, EPA considers the SNUR and section 5(e) provisions to be generally equivalent. Moreover, the company which entered into the hazard communication provisions of the earlier P–86–1315 section 5(e) order, as well as those companies covered by the SNUR, are generally subject to the requirements of the hazard communication standard promulgated by the Occupational Safety and Health Administration and codified at 29 CFR 1910.2100. Therefore, EPA believes it equitable and minimally burdensome to include in the SNUR those requirements of the hazard communication standard that are generally considered to be acceptable in informing workers of potential chemical hazards.

As presented in the regulatory text that follows, the P–86–1315 substance is exempt from § 721.63 and/or § 721.72 provisions if present at low levels and is not expected to be reconcentrated in mixtures. The exemptions are provided in § 732.63(b) and § 721.72(e) and their application will make the requirements for the substance consistent with SNURs based on more recent section 5(e) consent orders. If a substance was determined to pose a cancer concern by structural-activity analysis or actual data (as described in the preamble that follows), it is exempt only if the level is 0.1 percent or less. All other substances must not exceed a 1.0 percent level in a mixture to qualify for the exemption. EPA's decision to allow exemptions at these levels was based on the Occupational Safety and Health Administration's hazard communication standard exemption of MSDS requirements in § 1910.1200(g)(2)(i)(C)(1) and (2) when substances are present at or below such levels in mixtures.

The SNURs for the PMN substances P–92–156, P–92–157, P–92–159, and P–92–341 regulate the chemical substances subject to section 5(e) orders where the finding under TSCA is based solely on substantial production volume and significant or substantial human exposure or release to the environment in substantial quantities. For these cases there was limited or no toxicity data available for the PMN substance. In such cases EPA regulates new chemical substances under section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects.

**PMN Number P–86–1315**

*Chemical name:* (generic) Substituted ethyl alkenamide.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* February 5, 1988.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment and on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposures.
*Toxicity concern:* Similar chemicals have been shown to cause carcinogenicity, mutagenicity, neurotoxicity, and genotoxic effects in test animals. Similar chemicals have also been shown to cause toxic effects in aquatic organisms.
*Recommended testing:* The EPA has determined that a 2–year, two-species rodent bioassay, a 90–day subchronic assay with functional observational battery and histopathology, and a dominant lethal assay would help characterize the health effects of the PMN substance. In addition, acute fish, acute daphnia, and algal studies would help characterize the environmental effects.
*CFR citation:* 40 CFR 721.445.

**PMN Number P–89–963**

*Chemical name:* (generic) Polyalkylene polyamine.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* June 27, 1992.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on findings that this substance may present an unreasonable risk of injury to the environment and that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposures.
*Toxicity concern:* The PMN substance and similar chemicals have been shown to cause acute toxicity to aquatic organisms at low levels of exposure. Specifically, based on data submitted on the PMN substance, the fish acute LC50 value is 780 ppm, the daphnid acute LC50 value is 10 ppm, and the algal acute EC50 value is 2.9 ppm. Applying an assessment factor of 100 to the daphnid acute value, EPA predicts that chronic toxicity to aquatic life may occur at concentrations as low as 100 ppb.
*Recommended testing:* EPA has determined that the results of a 28–day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible human health effects posed by the substance. The PMN submitter has agreed not to exceed the production limit without performing this test.
*CFR citation:* 40 CFR 721.6193.

**PMN Number P–90–159**

*Chemical name:* 1*H*-Pyrole-2, 5-dione, 1-(2,4,6-tribromophenyl)-.
*CAS number:* 59789–51–4.
*Effective date of section 5(e) consent order:* October 28, 1992.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
*Toxicity concern:* Laboratory animal tests of the PMN substance and similar chemicals have shown corrosion to the eyes, developmental toxicity, neurotoxicity, acute and chronic lung, liver, and gastrointestinal tract effects, sensitization, mutagenicity, and oncogenicity. Laboratory animal and human epidemiological studies of

halogenated dibenzodioxins and dibenzofurans have shown mutagenic and oncogenic effects; these substances may form during incineration of the polymer matrices that contain the PMN substance.

Based on quantitative structural activity relationships (QSAR) for the chemical class of neutral organics, the PMN substance is not expected to be acutely toxic to aquatic organisms at saturation, but may be chronically toxic to aquatic organisms at levels as low as 20 ppb. Chronic values are estimated to be 150 ppb for fish, 220 ppb for daphnia, and 610 ppb for algae. The concentration of concern of 20 ppb is based on the fish chronic value with an assessment factor of 10.

*Recommended testing:* (1) Incineration simulation testing (protocol guidelines are available in the March 29, 1991, Midwest Research Institute report entitled "Guidelines for the Determination of Polyhalogenated Dibenzo-*para*-Dioxins and Dibenzofurans in PMN Substances, Selected Waste Streams, and Simulated Incinerator Emissions") would help characterize the potential for dioxin and furan formation through incineration of polymer matrices containing the PMN substance.

(2) A mouse micronucleus study (IP route) (40 CFR 798.5395) and an acute inhalation study (40 CFR 798.1150) would help characterize the potential for mutagenicity and lung toxicity.

(3) Either a two-species developmental toxicity study (40 CFR 798.4900) and a 90–day subchronic (40 CFR 798.2650) by the oral route or a two-species developmental toxicity study (40 CFR 798.4350) and a 90–day subchronic (40 CFR 798.2450) by the inhalation route would help characterize the potential for developmental toxicity and acute and chronic toxicity in the lungs, liver, and gastrointestinal tract. The route of administration for the developmental and 90–day subchronic will be determined by EPA after comparing results of the acute inhalation toxicity test required in (2) above with the oral LD50 toxicity test submitted with the PMN.

(4) A 90–day inhalation neurotoxicity study with functional observational battery (40 CFR 798.6050), motor activity (40 CFR 798.6200), and neuropathology (40 CFR 798.6400) would help characterize the potential for neurotoxicity.

(5) A 2–year, two-species bioassay (40 CFR 798.3300) may be required to help characterize the potential for oncogenicity, if warranted by the results of the submitted Ames assay and the mouse micronucleus and the 90–day subchronic study. The consent order contains three import volume limits. The PMN submitter has agreed not to exceed the first import volume limit without performing the incineration simulation testing. The PMN submitter has agreed not to exceed the second higher import volume limit without performing a mouse micronucleus study and an acute inhalation study. The PMN submitter has also agreed not to exceed the third, highest import volume limit without performing either a two-species developmental toxicity study and a 90–day subchronic toxicity study by the oral route, or a two-species developmental toxicity study and a 90–day subchronic toxicity study by the inhalation route.

*CFR citation:* 40 CFR 721.8965.

**PMN Numbers P–90–237, P–90–248, and P–90–249**

*Chemical name:* (generic) Alkylated diphenyls.

*CAS number:* Not available.

*Basis for action:* The PMN substances will be used as solvents. Based on the results of acute toxicity studies, the PMN substances may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters at concentrations above 1 ppb. EPA has determined that other uses of the substances may result in releases to surface water at concentrations above 1 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(i).

*Recommended testing:* EPA has determined that a 28–day chironomid chronic toxicity test or 30–day tadpole early life stage toxicity test, and a fish bioconcentration test will characterize the environmental effects of the PMN substances.

*CFR citation:* 40 CFR 721.2520.

**PMN Number P–91–1077**

*Chemical name:* (generic) Acrylates of aliphatic polyol.

*CAS number:* Not available.

*Effective date of section 5(e) consent order:* June 26, 1992.

*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

*Toxicity concern:* Similar chemicals have been shown to cause cancer in test animals.

*Recommended testing:* A 2–year rodent bioassay (test guidelines described in 40 CFR 798.3300) to help characterize carcinogenic effects.

*CFR citation:* 40 CFR 721.7370.

**PMN Number P–91–1321**

*Chemical name:* (generic) Methylpolychloro aliphatic ketone.

*CAS number:* Not available.

*Effective date of section 5(e) consent order:* August 25, 1992.

*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health and the environment.

*Toxicity concern:* The PMN substance has been shown to cause neurotoxicity in test animals. In addition, similar chemicals have been shown to cause cancer, developmental toxicity, and systemic toxicity in test animals. Furthermore, similar chemicals have been shown to cause chronic toxicity to aquatic organisms at low levels of exposure. Specifically, based on QSARs derived from test data available on structurally similar compounds, the level of concern is 5 ppb.

*Recommended testing:* The Agency has determined that the results of a developmental toxicity study, a 90–day subchronic toxicity study with functional observation battery and neuropathology, and a 2–year, two-species bioassay would help characterize the potential developmental, neurotoxic, carcinogenic, and internal organ effects of the PMN substance. The PMN submitter has agreed not to exceed the first production volume limit without performing a developmental toxicity study. The PMN submitter has also agreed not to exceed the second higher production volume limit without performing a 90–day subchronic toxicity study with functional observation battery and neuropathology. The Company has agreed not to exceed a third higher production volume limit without performing a 2–year, two-species bioassay. In addition, the Agency has determined that the results of the following aquatic toxicity studies would help characterize possible environmental effects posed by the substance: Fish acute toxicity (40 CFR 797.1400), daphnid acute toxicity study (40 CFR 797.1300), and green algal toxicity study (40 CFR 797.1050).

*CFR citation:* 40 CFR 721.4568.

**PMN Number P–91–1322**

*Chemical name:* (generic) Dimethyl-3-substituted heteromonocycle.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* August 25, 1992.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health and the environment.
*Toxicity concern:* The PMN substance, as well as structurally similar chemicals, have been shown to cause neurotoxicity in test animals. Similar chemicals have been shown to cause systemic toxicity in test animals. Furthermore, structurally similar chemicals have been shown to cause chronic toxicity to aquatic organisms at low levels of exposure. Specifically, based on QSARs derived from test data available on structurally similar compounds, the Agency predicts the following acute toxicity values (LC50/EC50)—38 ppm for fish, 42 ppm for daphnia, and 3.5 ppm for algae. Predicted chronic toxicity values are as follows—5.5 ppm for fish, 2.6 ppm for daphnia, and 3.5 ppm for algae. Applying an assessment factor of 10 to the predicted daphnia chronic value, the concern concentration is 300 ppb.
*Recommended testing:* The Agency has determined that the results of a 90–day subchronic toxicity study with functional observation battery and neuropathology would help characterize the potential neurotoxic effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit without performing a 90–day subchronic toxicity study with functional observation battery and neuropathology. In addition, the Agency has determined that the results of the following aquatic toxicity studies would help characterize possible environmental effects posed by the substance: Fish acute toxicity (40 CFR 797.1400), daphnid acute toxicity study (40 CFR 797.1300), and green algal toxicity study (40 CFR 797.1050).
*CFR citation:* 40 CFR 721.4128.

**PMN Number P–91–1323**

*Chemical name:* (generic) Dimethyl substituted heteromonocyclic amine.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* August 25, 1992.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health and the environment.
*Toxicity concern:* The PMN substance, as well as structurally similar chemicals, have been shown to cause neurotoxicity in test animals. Similar chemicals have been shown to cause systemic toxicity in test animals. Furthermore, similar chemicals have been shown to cause chronic toxicity to aquatic organisms at low levels of exposure. Specifically, based on QSARs derived from test data available on structurally similar compounds, the Agency predicts the following acute toxicity values (LC50/EC50)—29 ppm for fish, 33 ppm for daphnia, and 21 ppm for algae. Predicted chronic toxicity values are as follows—3.8 ppm for fish, 2.3 ppm for daphnia, and 3.3 ppm for algae. Applying an assessment factor of 10 to the predicted daphnia chronic value, the concern concentration is 200 ppb.
*Recommended testing:* The Agency has determined that the results of a 90–day subchronic toxicity study with functional observation battery and neuropathology would help characterize the potential neurotoxic effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit without performing a 90–day subchronic toxicity study with functional observation battery and neuropathology. In addition, the Agency has determined that the results of the following aquatic toxicity studies would help characterize possible environmental effects posed by the substance: Fish acute toxicity (40 CFR 797.1400), daphnid acute toxicity study (40 CFR 797.1300), and green algal toxicity study (40 CFR 797.1050).
*CFR citation:* 40 CFR 721.4133.

**PMN Number P–91–1328**

*CAS number:* Not available.
*Chemical name:* (generic) Polyamine dithiocarbamate.
*Basis for action:* The PMN substance will be used to remove suspended oil and grease in brine co-produced with crude oil. Based on the results of acute toxicity studies, the PMN substance causes toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 50 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters at concentrations above 50 ppb. EPA has determined that other uses of the substance may result in releases to surface water at concentrations above 50 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(i).
*Recommended testing:* EPA has determined that the results of a chronic 60–day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600) and a 21–day chronic daphnid toxicity test (40 CFR 797.1330) would help characterize the environmental effects of the substance.
*CFR citation:* 40 CFR 721.6186.

**PMN Number P–91–1361**

*Chemical name:* (generic) Bis(1,2,2,6,6-pentamethyl-4-piperidin-4-ol) ester of cycloaliphatic spiroketal.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* April 16, 1992.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and environment.
*Toxicity concern:* Similar chemicals have been shown to cause adverse effects to the liver, blood, immune system, male reproductive system and the gastrointestinal tract in test animals. Similar chemicals have also been shown to cause adverse effects to aquatic organisms.
*Recommended testing:* In order to address the health effects of the PMN substance, a 90–day oral subchronic study (as described in 40 CFR 798.2650) administered by gavage should be conducted on the PMN substance. This study should place special emphasis on the hematology, lymphoid organ weights (spleen, thymus), and histology, as well as the cellularity of the bone marrow, thymus and spleen. In addition, the study should also include a well-conducted histopathologic examination of the testes plus staging of sperm, to allow EPA to better characterize the potential chronic effects of the PMN substance. In order to address the aquatic toxicity effects of the PMN substance, the following studies should be conducted on the PMN substance: Acute algal (40 CFR 797.1050) (static/nominal conditions), acute daphnid (40 CFR 797.1300) (flow-through/measured conditions), and acute fish (40 CFR 797.1400) (flow through/measured conditions). The PMN submitter is not required to submit the above information at any specified time or production volume.
*CFR citation:* 40 CFR 721.9527.

**PMN Number P–91–1464**

*Chemical name:* (generic) Substituted diacrylate.
*CAS number:* Not available.

*Effective date of section 5(e) consent order:* July 8, 1992.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
*Toxicity concern:* Similar chemicals have been shown to cause cancer in test animals.
*Recommended testing:* A 2–year two-species rodent bioassay study to help characterize possible carcinogenicity of the substance. Toxicity data on representative members of the acrylate/methacrylate class of chemical substances being developed by certain acrylate and methacrylate manufacturers may also be useful in evaluating the risk posed by the PMN substance.
*CFR citation:* 40 CFR 721.370.

**PMN Numbers P–92–34, P–92–35, and P–92–36**

*Chemical name:* P–92–34—1*H*-Benzotriazole, 5-(pentyloxy)-; P–92–35—1*H*-benzotriazole, 5-(pentyloxy)-, sodium salt; P–92–36— 1*H*-benzotriazole, 5-(pentyloxy)-, potassium salt .
*CAS number:* P–92–34—133145–29–6; P–92–35 and P–92–36—not available.
*Effective date of section 5(e) consent order:* July 8, 1992.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the aquatic environment.
*Toxicity concern:* Similar benzotriazole substances have been shown to cause toxicity to aquatic organisms.
*Recommended testing:* An aerobic aquatic biodegradation test (40 CFR 796.3100), a daphnid chronic test (40 CFR 797.1330), and a fish early life stage test (40 CFR 797.1600) are required to help characterize aquatic toxicity. The PMN submitter has agreed not to exceed a combined aggregate production volume for all three substances of 9,500 kg without performing these tests.
*CFR citation:* 40 CFR 721.1750.

**PMN Numbers P–92–156, P–92–157, and P–92–159**

*Chemical name:* (generic) Triethanolamine salts of fatty acids.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* June 20, 1992.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that these substances are expected to be produced in substantial quantities and there may be substantial human exposures and environmental releases.
*Recommended testing:* EPA has determined that the results of an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), a 28–day repeated dose oral study in rats (OECD Guideline No. 407) including neurotox battery (NTIS PB 91–154617), and a developmental toxicity study by the oral route in one species (40 CFR 798.4900), would help characterize possible human health effects of the substances. In addition, a coupled units test (40 CFR 796.3300) and an aerobic aquatic biodegradation study (40 CFR 796.3100) would help characterize the environmental fate of the substances. The consent order contains two production limits. The PMN submitter has agreed not to exceed the first production limit without performing an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), a 28–day repeated dose oral study in rats (OECD Guideline No. 407), a coupled units test (40 CFR 796.3300), and an aerobic aquatic biodegradation study (40 CFR 796.3100). The PMN submitter has also agreed not to exceed the second higher production limit without performing a developmental toxicity study by the oral route in one species (40 CFR 798.4900).
*CFR citation:* 40 CFR 721.3629.

**PMN Number P–92–329**

*Chemical name:* (generic) Trisubstituted hydroquinone diester.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* July 31, 1992.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
*Toxicity concern:* Similar substances have been shown to cause acute and chronic toxicity to aquatic organisms at low levels of exposure. Specifically, based on data available on structurally similar compounds, the Agency predicts the following acute (LC50/EC50) toxicity values: 1.6 ppm for fish, 2.1 ppm for daphnia, and 1.5 ppm for algae. Chronic toxicity values (ChV) are estimated to be as follows: 320 ppb for fish, 350 ppb for daphnia, and 740 ppb for algae. Applying an assessment factor of 10 to the predicted fish chronic value, the concern concentration is set at 30 ppb. Rationale for using SNUR reporting triggers not matched in 5(e): The section 5(e) order restricted the sites at which manufacturing and processing could occur and allowed certain process and disposal technologies as described in the PMN. Manufacturing and processing under these conditions were not expected to result in release levels at or above 30 ppb. EPA would be concerned with levels that met or exceeded 30 ppb.
*Recommended testing:* EPA has determined that the results of the following aquatic toxicity studies would help characterize possible environmental effects posed by the substance: Fish acute toxicity (40 CFR 797.1400), daphnid acute toxicity study (40 CFR 797.1300), and green algal toxicity study (40 CFR 797.1050).
*CFR citation:* 40 CFR 721.4390.

**PMN Number P–92–341**

*Chemical name:* Ethane, 1,1,1 trifluoro-.
*CAS number:* 420–46–2.
*Effective date of section 5(e) consent order:* July 2, 1992.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposures.
*Recommended testing:* EPA has determined that the results of a cardiac sensitization study in dogs, a two species developmental inhalation toxicity study (40 CFR 798.4350), and a 90–day inhalation toxicity study in rats (40 CFR 798.2450) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed a certain production limit without performing these studies.
*CFR citation:* 40 CFR 721.3254.

**PMN Numbers P–92–343 and P–92–344**

*Chemical name:* (generic) 1,3,5-Triazin-2-amine, 4-dimethylamino-6-substituted-.
*CAS numbers:* Not available.
*Effective date of section 5(e) consent order:* June 3, 1992.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health and the environment. Although the environmental concentration of concern for aquatic toxicity was determined to be 30 ppb, human health concerns from drinking water exposure led the Agency to limit water releases to concentrations no greater than 1 ppb.
*Toxicity concern:* Similar substances have been shown to cause carcinogenicity, mutagenicity, neurotoxicity, eye irritation, and

maternal, developmental, reproductive, and systemic toxicities in test animals. Similar substances have also been shown to cause toxic effects in aquatic organisms.

RECOMMENDED TESTING

| Information and PMN substance on which it is to be developed | Effects | Guideline |
|---|---|---|
| Aquatic toxicity tests | | |
| Algae (P–92–343 and P–92–344) | Aquatic toxicity | 40 CFR 797.1050 |
| Daphnia (P–92–344) | Aquatic toxicity | 40 CFR 797.1300 |
| Fish (P–92–344) | Aquatic toxicity | 40 CFR 797.1400 |
| Human-health-related tests | | |
| Two-generation reproductive study (rats/rabbits) (P–92–343) | Reproductive, developmental, and maternal effects.. | 40 CFR 798.4700 |
| 1–year chronic dog study (with emphasis on the heart) (P–92–343). | Systemic | 40 CFR 798.3260 |
| 2-year, two-species rodent bioassay (P–92–343) | Cancer | 40 CFR 798.3300 |
| Biological fate | | |
| Sorption to soils and sediments test (P–92–343 and P–92–344) | Migration to drinking water | 40 CFR 796.2750 |
| Activated sludge adsorption isotherm test (P–92–343 and P–92–344). | Percent removal from treatment | 40 CFR 795.170 |

The consent order contains two combined aggregate production volume limits for these PMN substances. The PMN submitter has agreed not to exceed the first production volume limit without performing the fish and daphnid tests on the P–92–344 substance and the algal test on both PMN substances. The PMN submitter has also agreed not to exceed the second higher production volume limit without performing the two-generation reproductive study on the P–92–343 substance.
*CFR citation:* 40 CFR 721.9730.

**PMN Number P–92–491**

*Chemical name:* (generic) Polyaminopolyacid.
*CAS number:* Not available.
*Basis for action:* The PMN substance will be used as a material used to drill oil and gas wells. Based on the analogy of the PMN substance to aliphatic amines, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 500 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters at concentrations above 500 ppb. EPA has determined that other uses of the substance may result in releases to surface water at concentrations above 500 ppb. Based on this information the PMN substance meets the concern criteria at section 721.170 (b)(4)(ii).
*Recommended testing:* EPA has determined that an acute algal assay (40 CFR 797.1050) will characterize the environmental effects of the PMN substance.
*CFR citation:* 40 CFR 721.6470.

**PMN Number P–92–509**

*Chemical name:* (generic) Bisphenol derivative.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* November 5, 1992.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
*Toxicity concern:* Similar chemicals have been shown to cause systemic effects (depression in body weight gain and blood effects) in test animals.
*Recommended testing:* Data from a 90–day subchronic study (as described in 40 CFR 798.2650) with special attention given to hematology would help characterize potential systemic toxicity of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing this test.
*CFR citation:* 40 CFR 721.1820.

**PMN Number P–92–595**

*Chemical name:* Ethane, 1,2,2-trichloro-difluoro-.
*CAS number:* 354–21–2.
*Basis for action:* The PMN substance will be used as a chemical intermediate. Based on analogous substances, the PMN substance may cause oncogenicity, developmental toxicity, reproductive toxicity, cardiac sensitization, sedation, and liver and kidney effects. EPA determined that use of the substance as an intermediate as described in the PMN did not present an unreasonable risk because worker exposure would be low. EPA has determined that other uses of the substance may result in greater exposures. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(2), and (b)(3)(ii)
*Recommended testing:* EPA has determined that a 2–year two-species bioassay (40 CFR 798.3300), a 90–day two-species developmental toxicity study (40 CFR 798.4900), a 90–day subchronic toxicity test via the inhalation route (40 CFR 798.2450), and a cardiac sensitization study will help to characterize the health effects of the PMN substance.
*CFR citation:* 40 CFR 721.3248.

**PMN Number P–92–688**

*Chemical name:* (generic) Quaternary ammonium salt of fluorinated alkylaryl amide.
*CAS number:* Not available.
*Basis for action:* The PMN substance will be used as a component of copier toner. Based on test data on the PMN substance, the substance may cause toxicity to aquatic organisms at concentrations as low as 20 ppb as well as sensitization, eye irritation, and lung toxicity to exposed individuals. EPA determined that use of the substance as a component of imported copier toner did not present an unreasonable risk because the substance would not be released to surface waters nor would workers be exposed by inhalation. EPA has determined that other uses or domestic manufacture of the substance may result in releases to surface waters or inhalation exposures. Based on this

information the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(3)(i).
*Recommended testing:* EPA has determined that an acute algal assay (40 CFR 797.1050) will characterize the environmental effects of the PMN substance and that a 90–day subchronic inhalation study (40 CFR 798.3260) will characterize the potential lung effects.
*CFR citation:* 40 CFR 721.9075.

**PMN Number P–92–692**

*Chemical name:* (generic) Oxo-substituted aminoalkanoic acid derivative.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* August 29, 1992.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
*Toxicity concern:* Similar chemicals have been shown to cause neurotoxicity, liver toxicity, blood toxicity, and cancer in test animals, and toxicity to aquatic organisms.
*Recommended testing:* The following additional information would be required to evaluate the following effects which may be caused by the PMN substance:

| Information | Effects | Guidelines |
|---|---|---|
| 2-year rodent bioassay. | Cancer .... | 40 CFR 798.3300 |
| Algal acute study. | Aquatic toxicity. | 40 CFR 797.1050 (static/nominal conditions) |
| Daphnid acute study. | Aquatic toxicity. | 40 CFR 797.1300 (flow-through/measured conditions) |
| Fish acute study. | Aquatic toxicity. | 40 CFR 797.1400 (flow-through/measured conditions) |

The consent order does not require submission of the above information at any specified time or production volume. However, the order's restrictions on manufacture, import, processing, distribution in commerce, and use of the PMN substance will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.
*CFR citation:* 40 CFR 721.430.

## IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for 21 of the substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The bases for such findings are outlined in Unit III. of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters. The SNUR provisions for these substances designated herein are consistent with the provisions of the section 5(e) orders.

In the case for seven of the substances for which the proposed uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at § 721.170 were met.

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review to ensure the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements. Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

## V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in § § 721.160(c)(3) and 721.170(d)(4). In accordance with § 721.160(c)(3)(ii), this rule will be effective August 9, 1993, unless EPA receives a written notice by July 8, 1993 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30–day comment period.

This action establishes SNURs for 28 chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

## VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order requires or recommends certain testing, Unit III. of this preamble lists those recommended tests.

However, EPA has established production limits in the section 5(e) orders for 15 of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the section 5(e) orders are included in Unit III. of this preamble. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUR notice submitters contact EPA early enough so that they will be able to conduct the appropriate tests before exceeding the production limit.

SNUR notice submitters should be aware that EPA will be better able to

evaluate SNUR notices which provide detailed information on:

(1) Human exposure and environmental release that may result from the significant new use of the chemical substances.

(2) Potential benefits of the substances.

(3) Information on risks posed by the substances compared to risks posed by potential substitutes.

## VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in § 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request that EPA determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

## VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. Section 5(e) orders have been issued in 19 cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement (NOC) and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 22 of the 28 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing.

As discussed at 55 FR 17376 (April 24, 1990), EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through these SNURs will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA has promulgated provisions to allow persons to comply with these SNURs before the effective date. If a person were to meet the conditions of advance compliance in § 721.45(h), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

## IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPPTS–50608).

## X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50608). The record includes information considered by EPA in developing this rule.

A public version of the record without any confidential business information is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located at Rm. NE–G004, 401 M St., SW., Washington, DC. Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file.

Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any person submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

## XI. Regulatory Assessment Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major"

and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,552 to $12,166, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

*C. Paperwork Reduction Act.*

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, DC 20503.

**List of Subjects in 40 CFR Part 721**

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 18, 1993.

**Susan H. Wayland,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR part 721 is amended as follows:

## PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.370 to subpart E to read as follows:

**§ 721.370 Substituted diacrylate.**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted diacrylate (PMN No. P–91–1464) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(iii)(D), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(D), (h)(2)(iii)(A), (h)(2)(iii)(B), and (h)(2)(iii)(D). In addition to the statements specified, the label and MSDS shall contain the following statement: Use respiratory protection when there is a reasonable likelihood of exposure in the work area from dust, mist, smoke, fumes, vapor, or gas.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

3. By adding new § 721.430 to subpart E to read as follows:

**§ 721.430 Oxo-substituted aminoalkanoic acid derivative.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as oxo-substituted amino alkanoic acid derivative (PMN No. P–92–692) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a) through (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (a)(2), and (a)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

4. By adding new § 721.445 to subpart E to read as follows:

**§ 721.445 Substituted ethyl alkenamide.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted ethyl alkenamide (PMN No. P–86–1315) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in

§ 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(ii), (g)(1)(vii), (g)(2)(i), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Use other than polymerizing all residual materials from the manufacture, processing, and equipment rinsing of the PMN substance so that no monomers of the PMN substance are released to the environment.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

5. By adding new § 721.1750 to subpart E to read as follows:

**§ 721.1750 1*H*-Benzotriazole, 5-(pentyloxy)- and 1*H*-benzotriazole, 5-(pentyloxy)-, sodium and potassium salts.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances 1*H*-benzotriazole, 5-(pentyloxy)- (PMN P–92–34, CAS no. 133145–29–6), 1*H*-benzotriazole, 5-(pentyloxy)-, sodium salt (PMN P–92–35), and 1*H*-benzotriazole, 5-(pentyloxy)- , potassium salt (PMN P–92–36) are subject to reporting for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of these substances is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for these substances, the employer becomes aware that these substances may present a risk of injury to the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If these substances are not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substances are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive, or who have received these substances from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial consumer activities.* Requirements as specified in § 721.80(p) (limit set at 9,500 kg).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.The following recordkeeping requirements are applicable to manufacturers, importers, and processors of these substances, as specified in § 721.125(a), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

6. By adding new § 721.1820 to subpart E to read as follows:

**§ 721.1820 Bisphenol derivative.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as bisphenol derivative (PMN No. P–92–509) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1) (systemic effects—depression in body weight gain and blood effects), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv) (when in dust or mist form), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d), and (f) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

7. By adding new § 721.2520 to subpart E to read as follows:

**§ 721.2520 Alkylated diphenyls.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkylated diphenyls (PMN Nos. P–90–237, P–90–248, and P–90–249) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 1 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

8. By adding new § 721.3248 to subpart E to read as follows:

**§ 721.3248 Ethane, 1,2,2-trichlorodifluoro-.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as ethane, 1,2,2-trichlorodifluoro- (CAS No. 354–21–2, PMN No. P–92–595) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in

§ 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

9. By adding new § 721.3254 to subpart E to read as follows:

**§ 721.3254 Ethane, 1,1,1 trifluoro-.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as ethane, 1,1,1 trifluoro- (CAS No. 420–46–2, PMN No. P–92–341) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive, or who have received these substances from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

10. By adding new § 721.3629 to subpart E to read as follows:

**§ 721.3629 Triethanolamine salts of fatty acids.**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as triethanolamine salts of fatty acids (PMN Nos. P–92–156, P–92–157, and P–92–159) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of these substances is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for these substances, the employer becomes aware that these substances may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If these substances are not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substances are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive, or who have received these substances from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

11. By adding new § 721.4128 to subpart E to read as follows:

**§ 721.4128 Dimethyl-3-substituted heteromonocycle.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dimethyl-3-substituted heteromonocycle (PMN No. P–91–1322) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(6)(ii), (a)(6)(iii), (a)(6)(v), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (d) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

12. By adding new § 721.4133 to subpart E to read as follows:

**§ 721.4133 Dimethyl-3-substituted heteromonocyclic amine.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dimethyl-3-substituted heteromonocycle (PMN No. P–91–1323)

is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(6)(ii), (a)(6)(iii), (a)(6)(v), (b) (concentration set at 1.0 percent).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (d) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

13. By adding new § 721.4390 to subpart E to read as follows:

**§ 721.4390 Trisubstituted hydroquinone diester.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as trisubstituted hydroquinone diester (PMN No. P–92–329) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) (where N = 30 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (j), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

14. By adding new § 721.4568 to subpart E to read as follows:

**§ 721.4568 Methylpolychloro aliphatic ketone.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as methylpolychloro aliphatic ketone (PMN No. P–91–1321) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(6)(ii), (a)(6)(iii), (a)(6)(v), (b) (concentration set at 0.1 percent), and (c). The employer is able to demonstrate that the gloves selected for handling P–91–1321 provide an impervious barrier to prevent dermal exposure during normal and expected duration and conditions of exposure within the work area by testing the material used to make the gloves and the construction of the gloves to establish that they will be impervious for the expected duration and conditions of exposure. The testing must subject the gloves to the expected conditions of exposure, including the likely combinations of chemical substances to which the gloves may be exposed in the work area. There must be no permeation of P–91–1321 greater than 0.017 mg/cm$^2$/min after 8 h of testing in accordance with the most recent versions of the American Society for Testing and Materials (ASTM) F739 "Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids or Gases" and ASTM F1194 "Guide for Documenting the Results of Chemical Permeation Testing of Protective Clothing Materials." The employer must submit all test data to the Agency and must receive written Agency approval of the test results for each type of glove tested prior to use of such gloves. Neoprene gloves with a minimum thickness of 1.50 mm have already been tested and found to satisfy the terms of this rule. Nitrile gloves with a minimum thickness of 0.61 mm also satisfy the terms of this rule, as long as the duration of exposure to P–91–1321 is less than 2 h per work shift. If the duration of exposure is longer than 2 h, nitrile gloves shall be discarded and replaced every 2 h. Unless otherwise indicated, gloves contaminated with P–91–1321 shall be disposed of after every work shift.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(v), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (d) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

15. By adding new § 721.6186 to subpart E to read as follows:

**§ 721.6186 Polyamine dithiocarbamate.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polyamine dithiocarbamate (PMN No. P–91–1328) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 50 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

16. By adding new § 721.6193 to subpart E to read as follows:

**§ 721.6193 Polyalkylene polyamine.**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as polyalkylene polyamine (PMN No. P–89–963) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4) (users minimize releases to water), and (g)(5). In addition, a significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into the MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to the MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided the MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

17. By adding new § 721.6470 to subpart E to read as follows:

**§ 721.6470 Polyaminopolyacid.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polyaminopolyacid (PMN No. P–92–491) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90.(a)(4), (b)(4), and (c)(4) (concentration set at 500 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

18. By adding new § 721.7370 to subpart E to read as follows:

**§ 721.7370 Acrylates of aliphatic polyol.**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as acrylates of aliphatic polyol (PMN No. P–91–1077) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), (h)(2)(i)(D) and (h)(2)(iii)(A).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

19. By adding new § 721.8965 to subpart E to read as follows:

**§ 721.8965 1*H*-Pyrole-2, 5-dione, 1-(2,4,6-tribromophenyl)-.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1*H*-pyrole-2, 5-dione, 1-(2,4,6-tribromophenyl)-, (PMN No. P–90–159) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(2)(iii) for employees likely to have ocular exposure, (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(i), (b) (concentration set at 0.1 percent by weight or volume), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) concentration set at 0.1 percent by weight or volume, (f), (g)(1)(ii), (g)(1)(iii), (g)(1)(iv), (g)(1)(v), (g)(1)(vii), (g)(1)(ix) (corrosion to the eyes), (g)(2)(iii), (g)(2)(iv)( use chemical goggles), (g)(3)(ii), (g)(4)(i), (g)(4)(iii) (except the dewatering step during polymerization of acrylonitrile/butadiene/styrene), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (a), (c), (f), (k) (any use in a system other than as flame retardant in styrenic, polyolefin elastomer, and thermoset systems), (l), and (q).

(iv) *Disposal.* Requirements as specified in § 721.85(b)(1) (by industrial incinerator), (b)(2), (c)(1), and (c)(2). Dispose of the PMN substance by industrial incinerator or landfill.

(v) *Release to water.* Requirements as specified in § 721.90(b)(1) and (c)(1). Section 721.90 (c)(1) does not apply to releases of the PMN substance during the dewatering step of the polymerization reactions from use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d), and (f) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

20. By adding new § 721.9075 to subpart E to read as follows:

**§ 721.9075 Quaternary ammonium salt of fluorinated alkylaryl amide.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as quaternary ammonium salt of fluorinated alkylaryl amide (PMN No. P–92–688) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

21. By adding new § 721.9527 to subpart E to read as follows:

**§ 721.9527 Bis(1,2,2,6,6-pentamethyl-4-piperidin-4-ol) ester of cycloaliphatic spiroketal.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as bis(1,2,2,6,6-pentamethyl-4-piperidin-4-ol) ester of cycloaliphatic spiroketal (PMN No. P–91–1361) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* For manufacturing workers only, requirements as specified in § 721.63(a)(4), (a)(5)(i), (a)(6)(i), and (b) (concentration set at 1.0 percent). For processing/use workers only, requirements as specified in § 721.63(a)(4), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(vi), (g)(1)(viii), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(3)(ii), (g)(4)(iii), and (g)(5). The following additional statements shall appear on each label and MSDS required by this paragraph: This substance may cause systemic effects, eye irritation.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d), (f) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

22. By adding new § 721.9730 to subpart E to read as follows:

**§ 721.9730 1,3,5-Triazin-2-amine, 4-dimethylamino-6-substituted-.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances generically identified as 1,3,5-triazin-2-amine, 4-dimethylamino-6-substituted- (PMN Nos. P–92–343 and P–92–344) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Disposal.* Requirements as specified in § 721.85 as thus amended: It is a significant new use to dispose of the process or use stream associated with any use of the substance or with any manner or method of manufacturing associated with any use of the substance by landfill.

(v) *Release to water.* Requirements as specified in § 721.90(a)(4) (where N = 1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

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federal register

Tuesday
June 8, 1993

Part VIII

# Department of Transportation

## Federal Aviation Administration

14 CFR Part 91

Special Visual Flight Rules (SVFR) Operations; Notice of Proposed Rulemaking

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 91**

**[Docket No. 27318; Notice No. 93–6]**

**RIN 2120–AE85**

## Special Visual Flight Rules (SVFR) Operations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to amend certain regulations governing special visual flight rules (SVFR) operations. By omission of certain words and phrases, the Airspace Reclassification final rule inadvertently altered the applicability and scope of the Part 91 SVFR provisions. Further, some airspace revisions in the Terminal Airspace Reconfiguration final rule resulted in an unintentional reduction in the amount of airspace within which SVFR operations could be conducted at some airports. This action would restore the applicability and scope of the SVFR provisions and reestablish airspace for SVFR operations essentially equivalent to that which existed prior to those amendments.

**DATES:** Comments must be submitted on or before July 8, 1993.

**ADDRESSES:** Comments on this NPRM should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 27318, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be market Docket No. 27318. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Melodie M. DeMarr or William M. Mosley, Air Traffic Rules Branch, ATP–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27318." The postcard will be date stamped and mailed to the commenter.

### Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Background

The Airspace Reclassification Final Rule (56 FR 65638; December 17, 1991), which is effective September 16, 1993, replaces all control zones with either a Class B, C, D, or E segment of controlled airspace that extends upward from the surface. However, that final rule inadvertently amended Section 91.157 and removed the provision whereby a pilot could request and receive an air traffic control (ATC) clearance to conduct an SVFR flight through such an airspace segment. That was not the intention of the FAA. On the contrary, in response to comments to the proposal that preceded that final rule, the FAA included in the preamble to the final rule a discussion (56 FR 65648) that it intended to continue to permit SVFR operations for through flights as well as flights for arrival or departure at airports within Class B, C, D, or E surface areas.

Additionally, the December 17, 1991, final rule will replace, effective September 16, 1993, the SVFR prohibition provisions currently contained in § 93.113 with Section 3 of Appendix D to part 91. Currently, the prohibition against SVFR operations contained in § 93.113 only applies to fixed-wing aircraft at the airports listed in that section. However, in establishing Section 3 of Appendix D as the replacement for § 93.113, the FAA inadvertently omitted the word "fixed-wing." That omission, in effect, results in the inclusion of helicopters in the SVFR prohibitions. This action would restore the applicability of Section 3 of Appendix D to part 91 to only fixed-wing aircraft.

Further, in the December 17, 1991, final rule, the FAA adopted a new § 91.155 which will replace the existing § 91.155 effective September 16, 1993. That action was intended merely to facilitate the reclassification of control zones to Class B, C, D, or E controlled airspace extending upward from the surface. However, the phrase "beneath the ceiling" in paragraph (c) of that section was unintentionally omitted. In effect, the omission would prohibit operations conducted under visual flight rules (VFR) anywhere in such airspace, above as well as below a cloud ceiling, regardless of the meteorological conditions above the cloud layer(s), when the reported ceiling is less than 1,000 feet. It was the FAA's intent to prohibit VFR flight only beneath the ceiling when such ceiling is reported as less than 1,000 feet. This action would restore the VFR flight prohibition that existed prior to the December 17, 1991 final rule.

Transition to the new airspace classifications began on October 15, 1992, when portions of the Terminal Airspace Reconfiguration Final Rule (57 FR 38962; August 27, 1992) became effective. That final rule, in pertinent part, revised the vertical limits of control zones at airports with an operating control tower. However, only the lateral limits were changed for control zones without an operating control tower.

Control zones for airports for which an airport radar service area (ARSA) or terminal control (TCA) is designated had the control zone vertical limits reduced to the specified vertical limits of the ARSA or TCA. In all cases, the revised vertical limits are lower than they were prior to October 15, 1992. At other airports in control zones with an operating control tower, however, the

control zone vertical limits were generally reduced to 2,500 feet above ground level (AGL). On September 16, 1993, those revised vertical limits represent the altitudes below which two-way radio communications between ATC and aircraft operating within the specific airspace segment will be required. However, that action has the unforeseen effect of reducing the amount of airspace available for SVFR operations. Such impact was not the intent of the FAA since, prior to October 15, 1992, SVFR operations could be authorized within a control zone between the surface and 14,500 feet mean sea level (MSL).

In most cases, the reduced vertical limits of control zones will only have a minor technical impact; different types of airspace designations will permit different levels of SVFR use. For example, TCA's generally have a vertical limit of 8,000 to 12,500 feet MSL while most ARSA's extend upward to 4,000 feet AGL, and the majority of control zones with operating control towers are approximately 2,500 feet AGL. SVFR operations are permitted only to the vertical limit of these differing types of controlled airspace. The principal impact exists only at some airports in control zones with an operating control tower. This action would mitigate that impact.

However, when the Airspace Reclassification Final Rule becomes effective on September 16, 1993, control zones will cease to exist as a type of airspace. They will be replaced by Class B, Class C, Class D, and Class E surface areas, as appropriate. At airports without an operating control tower, the Class E airspace extending upward from the surface would technically terminate at the base of the overlying transition area (700 or 1200 feet AGL). Effectively, the airspace within which SVFR operations could be authorized would be significantly reduced, resulting in a severe limitation on SVFR arrival and departure operations at those airports. This was not the intent of the FAA in promulgating the Airspace Reclassification Final Rule. This action would reestablish airspace for SVFR operations essentially equivalent to that which existed prior to the amendment.

**The Proposal**

This proposal would accomplish four actions. It would make three editorial changes to ensure that the SVFR provisions are, as of September 16, 1993, continued or established as appropriate for: (1) Prohibiting flight under VFR within Class B, Class C, Class D, and Class E surface areas beneath the ceiling when the ceiling is less than 1,000 feet; (2) prohibiting only fixed-wing SVFR operations at certain specified airports; and (3) allowing SVFR operations through the airspace for Class B, Class C, Class D, and Class E surface areas.

The fourth action would amend § 91.157, Special VFR weather minimums, to restore the SVFR provisions virtually to the way they were prior to the Airspace Reclassification and the Terminal Airspace Reconfiguration Final Rules. Specifically, prior to October 15, 1992, most control zones extended from the surface upward to, but not including, 14,500 feet MSL, and SVFR operations could be authorized in all or part of such airspace. To reestablish consistency in the maximum altitudes applicable to SVFR operations regardless of airspace designation, the FAA is proposing to establish 10,000 feet MSL as the altitude below which air traffic control (ATC) could authorize an SVFR operation in controlled airspace designated to the surface for an airport. That altitude is consistent with the level at which the visibility requirement for flight under VFR increases from 3 miles to 5 miles.

**Procedural Changes**

To effect this proposal, a number of phraseology and procedural changes would be required. Procedural changes would be of an editorial nature and would occur without impact on aviation users. However, noticeable changes in phraseology would occur. Examples of phraseology for an ATC clearance authorizing a pilot to conduct SVFR operations might be:

"Cleared to the (name) Airport, Maintain Special V–F–R."

"Cleared to the (name) Airport, Maintain Special V–F–R at or Below (altitude)."

"Maintain Special V–F–R."

"Maintain Special V–F–R at or Below (altitude)."

The phrase, "while in the control zone," currently used in an SVFR ATC clearance, would be absent from the phraseology. This is intentional since effective September 16, 1993, control zones cease to exist. Further, to avoid the use of cumbersome phraseology to describe the lateral limits of an SVFR ATC clearance, the FAA would expect that pilots would refer to aeronautical charts to determine, as they do today, the airspace boundaries within which SVFR operations may be conducted.

**Regulatory Evaluation**

The proposed amendments to the regulations are to correct errors associated with the designation of controlled airspace and inadvertent omissions in operating rules dealing with SVFR operations within that airspace. ATC services associated with SVFR are currently provided by the FAA in that airspace. This action would ensure that those services would continue to be provided. The rules that changed the airspace descriptions and are a subject of this rulemaking are described in part 71. However, this action would restore ATC services in the affected airspace by amending part 91. The change to part 91 is necessary because of a terminology change in airspace descriptions that facilitates the reclassification of the U.S. airspace. Except for minor phraseology changes in ATC clearances, there would be no change to ATC services. Also, restoring the airspace for SVFR operations to 10,000 feet instead of 14,500 feet MSL would not impact ATC system users since, as a practical matter, SVFR operations have been rarely requested or authorized above 10,000 feet MSL. For these reasons, operators are not expected to incur any costs from compliance with the proposed rule. Additionally, this proposal would remove some of the restrictions put in place October 15, 1992, by allowing more operations in a designated airspace. This proposal is considered relieving in nature. Therefore, a regulatory evaluation has not been prepared because the proposed rule is essentially procedural in nature with no costs to aircraft operators.

**Conclusion**

For the reasons set forth above, the FAA has determined that this action is not a "major proposed rule" under Executive Order 12291. The proposed rule is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). However, because the costs of the proposed rule are virtually nonexistent, it is also certified that this proposed rule would not have a significant economic impact, either positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Federalism Implications**

The regulations herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal will not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 14 CFR Part 91**

Aircraft, Airmen, Aviation safety.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 91 of the Federal Aviation Regulations (14 CFR part 91) as follows:

The following amendments are to part 91 currently in effect:

## PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

**Authority:** 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 91.157 is amended by revising paragraphs (a), (b), (c), and (e) introductory text to read as follows:

**§ 91.157 Special VFR weather minimums.**

(a) Except as provided in § 93.113, when a person has received an appropriate ATC clearance to conduct operations under special VFR, the requirements and weather minimums of this section instead of those contained in § 91.155 apply to the operation under special VFR of an aircraft by that person in a control zone or in that airspace contained within the upward extension of the lateral boundaries of a control zone to, but not including, 10,000 feet MSL.

(b) No person may operate an aircraft under VFR in a control zone or the airspace contained within the control zone's upward extension to, but not including, 10,000 feet MSL except clear of clouds.

(c) No person may operate an aircraft (other than a helicopter) under VFR in a control zone or the airspace contained within the control zone's upward extension to, but not including, 10,000 feet MSL unless the flight visibility is at least 1 statute mile.

(d) * * *

(e) No person may operate an aircraft (other than a helicopter) in a control zone or the airspace contained within the control zone's upward extension to, but not including, 10,000 feet MSL under the special weather minimums of this section, between sunset and sunrise (or in Alaska, when the sun is more than 6° below the horizon) unless:

(1) * * *

(2) * * *

The following amendments are to part 91 effective September 16, 1993:

## PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

4. Section 91.155 is amended by revising paragraph (c) to read as follows:

**§ 91.155 Basic VFR weather minimums.**

* * * * *

(c) Except as provided in § 91.157, no person may operate an aircraft under VFR within the lateral boundaries of controlled airspace designated to the surface for an airport, beneath the ceiling when the ceiling is less than 1,000 feet.

* * * * *

5. Section 91.157 is revised to read as follows:

**§ 91.157 Special VFR weather minimums.**

(a) Except as provided in appendix D, section 3, of this part, special VFR operations may be conducted under the weather minimums and requirements of this section, instead of those contained in § 91.155, below 10,000 feet MSL within the airspace contained by the upward extension of the lateral boundaries of the controlled airspace designated to the surface for an airport.

(b) Special VFR operations may only be conducted—

(1) With an ATC clearance;

(2) Clear of clouds;

(3) Except for helicopters, when flight visibility is at least 1 statute mile; and

(4) Except for helicopters, between sunrise and sunset (or in Alaska, when the sun is 6° or more above the horizon) unless—

(i) The person being granted the ATC clearance meets the applicable requirements for instrument flight under part 61 of this chapter; and

(ii) The aircraft is equipped as required in § 91.205(d).

(c) No person may take off or land an aircraft (other than a helicopter) under special VFR—

(1) Unless ground visibility is at least 1 statute mile; or

(2) If ground visibility is not reported, unless flight visibility is at least 1 statute mile.

6. The title of Section 3 to Appendix D of part 91 is revised to read as follows:

**Appendix D—Airports/Locations: Special Operating Restrictions**

* * * * *

Section 3. Locations at which fixed-wing Special VFR operations are prohibited.

* * * * *

Issued in Washington, DC on June 1, 1993.

**L. Lane Speck,**

*Director, Air Traffic Rules and Procedures Service.*

[FR Doc. 93–13438 Filed 6–7–93; 8:45 am]

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federal register

Tuesday
June 8, 1993

Part IX

# Department of Transportation

## Federal Aviation Administration

14 CFR Part 119 et al.
Passenger Carrying and Cargo Air Operations for Compensation or Hire; Proposed Rule

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 119, 121, 125, 127, and 135**

**[Docket No. 25713; Notice No. 93–7]**

**RIN 2120–AC08**

## Passenger Carrying and Cargo Air Operations for Compensation or Hire

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** This supplemental notice proposes a definition for "scheduled operation" that differs from the definition proposed in Notice of Proposed Rulemaking No. 88–16, issued October 12, 1988. After review of the comments received opposing that definition to the extent that it was based on a "frequency and consistency of flight operations" standard, the FAA has determined that the proposed definition might cause an unnecessary burden on and detriment to certain segments of the aviation industry. The definition of "scheduled operation" proposed here is based on the classifications authorized by the Department of Transportation for air carrier operations and on a revised frequency standard for commercial operators as classified by the FAA.

**DATES:** Comments must be received on or before July 23, 1993.

**ADDRESSES:** Comments on this supplemental notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, (AGC–10), Docket No. 25713, 800 Independence Avenue SW., Washington, DC 20591. Comments must be marked "Docket No. 25713." Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Gary Davis, Project Development Branch (AFS–240), Air Transportation Division, Flight Standards Service, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3747.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposal in this supplemental notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25713." The postcard will be date stamped and mailed to the commenter.

### Background

In December 1978, in anticipation of the impeding sunset of the Civil Aeronautics Board (CAB), the FAA adopted Special Federal Aviation Regulation (SFAR) 38 on December 14, 1978. SFAR 38 simplified the procedures for issuance of FAA certificates to air carriers and commercial operators, and largely replaced the certification requirements in the Federal Aviation Regulations (FAR) for U.S. air carriers that, until then, had been premised on CAB economic authority. Anticipating further Congressional action regarding economic deregulation, the rules in the FAR were not updated at that time.

In 1985, the FAA issued SFAR 38–2, the main purposes of which were to extend SFAR 38, to state which FAR are applicable to a particular kind of operation, and to require all rotorcraft operations involving air transportation in common carriage to be governed by part 135. The FAA intended SFAR 38–2 to be a temporary measure of short duration that would allow the FAA time to review and update parts 121 and 135 as necessitated by the economic deregulation of the airline industry.

In Notice of Proposed Rulemaking (NPRM) No. 88–16 [53 FR 39852], October 12, 1988, the FAA proposed to establish new part 119 of the FAR. The major purposes of new part 119 are to make SFAR 38–2 permanent by incorporating certain of its provisions into the FAR; and to consolidate into one part the certification and operations specifications requirements for persons who operate under part 121 or part 135. In addition, in order to clarify which rules apply to specific kinds of operations and to correct a longstanding disparity in the FAA treatment of operationally similar service, NPRM 88–16 proposed to change the definition of "scheduled operation" contained in SFAR 38–2. SFAR 38–2 defined "scheduled operation" as "operations that are conducted in accordance with a published schedule for passenger operations which includes dates or time (or both) that is openly advertised or otherwise made readily available to the general public." The NPRM proposed to replace that definition with one that included operations being conducted under a scheduled certificate issued under section 401(d)(1) of the Federal Aviation Act by the Department of Transportation (DOT) or which met a "frequency and consistency of flight operations" standard of "5 or more one-way flights per calendar week over any consecutive 4-week calendar period. . . ."[1]

### Comments

Of the comments received to the NPRM that addressed the proposed definition, most objected to the part of the definition that set a frequency of operation standard. The Regional Airline Association and several charter operators objected to the definition because of the one-way criterion, noting that, historically, the definition of a scheduled operation has been based on round-trip operations, such as the definition of "commuter air carrier" contained in 14 CFR part 298.

Sun Country Airlines, Inc., commented that the proposed change would require it to establish and certificate a flight dispatch system at substantially higher costs. As these costs would then be passed on to the public, Sun Country stated that the proposal

[1] Specifically, the definition proposed in the NPRM reads as follows: "'Scheduled operation' means any common carriage passenger-carrying operation conducted under part 121 or part 135 of this chapter where—(1) The certificate holder operates or intends to operate under the authority of section 401(d)(1) (including section 401(d)(1) authority obtained under section 401(d)(8) of the FA Act) except for flights conducted by the certificate holder under part 207 (including those operated under part 380) of this title; or (2) For operations other than those included in paragraph (1) of this definition, the certificate holder operates 5 or more one-way flights per calendar week over any consecutive 4-calendar week period which includes the same two points at which any passenger may either enplane or deplane."

would eliminate low-cost charter transportation to the public and small operators. Similar comments were received from TPI International Airways, Inc., Ryan International Airlines, Inc., Empire Airlines, Inc., Mid-Pacific Air Corporation, Executive Jet Management, Inc., Mayo Aviation, Airline International, Inc., and the National Air Carrier Association. Sun Country asked the FAA to exclude from the definition of "scheduled operation" flights filed and sold as public charters under DOT rules governing such flights (14 CFR part 380).

Ports of Call pointed out that seasonal fluctuation in the demand for charter operations may indeed throw it into the category of "scheduled" operations, although in the great majority of cases, it conducts fewer than 5 flights to each of its markets. World Airways, Inc., stated that the proposed definition has not been justified for reasons of safety, noting that in adopting SFAR 38–2 the FAA commented at some length on the reasons for the regulatory distinction between scheduled and nonscheduled operations. World suggested a frequency standard of at least 10 one-way flights per week during a 16-consecutive-week period. The New England Helicopter Pilots Association opposed the proposed definition because it would capture many small and single pilot on-demand part 135 helicopter operators. Similarly, Kent Air argued that the proposed change would jeopardize its survival as a single-person company and mean the deletion of air transportation service in areas that are not served by commuters or air carriers.

Rich International Airways, Inc., commented that a redefinition of "scheduled operation" may force it to surrender its flag operations specifications; if so, it would be impossible for operators such as Rich to offer subservice to scheduled carriers. American Trans Air estimates that approximately one-third of its operations would have to be reclassified as "scheduled operations" under the proposed definition, and that many stations would have to be added to its operations specifications. This in turn would mean doubling the number of required amendments to its operations specifications, and costs would increase significantly. As this would present a considerable economic burden for U.S. carriers, the change in definition would give foreign carriers a definite economic advantage. American Trans Air also stated that scheduled carriers operating under DOT rules for charters (14 CFR part 207) may add charter flights without amendments to their operations specifications. Thus, this commenter stated that the change in definition would cause it to be at a competitive disadvantage with both foreign air carriers and scheduled carriers. Trans Continental Airlines, Inc., and the Air Transport Association supported these comments.

The Air Line Pilots Association stated, however, that it has no problem with the definition of "scheduled operation" as proposed in NPRM 88–16. American Airlines, Inc., also commented that there is no basis for modifying the definition. Instead, American urges the FAA to accelerate efforts to eliminate all operational distinctions between "scheduled" and "charter" operations. The Transport Workers Union of America also stated that it is opposed to any system of multiple safety standards wherein air carriers are regulated based on the type of operation conducted; that "users of charter flights desire and deserve the same consideration as those who use scheduled flights." Similarly, Midway Airlines, Inc., commented that nonscheduled operators whose service is the same as scheduled operators should be subject to the same minimum standards of safety, and that there is no economic or safety reason to exclude nonscheduled operations from the domestic or flag rules.

On November 30, 1989, representatives of American Trans Air restated the carrier's position in a meeting with representatives of the Office of the Secretary of Transportation and the FAA. Comments made during that meeting emphasized the same points enumerated above; a copy of the record of that meeting has been placed in the docket.

On April 17, 1990, the comment period for Notice No. 88–16 was reopened to receive additional comments on the definition of "scheduled operation." The comment period closed May 17, 1990. Additional comments from charter operators opposed the proposed definition for the same reasons iterated above.

**The FAA's Response and Proposed Change in Definition**

The FAA's intent in NPRM 88–16 in proposing a new definition of "scheduled operation" was to respond to the complaints of some operators that the definition contained in SFAR 38–2 was too broad. As proposed in the NPRM, "scheduled operation" would have been determined by the type of DOT economic authority under which such flights were operated or by the regularity and frequency of operation, rather than by the SFAR 38–2 criterion of whether or not the flight was advertised. Inclusion of a specific frequency standard was intended not only to create a definitive dividing line between scheduled and nonscheduled operations, but to serve as a basis for treating operationally similar service in a like manner.

However, after careful consideration of the industry comments, it appears that adoption of the "frequency" standard could produce serious problems for the charter industry, and that permitting only charters operated less frequently than two-and-a-half round trips per week to be conducted under the supplemental rules could substantially impact the charter industry as we know it today. It was never the intention of the FAA to diminish the availability of charter passenger air transportation, which has satisfactorily served the public for many years. While the record does not conclusively establish that competition would be harmed by the proposed change or that the change would be incapable of implementation, it is clear that, to the extent charter competition were affected, those effects would be negative. Moreover, the expected benefits of the frequency standard are not demonstrable by a history of particular safety problems with charters that the proposed change would cure.

Against this background, the FAA is proposing to delete that portion of the proposed "scheduled operation" definition that establishes a frequency criterion, at least insofar as air carrier operations are concerned. Whether an operation is considered scheduled will be based only on the air carrier classification and type of authority issued by the Department of Transportation. Therefore, if an operator receives DOT authority to conduct scheduled operations as an air carrier, then proposed part 119 allows that operator to conduct its scheduled operations under the rules applicable to domestic, flag, or commuter operations.

Operations conducted by FAA-classified commercial operators engaged in common carriage will be treated somewhat differently. Operators who conduct their operations wholly within a state, territory or possession of the United States are not required to obtain economic authority from the Department of Transportation. Currently there are few operators of this type in existence; all of the operators remaining are those who engage in Part 135 intrastate operations, most of which are conducted in Alaska. Some of these operations are of a frequency and nature that resemble scheduled operations and the FAA believes the operations should be governed by the rules applicable to

commuter operations. For these operations, the FAA proposes in § 119.3 to use the definition contained in SFAR 38–2 for commuter airlines that use small airplanes and rotorcraft used in commercial operations, that is, operations consisting of five or more round trips per week on at least one route between two or more points. At present, the FAA is not aware of the existence of any commercial operators using large airplanes that are engaged in common carriage. In the event that an applicant may contemplate conducting such operations at a future date, the FAA proposes to incorporate into § 119.3 the frequency of operations requirements of § 121.7 as the means for determining the kinds of operations that could be authorized.

**The Proposal**

The proposed definition of "scheduled operation" applies to air carrier operations that are classified by the Department of Transportation as operations involving "scheduled air transportation," with certain exceptions described below. The definition also applies to commercial operations that are classified by the FAA based upon the use of certain aircraft and the frequency of operations. It should be noted that charter air transportation operations are excluded from the definition.

The definition is divided into two paragraphs. Paragraph (1) excludes from the definition any air carrier operations governed by Part 135 of this chapter that involve the use of small airplanes or rotorcraft, or both, with a frequency of operations that do not meet the frequency formula for commuter operations. Paragraph (2) excludes from the definition any commercial operator operation that is conducted entirely within any State, territory, or possession of the United States and between any two or more points at which any passenger is either enplaned or deplaned when the operation does not meet the frequency formula for the aircraft used in the operation. The paragraph has two sets of frequency formulas which would be used to classify the operation for the purpose of establishing the applicable operating rules under which the certificate holder's operations would be governed. One set of formulas would be for large airplanes and the other set for rotorcraft and small airplanes.

This definition accomplishes four objectives:

(1) The definition would require air carriers who are classified and authorized by the DOT to engage in scheduled air transportation, and who conduct or plan to conduct the operation with airplanes having more than 30 passenger seats or a maximum payload capacity of more than 7,500 pounds, to conduct the operation under the part 121 rules applicable to domestic or flag operations;

(2) The definition would require air carriers who are classified and authorized by the DOT to engage in scheduled air transportation, and who conduct or plan to conduct the operation with small airplanes, rotorcraft, or both, with a frequency of operations of at least five round trips per week on at least one route between two or more points where a passenger is either enplaned or deplaned, to conduct the operation under the part 135 rules applicable to commuter operations;

(3) The definition would require commercial operators who are classified and authorized by the FAA to engage in common carriage passenger-carrying operations entirely within a State, territory, or possession of the United States with rotorcraft or small airplanes, or both, with a frequency of operations of at least five round trips per week on at least one route between two or more points to conduct the operation under the part 135 rules applicable to commuter operations; and

(4) The definition would require commercial operators who are classified and authorized by the FAA to engage in common carriage passenger-carrying operations entirely within a State, territory, or possession of the United States with large airplanes with a frequency of operations of at least two flights or one round trip a week on the same day or days of the week for 8 or more weeks in any 90 consecutive days, or a total of 36 of more flights or 18 or more round trips in any consecutive 90 days, to conduct the operation under the part 121 rules applicable to domestic operations.

As a result of the changes to the definition of "schedule operation," this supplemental notice must alter two other definitions that are directly affected, those being the definitions of "commuter operation" and "domestic operation." With the removal of the frequency test from the definition of "scheduled operation," it is necessary to make a conforming change to the definition of "commuter operation." In the case of "domestic operation," paragraph (3) was added to incorporate the provisions of § 121.3(d) which authorizes operations to points outside of the 48 contiguous States and the District of Columbia to be conducted under the part 121 rules applicable to domestic operations. This provision was inadvertently omitted from the definition in the NPRM. Only those three definitions are written into the regulatory language of this supplemental notice. The agency realizes that other conforming changes may have to be made to other sections of new part 119 before it can be issued if the definition of "scheduled operation" proposed in this notice is adopted. Those will be accomplished in the final rule.

**Economic Statement**

Executive Order 12291, dated February 17, 1981, directs Federal Agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is expected to have $100 million or more annual effect on the economy. Other reasons for classifying a rule as major are: it causes a large increase in consumer costs; it has a significant adverse effect on competition; or it is highly controversial.

The FAA has determined that this proposed rule is not major as defined in the executive order. Therefore, a full regulatory analysis, including identification and evaluation of cost reducing alternatives to this proposal, has not been prepared. Furthermore, the FAA has determined that the proposed rule would not impose additional costs on the public or the FAA. Thus, no additional regulatory evaluation was prepared.

The proposed definition of "scheduled operation" will allow air carriers and commercial operators to operate under the FAA safety rules based on the air carrier and commercial operator classification requirements established by the DOT and the FAA respectively. This proposal would continue current practices and would not shift any operator from one classification to another. Because all present arrangements are maintained, this proposal would not impose additional costs on the aviation industry. Also, this proposal would not cause any loss of safety benefits because each carrier and commercial operator would continue to operate under the same operating rules that they are currently following.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) requires Federal agencies to

review rules that may have a "significant economic impact on a substantial number of small entities." The FAA has adopted criteria and guidelines for rulemaking officials to apply when determining whether a proposed or existing rule has any significant economic impact on a substantial number of small entities.[2]

The entities that would be affected by this rule are air carriers and commercial operators operating under parts 121 and 135. These air carriers and commercial operators are within the general classification of "operators of aircraft for hire." A substantial number of carriers is a number of carriers that is not fewer than 11 or which is more than one-third of affected small entities.

The FAA has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. Because the proposal would maintain what is essentially current practice, there is no economic impact on entities covered under this proposal.

**International Trade Impact Assessment**

The proposed rule would have no impact on international trade. Because the proposed rule maintains the current classification of air carriers, U.S. air carriers operating in international markets would incur no additional costs or impacts on competition.

**Federalism Implications**

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of various levels of government. Therefore, in accordance with Executive Order 12012, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Conclusion**

For the reasons set forth under the heading "Economic Impact," the FAA has determined that this supplemental notice of part 119: (1) is not a major rule under Executive Order 12291; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it is certified that this proposed amendment would not have a significant economic impact on a substantial number of small entities.

[2] U.S. Department of Transportation, Federal Aviation Administration. Regulatory Flexibility Criteria and Guidance. FAA Order 2100.14A. September 16, 1986.

**List of Subjects**

*14 CFR Part 119*

Administrative practice and procedures, Air carriers, Air taxis, Aircraft, Aviation safety, Charter flights, Commuter operations, Reporting and recordkeeping requirements.

*14 CFR Part 121*

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

*14 CFR Part 125*

Aircraft, Airplanes, Airworthiness, Air transportation.

*14 CFR Part 127*

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

*14 CFR Part 135*

Air taxis, Aircraft, Airmen, Aviation Safety, Reporting and recordkeeping requirements.

**The Proposal**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend the Federal Aviation Regulations (Subchapter G) as follows:

1. The heading of Subchapter G is revised to read:

**Subchapter G—Air Carriers and Operators for Compensation or Hire: Certification and Operations**

2. A New part 119 is added to 14 CFR chapter I, subchapter G, to read as follows:

## PART 119—CERTIFICATION: AIR CARRIERS AND OTHER OPERATORS FOR COMPENSATION OR HIRE

**Authority:** 49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421–1431, 1472, 1485, 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

**§ 119.3 Definitions.**

For the purpose of subchapter G of this chapter, the term—*Commuter operation* means any scheduled operation conducted by any person who is a U.S. citizen, with a frequency of operations of at least five round trips per week on at least one route between two or more points to which any passenger is either enplaned or deplaned according to published flight schedules using—

(1) Airplanes having a maximum passenger seating configuration of 30 seats or less, excluding any required crewmember seat and a maximum payload capacity of 7,500 pounds or less, or

(2) Rotorcraft.

*Domestic operation* means any scheduled operation conducted by any person who is a U.S. citizen using airplanes having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7,500 pounds—

(1) Between any points within the 48 contiguous States of the United States or the District of Columbia; or

(2) Between any points entirely within any State, territory or possession of the United States; or

(3) Between any points within the 48 contiguous States of the United States and the District of Columbia and any specifically authorized points located outside the United States.

*Scheduled operation* means any common carriage passenger-carrying operation conducted under part 121 or part 135 of this chapter that is other than any of the operations that follow:

(1) Any charter air transportation operation;

(2) Any other air transportation operation, authorized under the appropriate economic authority issued by the Civil Aeronautics Board or the Department of Transportation or under the exemption authority of part 298 of this title, conducted with airplanes having a passenger seating configuration of less than 30 seats, excluding any required crewmember seat, or a payload capacity of less than 7,500 pounds, or rotorcraft, or both, with a frequency of operations fewer than five round trips per week on at least one route between two or more points where a passenger is either enplaned or deplaned; and

(3) Any commercial operator operation conducted with rotorcraft or airplanes entirely within any State, territory, or possession of the United States between any two or more points at which any passenger is either enplaned or deplaned with a frequency of operations fewer than the following:

(i) For rotorcraft and airplanes having a passenger seating configuration of 30 seats or less, excluding any required crewmember seat, and a payload capacity of 7,500 pounds or less, five round trips per week on at least one route between two or more points; and

(ii) For airplanes having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7,500 pounds, the following:

(A) Two flights, or one round trip a week on the same day or days of the week for 8 or more weeks in any 90 consecutive days, or

(B) A total of 36 or more flights or 18 or more round trips in any 90 consecutive days.

Issued in Washington, DC on June 1, 1993.

**William J. White,**

*Acting Director, Flight Standards Service.*

[FR Doc. 93–13439 Filed 6–7–93; 8:45 am]

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Part X

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Public and Indian Housing**

**NOFA for the Public Housing Resident Management Program Technical Assistance; Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3622; FR–3416–N–01]

### NOFA for the Public Housing Resident Management Program Technical Assistance

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of funding availability for FY 1993.

**SUMMARY:** HUD is announcing the availability of $4.68 million for Fiscal Year 1993 under the Public Housing Resident Management Program. This program provides assistance to Resident Councils (RCs), Resident Management Corporation (RMCs), and Resident Organizations (ROs) to fund training and other activities for the resident management of public and Indian housing. Also in the body of this document is information on the purpose of the NOFA, eligibility, available amounts, selection criteria, how to apply for funding, and how selections will be made.

**DATES:** Application kits may be requested beginning June 8, 1993. The deadline for submitting applications will be on August 9, 1993, and will be firm as to date and hour specified in the application kit.

**ADDRESSES:** To obtain a copy of the application kit, please write the Resident Initiatives Clearinghouse, Post Office Box 6424, Rockville, MD 20850, or call the toll free number 1–800–955–2232. Requests for application kits must include your names, mailing address (including zip code), telephone number (including area code), and should request the application kit for document FR–3416. This NOFA cannot be used as the application.

**FOR FURTHER INFORMATION CONTACT:**

Patricia Arnaudo, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3611 (this is not a toll-free number). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300 for information on the program (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act Statement**

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0127.

**I. Purpose and Substantive Description**

*A. Authority*

Section 20, United States Housing Act of 1937 (42 U.S.C. 1437r); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

*B. Statutory Background*

Section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100–42, approved February 5, 1988) amended the U.S. Housing Act of 1937 (1937 Act) by adding a new section 20. In part, section 20 states as its purpose the encouragement of "increased resident management of public housing projects [and the provision of funding] * * * to promote formation and development of resident management entities" (Sec. 20(a)). Under section 20(f)(1):

> (T)he Secretary shall provide financial assistance to resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.

Under section 20(f)(2), this financial assistance may not exceed $100,000 with respect to any public housing project, and subsection (f)(3) limits the assistance within the context of funds available under section 14 of the 1937 Act (Public and Indian Housing Modernization). In Fiscal Years 1988–1992, a total of $17 million was set aside for the development of resident management entities. In FY 1992, $4.6 million was awarded to 94 organizations. This NOFA provides $4,682,172 for technical assistance and training for resident management.

On September 7, 1988, HUD published a final rule (24 CFR part 964) implementing section 20 of the 1937 Act. That rule sets forth, among other things, the policies, procedures, and requirements of resident participation and management of public housing (see FR 34676). In an "Overview" of the rule, HUD explained that:

Section 20 establishes a new program of resident management of public housing. Under the program, resident councils that represent residents of a public housing project or projects may approve the formation of a resident management corporation. A qualifying resident management corporation may enter into a management contract with the public housing agency (PHA) establishing the respective management rights and responsibilities of the PHA and the corporation with respect to the public housing project involved. The program provides PHAs and resident management corporations wide latitude in establishing their respective roles and relationships under the contract.

Resident management corporations may retain any income that they generate in excess of estimated revenues for the project. Retained amounts may be used for purposes of improving the maintenance and operation of public housing projects, establishing business enterprises that employ public housing residents, or acquiring additional dwelling units for lower income families.

The program contains special provisions governing HUD technical assistance to resident councils and resident management corporations; HUD waiver of certain non-statutory requirements for resident management corporations and the PHA; and the employment of public housing management specialists to help determine the feasibility of, and to help establish, resident management corporations, and to provide training and other duties in connection with the daily operations of the project.

By final rule published June 24, 1992 (§ 905.973, added by 57 FR 28353), resident management corporations and resident organizations of Indian housing are now eligible to apply for resident management program technical assistance funds without the necessity of obtaining a waiver.

Today, almost 300 resident groups throughout the country are in training to assume the management of public and Indian housing. HUD supports the resident management movement, as well as other self-sufficiency and improvement programs designed to benefit public and Indian Housing residents. The Office of Resident Initiatives in Public and Indian Housing has been created to deliver a variety of resident participation type programs, with assistance from a network of Resident Initiatives Coordinators (RICs) in HUD's Regional and Field Offices. The RICs are available to provide direct assistance to residents and resident groups interested in resident management.

*C. Key Features of this NOFA*

(1) An application kit is required as the formal submission to apply for funding. The kit includes information on the preparation of a Work Plan and

Budget for activities proposed by the applicant. This process facilitates the expeditious execution of a Technical Assistance Grant (TAG) for those applicants that are selected to receive funding.

(2) RCs/RMCs/ROs that have been in existence for fewer than three years may receive up to $40,000 for start-up activities (Mini-Grant).

(3) RCs/RMCs/ROs that have been in existence for over three years will be asked to demonstrate experience in community organizing and participation in public housing and community affairs, and may receive up to $100,000 for activities eligible under the regulations, as discussed in this NOFA (Basic Grant).

(4) RCs/RMCs/ROs that received less than $100,000 in FYs 1988–1992 will be asked to demonstrate progress or that they have completed the resident management program previously approved by HUD, and may receive additional funding not to exceed (including previous grants) the total statutory maximum of $100,000 (Additional Grant).

(5) An applicant will have an opportunity to correct technical deficiencies in its application submission as provided for in this NOFA.

*D. Funding*

As noted, $4,682,172 is being made available on a competitive basis under this NOFA to RCs/RMCs/ROs that submit timely applications and are selected for funding. Originally $4,750,000 was made available for this purpose in the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102–389, approved October 6, 1992). However, that amount was reduced by $76,339, which represents the program's share of anticipated recaptures in the Annual Contributions account. As recaptures are realigned, the funds will be made available. Also included in the amount available is $8,511 in carryover funds from FY 1992.

Section 20 provides that not more than an aggregate of $100,000 may be approved with respect to any public housing project. In determining the amount of any technical assistance grant, HUD will take into consideration the size of the resident management project and the anticipated complexity of the proposed change to resident management.

In this year's NOFA, the Department will again be providing Mini-Grants of up to $40,000 for start-up activities for RCs/RMCs/ROs that have been in existence for less than three years. Based on HUD's experience with the RCs/RMCs/ROs funded in previous years, the Department believes that up to $40,000 is a reasonable amount for newly emerging groups to begin to build and strengthen their capacity as an organization (e.g., maintain democratically elected officers of the organization, establish operating/planning committees and block-building captains to carry out specific organizational tasks, develop by-laws, etc.); to develop a cohesive relationship between the residents and the local community; to build a partnership with the PHA/IHA; and to begin participating in training activities associated with property management in public/Indian housing. (See subheadings III.A, Training Requirements, and I.H, Eligible Activities, in this NOFA for specific training activities associated with property management.)

RCs/RMCs/ROs that have been in existence for more than three years will be asked to demonstrate experience in community organizing and participation in public housing and community affairs, and may apply for and be eligible to receive Basic Grants of up to $100,000. The actual amount of funding approved by HUD will be determined after a detailed review by HUD of the Work Plan and Budget, as part of the application review process, to determine eligibility and cost reasonableness of activities/tasks being proposed by the RC/RMC/RO.

RCs/RMCs/ROs selected for funding in FYs 1988–1992 that received less than a total of $100,000 may apply for an Additional Grant not to exceed (including previous grants) the total statutory maximum. A RC/RMC/RO considered for additional funding will be asked to demonstrate progress on its resident management program previously approved by HUD, as determined by a review of the RC's/RMC's/RO's Work Plan. (See Ranking Factor 2(c) in subheading I.K of this NOFA.)

Any RC/RMC/RO awarded a Mini-Grant for start-up activities in the previous fiscal years may apply for an Additional Grant in a subsequent year, up to the total maximum limitation of $100,000, only after the resident organization has accomplished the following:

(1) Developed an active community organization which includes democratically elected officers;

(2) Issued by-laws governing the operation of the organization;

(3) Developed an organizational structure which consists of floor/block captains or residential community groups and program committees to carry out specific tasks;

(4) Developed a basic financial management and accounting system that will provide effective control over and accountability for all grant funds, or acquired an accounting service to perform this function;

(5) Identified community needs and interests for achieving resident management, and determined the level and degree of skills and community participation available to support program development;

(6) Obtained a Memorandum of Understanding (MOU) between the RC/RMC/RO and PHA/IHA that states the elements of their relationship and delineates what support the PHA/IHA will provide to the resident organization (e.g., on-the-job training, technical assistance, equipment, space, etc.) and the activities to be conducted by the RCs/RMCs/ROs; and

(7) Completed the first phase of the Board and Leadership Training provided by the Consultant/Trainer that is selected by the RC/RMC/RO; and

(8) Obtained formal recognition from the PHA/IHA to represent residents in meetings with the PHA/IHA or other entities.

*E. Technical Assistance Grant (TAG)*

Grant awards will be made through a Technical Assistance Grant (TAG), which defines the legal framework for the relationship between HUD and a RMC/RC/RO for the proposed activities approved for funding. The TAG will contain all applicable requirements, including administrative requirements such as progress reports, a final report, and a final audit. All necessary materials regarding the TAG will be furnished at a later date to applicants that are selected to receive funding.

*F. Definitions*

In accordance with 24 CFR 964.7 and 24 CFR 905.962, the following definitions apply:

*Project.* Includes any of the following that meet the requirements of Part 964:

(1) One or more contiguous buildings;

(2) An area of contiguous row houses; or

(3) Scattered site buildings (including single-family units, for Indian housing).

*Resident Council (RC)/Resident Organization (RO).* An incorporated or unincorporated nonprofit organization or association that meets each of the following requirements:

(1) It must be representative of the tenants it purports to represent;

(2) It may represent tenants in more than one project or in all of the projects of a PHA/IHA, but it must fairly

represent tenants from each project that it represents;

(3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years);

(4) It must have a democratically elected governing board; and

(5) The voting membership of the governing board must consist of tenants of the project or projects that the tenant organization or resident council represents.

*Resident Management.* The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the PHA/IHA.

*Resident Management Corporation (RMC).* The entity that proposes to enter into, or enters into, a management contract with a PHA/IHA that meets the requirements of subpart C of 24 CFR part 964 (for Public Housing) and 24 CFR part 905, subpart O (for Indian Housing). The corporation must have each of the following characteristics:

(1) It must be a nonprofit organization that is incorporated under the laws of the State or Indian Tribe in which it is located;

(2) It may be established by more than one tenant/resident organization or resident council, so long as each organization or council:

(a) Approves the establishment of the corporation; and

(b) Has representation on the Board of Directors of the corporation;

(3) It must have an elected Board of Directors;

(4) Its by-laws must require the Board of Directors to include representatives of each tenant/resident organization or resident council involved in establishing the corporation;

(5) Its voting members must be tenants/residents of the project or projects it manages;

(6) It must be approved by the resident council. If there is no council, a majority of the households of the project must approve the establishment of an organization to determine the feasibility of establishing a corporation to manage the project; and

(7) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of a resident council, as defined in this subheading.

*G. Eligibility*

Only organizations that meet the definitions of a RC/RMC/RO set forth under the subheading "Definitions" of this NOFA will be eligible for funding under this NOFA, as follows:

(1) an RC/RMC/RO that has been in existence for less than three years may apply only for a Mini-Grant of up to $40,000 for start-up activities.

(2) An RC/RMC/RO that has been in existence for over three years may apply for a Basic Grant of up to $100,000.

(3) An RC/RMC/RO selected for funding in FYs 1988–1992 that received less than the statutory maximum of $100,000 may apply for an Additional Grant not to exceed (including previous grants) the total statutory maximum; the RC/RMC/RO will receive consideration for the additional amount based on the Ranking Factors contained in subheading I.M in this NOFA. No special considerations will be given to previously funded applicants.

(4) Projects that were awarded the maximum total amount of $100,000 in FYs 1988–1992 are not eligible to apply.

(5) A RC/RMC/RO that represents more than one project may apply on behalf of some or all of the projects it represents. In that case, an individual project represented by the council may not apply for technical assistance funding for the same activities that are included in the application submitted by the larger organization.

(6) A city-wide/tribal-wide organization (consisting of members from RCs/RMCs/ROs who reside in housing projects that are owned and operated by the same PHA/IHA) may represent more than one RC/RMC/RO within a PHA/IHA. In that case, an individual project represented by the city-wide/tribal-wide organization that has received technical assistance funding in a previous year may not receive additional funding based on the application submitted by the organization.

(7) Unlike in previous years, RMCs/ROs of Indian housing are no longer required to obtain a waiver to apply for resident management technical assistance funds. On June 24, 1992, the Department published a final rule on Consolidated Indian Housing Program Regulations (57 FR 28240). Under § 905.973 in that rule (57 FR 28353), RMCs/ROs of Indian housing may apply directly for these technical assistance funds.

*H. Eligible Activities*

Activities that may be funded and carried out by an eligible RC/RMC/RO include any combination of, but are not limited to, the following:

(1) Determining the feasibility of resident management for a specific project or projects;

(2) Training of residents in skills directly related to the operations and management of a project(s) for potential employees of a RC/RMC/RO;

**Note:** By law, in becoming established, a RC/RMC/RO must hire a qualified public housing management specialist (Consultant/Trainer) who can provide needed training and other support to assist in developing a RC's/RMC's/RO's capabilities for resident management, and who can perform related technical assistance duties as may be agreed upon in connection with property management functions. This requirement is also applicable to newly formed RCs/RMCs/ROs of Indian housing.

The Consultant/Trainer may be a private consultant, a nonprofit community agency or university, community organizer, the PHA/IHA, or other qualified entity. The RC/RMC/RO may select one Consultant/Trainer, or one for each of several different areas of expertise, as long as there is continuity and movement toward entering into a dual or full resident management contract with the PHA/IHA.

(3) Training of Board members in community organization, Board development, and leadership;

(4) Training of residents with respect to fair housing requirements;

(5) Funds may be used to assist in the actual creation of a RC/RMC/RO, such as:

(a) Consulting and legal assistance to incorporate the RC/RMC/RO;

(b) Preparing by-laws and drafting a corporate charter;

(c) Developing performance standards and assessment procedures to measure the success of the RC/RMC/RO;

(d) Assistance in acquiring fidelity bonding and insurance, but not the cost of the bonding and insurance; and

(e) Assessing potential management functions or tasks that the RC/RMC/RO might undertake;

(6) Implementation of activities by a RC/RMC/RO capable of performing functions associated with the operation and maintenance of the public/Indian housing project(s). Examples of eligible activities, in addition to those cited in paragraphs (1) through (4) of this subheading, are:

(a) Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing;

(b) Assisting in developing and negotiating management contracts and related contract monitoring and management procedures;

(c) Designing and implementing a long-range planning system;

(d) Designing and implementing personnel policies; performance standards for measuring staff productivity; policies and procedures covering organizational structure, recordkeeping, maintenance, insurance, occupancy, and management

information systems; and any other recognized functional responsibilities relating to property management, in general, and public/Indian housing management, in particular;

(e) Identifying the social support needs of residents, and the securing of that support, e.g., health clinics, day care, security, etc.; and

(f) Assessing potential homeownership opportunities;

(7) Development of economic initiatives to increase further the self-sufficiency of a resident management corporation and residents. These activities may include:

(a) Preparation of market studies, management plans, or plans for a proposed economic development activity;

(b) Legal assistance in establishing a business entity; and

(c) Development of cooperative food stores, janitorial and maintenance service firms, etc.;

(8) Administrative costs necessary for the implementation of activities outlined in paragraphs (1) through (7) of this subheading are eligible costs and must clearly support activities related to the goal of resident management. Appropriate administrative costs include, but are not limited to, the following items or activities:

(a) Telephone, telegraph, printing, and sundry and non-dwelling equipment such as office supplies, computer software and furniture. In addition, a reasonable portion of funds may be applied to the acquisition of hardware equipment such as computers, copying machines, etc., unless purchase of this equipment can be made from a RC's/RMC's/RO's operating budget. A RC/RMC/RO must justify the need for this equipment in relationship to its management capability and the level of management responsibilities;

(b) Approved travel specifically related to activities for the development/training and implementation of resident management, including conference fees, related per diem for meals, and miscellaneous travel expenses for individual RC/RMC/RO staff or Board members;

(c) Child care expenses for individual RC/RMC/RO staff and Board members in cases where residents or Board members who need child care are involved in training-related activities associated with the development of resident management entities. Not more than two percent of the total grant amount (.02 times the grant award amount) may be used for expenses to support child care needs; and

(d) Officers and members of the newly created resident organizations should not receive stipends for participating or receiving resident management training. Stipends will be approved, subject to the availability of funds, when the officers and members of the resident organization are close to (within 3–6 months) a dual management contract with the PHA/IHA. Generally, no more than 10% of the grant funds should be used for this purpose; and

(9) Capacity building and training to facilitate resident participation in the Comprehensive Grant Program.

*I. Ineligible Activities*

Ineligible items or activities include, but are not limited to, the following:

(1) Entertainment, including associated costs such as food and beverages, except normal per diem for meals;

(2) Purchase or rental of land or buildings or any improvements to land or buildings;

(3) Activities not directly related to resident management, e.g., lead-based paint testing and abatement, and operating capital for economic development activities;

(4) Purchase or rental of any vehicle (car, van, bus, etc.), or any other property having a useful life of more than one year and an acquisition cost of $300 or more per item, other than hardware equipment described in paragraph (8)(a) under subheading I.H, Eligible Activities, of this NOFA, unless approved by HUD;

(5) Architectural and engineering fees;

(6) Payment of salaries for routine project operations such as security and maintenance, or for RC/RMC/RO staff, except that a reasonable amount of grant funds may be used to hire a person to coordinate the resident management grant activities;

(7) Payment of fees for lobbying services;

(8) Any fraudulent or wasteful expenditures or expenditures otherwise incurred contrary to HUD program regulations or directives will be considered ineligible expenditures upon appropriate determination by audit or HUD Field Office staff; and

(9) Any activity otherwise eligible under this NOFA for which funds from any other source are being provided or are requested by the applicant.

*J. Selection Process*

Each application for a grant award that is submitted in a timely manner to the local HUD field office or, in the case of IHAs, to the appropriate HUD Office of Indian Programs, and that otherwise meets the requirements of this NOFA, will be evaluated. An application must receive a minimum score of 75 points out of the maximum of 100 points available under this competition to be eligible for funding. Grants will be awarded to the four highest ranked, eligible applications within each HUD region identified in the Appendix. In addition, grants will be awarded to the four highest ranked, eligible IHA applications on a nationwide basis. All of the remaining applications will then be placed in overall nationwide ranking order, with the remaining funds granted in order of rank until all funds are awarded.

*K. Ranking Factors*

(1) An application for funding, whether as a Mini-Grant, a Basic Grant, or an Additional Grant, will be reviewed based on the following Ranking Factors (maximum of 70 points):

(a) The probable effectiveness of the proposal in meeting the needs of the RC/RMC/RO and accomplishing its overall objectives for resident management (30 points):

- A high score (16–30 points) is received where the RC/RMC/RO provides a detailed plan clearly showing proposed methods for accomplishing the overall objectives of resident management;
- A medium score (6–15 points) is received where the RC/RMC/RO provides a general explanation of proposed methods for accomplishing resident management; and
- A low score (0–5 points) is received where proposed methods for accomplishing the objectives of resident management are unclear or are not addressed.

(b) Evidence of support by project residents for the activities being proposed (e.g., RC/RMC/RO Board resolution) (16 points):

- A high score (10–16 points) is received where the RC/RMC/RO provides documentation that shows support of the proposed activity by the residents, evidenced by a board resolution, copy of the charter, articles of incorporation or by-laws;
- A medium score (5–9 points) is received where the RC/RMC/RO provides documentation that is limited to petitions, minutes of meetings, or letters of support; and
- A low score (0–4 points) is received where evidence of resident support is not provided, even if resident support is mentioned.

(c) Evidence that the RC/RMC/RO has the support of the State/local/county/tribal government, community organizations, or other public/private sector groups. Maximum point value is

given where the support letters contain commitments of support such as financial assistance, technical assistance, on-the-job training, or other tangible support (7 points):

• A high score (5–7 points) is received where the RC/RMC/RO provides copies of letters from more than three entities (e.g., State/local/county/tribal government, community organizations, and other public/private sector groups;

• A medium score (2–4 points) is received where the RC/RMC/RO provides letters from two or three entities; and

• A low score (0–1 point) is received where the RC/RMC/RO provides a letter from only one entity or was unable to obtain any letters of support.

(d) Evidence that the RC/RMC/RO has a strong partnership with the PHA/IHA and has obtained a commitment from the PHA/IHA to provide technical assistance, on-the-job training, or in-kind services to the resident organization (7 points):

• A high score (5–7 points) is received where the RC/RMC/RO provides a copy of a letter from the PHA/IHA that indicates there is a cooperative relationship and a commitment from the PHA/IHA to provide support, i.e., technical assistance, on-the-job training, or in-kind services to the resident organization;

• A medium score (2–4 points) is received where the RC/RMC/RO provides a copy of a letter from the PHA/IHA that indicates its support for the resident organization, but does not commit to providing tangible support to the resident organization; and

• A low score (0–1 point) is received where the RC/RMC/RO does not provide a letter from the PHA/IHA, even if PHA/IHA support is mentioned.

(e) Capability of handling financial resources (demonstrated through previous experience, adequate financial control procedures, etc.), or an explanation of how such capability will be obtained (10 points):

• A high score (7–10 points) is received where the RC/RMC/RO provides evidence of having over 3 years of experience in handling financial resources and has adequate accounting procedures in place, or lacks experience but has provided an acceptable plan for handling financial resources;

• A medium score (3–6 points) is received where the RC/RMC/RO provides evidence of having less than 3 years of experience in handling financial resources, or has provided a plan for developing financial controls that is not quite adequate; and

• A low score (0–2 points) is received where the RC/RMC/RO has little or no experience in handling financial resources, has an unacceptable plan for handling financial resources, or has failed to address the issue.

(2) Additional points to be awarded on each application for funding will be based on the following criteria, according to whether the application is for a Mini-Grant, a Basic Grant, or an Additional Grant (maximum of 30 points):

(a) The additional criterion applicable to the review of an application for a Mini-Grant is the extent and quality of the RC's/RMC's/RO's experience in community organization and in promoting tenant participation in meeting the needs of the project residents. The experience and success of individual board members will be evaluated (30 points):

• A high score (16–30 points) is received where at least two individual members of the RC/RMC/RO indicated 2 to 3 years of experience in community organization and in promoting tenant participation in addressing the social services needs of the project residents, and have brought about a positive change at the project;

• A medium score (6–15 points) is received where at least one individual member of the RC/RMC/RO indicates 1–2 years involvement in community organization and promoting tenant participation, and has shown some interest in or has attempted to address the social services and other needs of the residents; and

• A low score (0–5 points) is received where no member of the RC/RMC/RO can indicate at least 1 year of experience, or the members have few accomplishments in community organization, promoting tenant participation, or addressing the social services needs of the project residents.

(b) The additional criterion applicable to the review of an application for a Basic Grant is the amount of experience in community organization and the success of the RC/RMC/RO in promoting tenant participation in meeting the social services and other needs of the project residents (30 points):

• A high score (16–30 points) is received where the RC/RMC/RO has been continuously involved for over 3 years in community organization and promoting tenant participation in addressing the social services needs of the project residents, as evidenced by nearby community services, e.g., day care, drug treatment programs, health care, educational programs;

• A medium score (6–15 points) is received where the RC/RMC/RO has been in existence for over three years, has some experience in community organization and tenant participation, and has shown some interest in or has attempted to address the social services and other needs of the project residents; and

• A low score (0–5 points) is received where the RC/RMC/RO has been in existence for over three years, but has little experience or few accomplishments in community organization.

(c) The additional criterion applicable to the review of an application for an Additional Grant is a record of demonstrated measurable achievements in specified activities of the HUD-approved Work Plan previously funded (30 points):

• A high score (16–30 points) is received where the RC/RMC/RO has initiated, conducted, and completed tasks in the Work Plan, or has made measurable progress in accomplishing the tasks;

• A medium score (6–15 points) is received where the RC/RMC/RO has initiated some tasks in the Work Plan, but there are substantial delays in implementing the planned tasks; and

• A low score (0–5 points) is received where the RC/RMC/RO has made little progress in carrying out the Work Plan tasks.

*L. PHA/IHA Notification*

HUD will send a notification to PHAs/IHAs associated with the applications selected for funding.

**II. Application Process**

*A. Actions Preceding Application Submission*

Consistent with this NOFA, HUD may direct a PHA/IHA to notify its existing RC(s)/RMC(s)/RO(s) of this funding opportunity. It is important for residents to be advised that even in the absence of a RC/RMC/RO, the opportunity exists to establish a RC/RMC/RO. If no RC/RMC/RO exists for any of the projects, HUD encourages a PHA/IHA to post this NOFA in a prominent location within the PHA's/IHA's main office, as well as in each project office.

*B. Application Development and Submission*

(1) An application kit is required as the formal submission to apply for funding. The kit includes information on the preparation of a Work Plan and Budget for activities proposed by the

applicant. An application may be obtained by writing the Resident Initiatives Clearinghouse, Post Office Box 6091, Rockville, MD 20850, or by calling the toll free number 1–800–955–2232. Requests for application kits must include your name, mailing address (including zip code), telephone number (including area code), and should refer to document FR–3416. Applications may be requested beginning on June 8, 1993.

An RC/RMC/RO shall prepare and submit the application to the local HUD field office or, in the case of IHAs, to the appropriate HUD Office of Indian Programs, listed in the Appendix to this NOFA.

(2) *Preparation.* The application must contain the following information:

(a) Name and address of the RC/RMC/RO. Name and title of the board members of the RC/RMC/RO and date of the last election. A copy of the RC's/RMC's/RO's organizational documents, i.e., charter, articles of incorporation (if incorporated), and by-laws. Name and phone number of contact person (in the event further information or clarification is needed during the application review process);

(b) Name, address and phone number of the Public Housing Agency (PHA)/Indian Housing Authority (IHA) responsible for the project(s) to which inquiries may be addressed concerning the application;

(c) A narrative statement of the proposed activities, addressing the following issues:

(i) A discussion of the need for the project(s) and overall group objectives for resident management, and how the proposed activities will meet the needs of the RC/RMC/RO;

(ii) Amount of funds requested and an explanation of how the funds will be used, if approved, to determine feasibility of resident management and promote the formation and development, or implementation and operation, of resident management entities. Time frames for completion of proposed activities must be included;

(iii) A discussion of the experience of the RC/RMC/RO and individual board members in community activities, and actions taken in meeting the needs of the project residents;

(iv) A description of the project financial accounting procedures that are available, or plans to develop these procedures, to ensure that funds are properly spent;

(v) An explanation of how the proposed activities will enhance the management effectiveness or the scope of functions managed by a RC/RMC/RO, if applicable, along with a description of staffing plans;

(vi) An explanation of the RC's/RMC's/RO's progress in carrying out any Work Plan previously approved by HUD (applicable to RC's/RMC's/RO's funded in FYs 1988–1992);

(vii) A description of other funding the RC/RMC/RO has received for activities related to resident management, and, if appropriate, how the requested funding will complement ongoing activities;

(viii) A discussion of the extent to which the State/local government, PHA/IHA, community organizations, and private sector support the activities outlined in the proposal, including through provision of financial resources, technical assistance, or other support;

(ix) A description of the extent to which the residents of a project support the proposed activities; and

(x) A discussion of how the proposal specifically meets the Ranking Factors listed in this NOFA;

(d) The name of the project(s) for which the funds are proposed to be used, the number of units, a brief description of the project occupancy type (family or elderly), the number of buildings, housing type (high-rise, low-rise, walk-up, etc), and the physical condition of the project (interior/exterior);

(e) A budget, with supporting justification and documentation; Work Plan; and Implementation Schedule. The schedule for completion of all activities shall not exceed two years;

(f) The application must be signed by an authorized member of the board of the RC/RMC/RO and must include a resolution from the RC/RMC/RO stating that it agrees to comply with the terms and conditions established under this program and under 24 CFR part 964 (for Public Housing) and 24 CFR part 905, subpart O (for Indian Housing);

(g) Assurances that the RC/RMC/RO will comply with all applicable Federal laws, Executive Orders, regulations, and policies governing this program, including all applicable civil rights laws, regulations, and program requirements.

(3) *Supplementing Applications.* (a) HUD is in full support of a cooperative relationship between a resident organization and its PHA/IHA. A resident organization is urged to involve its PHA/IHA in the application planning and submission process. This can be achieved through meetings to discuss resident concerns and objectives, and how best to transfer these objectives into activities in the application. The RC/RMC/RO is also encouraged to obtain a letter of support from the PHA/IHA indicating to what extent it supports the proposed activities and would provide technical assistance. An applicant may receive the maximum point value, as appropriate under Ranking Factor 1(d) in subheading I.K of this NOFA, where there is evidence of a strong partnership between the RC/RMC/RO and PHA/IHA and a commitment by the PHA/IHA to provide technical assistance, on-the-job training, or in-kind services to the resident organization.

(b) A RC/RMC/RO is encouraged to include an indication of support by project residents (e.g., RC/RMC/RO Board resolution, copies of minutes, letters, petition, etc.); the neighboring community; and local public or private organizations, including State and local government entities responsible for activities relating to resident management or economic development initiatives. A RC/RMC/RO should also include evidence of the extent of support committed to the program. HUD will give the maximum point value, as appropriate under Ranking Factor 1(c) in subheading I.K of this NOFA, to an applicant that obtains commitments of support from these organizations, including financial assistance, technical assistance, or other tangible support. Copies of letters of support or other evidence of support should be included with the application.

(4) *Submission.* The original and 2 copies of the Application must be submitted. The Appendix lists addresses of HUD Field/Indian Offices that will accept the completed application.

The application must be physically received by HUD by no later than August 9, 1993, at the time listed in the application kit. 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. HUD will date-stamp incoming applications to evidence (timely or late) receipt, and, upon request, provide an acknowledgement of receipt. Facsimile and telegraphic applications are not authorized and shall not be considered.

HUD also encourages an applicant to submit a copy of the application to the PHA/IHA for the jurisdiction in which the RC/RMC/RO is located.

**III. Checklist of Application Submission Requirements**

The Application Kit will contain a checklist of all application submission requirements to complete the application process.

*A. Training Requirements*

(1) Grantees are required to have training in the following areas:

(a) HUD regulations and policies governing the operation of low-income public housing, including 24 CFR part 900 series and the Fair Housing Act implementing regulations at 24 CFR part 100;

(b) Financial management, including budgetary and accounting principles and techniques, in accordance with Federal guidelines, including OMB Circulars A–110 and A–122, which contain Federal administrative requirements for grants, and OMB Circular A–133, relating to audit requirements for non-profit organizations;

(c) Capacity building to develop the necessary skills to assume management responsibilities at the project; and

(d) Property management (excludes grantees applying for a mini-grant).

(2) Each grantee must ensure that this training is provided by a qualified housing management specialist (Consultant/Trainer), a community organizer, the PHA/IHA, or other sources knowledgeable about the program.

*B. OMB Procurement Requirements*

(1) The RC/RMC/RO must follow Circular A–110, Uniform Administrative Requirements for Grants, and other agreements with recipients of Federal funds. Attachment O of OMB Circular A–110 prescribes standards and policies essential to the proper execution of procurement transactions, including standards of conduct for RC/RMC/RO employees, officers, or agents engaged in procurement actions to avoid any conflict of interest.

(2) A RC/RMC/RO may use two methods in obtaining consultant services:

(a) A "full service" approach may be used where the RC/RMC/RO solicits competitive proposals for assisting in the preparation of the application/Work Plan and Budget, with inclusion of the consultant work if the RC/RMC/RO is selected to receive a grant. The evaluation criteria in the solicitation must address the qualifications and experience of prospective consultants for all tasks. (The contract may stipulate that in the event that the application is not approved, the consultant is not entitled to any payment.); and

(b) Separation of Application Preparation from Consultant Work After Grant Award. This approach allows a RC/RMC/RO to solicit competitive proposals and contract with a Consultant-Trainer/Housing Management Specialist for the development of an application for technical assistance funding. If the RC/RMC/RO is selected for funding, the Consultant-Trainer/Housing Management Specialist must compete along with other prospective Consultant-Trainer/Housing Management Specialists through an open and free procurement process for a training and technical assistance contract. This will eliminate any unfair competitive advantage attained by the Consultant-Trainer/Housing Management Specialist who was awarded a contract for the development of the application/Work Plan and Budget.

**IV. Corrections to Deficient Applicants**

Applicants will not be disqualified from being considered for funding because of technical deficiencies in their application submission, e.g., incorrect computations, internal inconsistencies, or incomplete execution of the application. HUD will notify an applicant in writing of any technical deficiencies in the application. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the Ranking Factors specified in this NOFA. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

After the application due date has expired, applicants will not have an opportunity to submit independently information omitted from the Application Kit that directly relates to the evaluation factors contained in the subheading "Ranking Factors" of this NOFA so as to enhance the merits of the application.

**V. Other Matters**

*A. Freedom of Information Act*

Applications submitted in response to this NOFA are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether to release information contained in an application in the event a FOIA request is received, an applicant may, through clear earmarking or otherwise, indicate those portions of its application that it believes should not be disclosed. The applicant's views will be used solely to aid the Department in preparing its response to a FOIA request; however, the Department is required by the FOIA to make an independent evaluation of the information.

HUD suggests that an applicant provide a basis, when possible, for its belief that confidential treatment is appropriate; general assertions or blanket requests for confidentiality, without more information, are of limited value to the Department in making determinations concerning the release of information under FOIA. The Department is required to segregate disclosable information from non-disclosable items, so an applicant should be careful to identify each portion of the application for which confidential treatment is requested.

The Department emphasizes that the presence or absence of comments or earmarking regarding confidential information will have no bearing on the evaluation of applications submitted in response to this solicitation.

*B. Environmental Impact*

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this rule relate only to technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

*C. Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this notice, as those policies and programs relate to family concerns.

*D. Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The NOFA will fund technical assistance and activities for the resident

management of public and Indian housing. It will have no meaningful impact on States or their political subdivisions.

*E. Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act*

*Documentation and public access requirements.* Pursuant to section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (HUD Reform Act), 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 documentation and public access 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 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.)

*F. Prohibition Against Advance Information on Funding Decisions*

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on 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 restrained 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 questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD) (this is not a toll-free number). The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

*G. Prohibition Against Lobbying of HUD Personnel*

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 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.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

*H. Drug-Free Workplace Certification*

The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

*OMB Circulars.* Copies of OMB Circulars may be obtained from E.O.P. Publications, Room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332 (this is not a toll-free number). There is a limit of two free copies.

(The Catalog of Federal Domestic Assistance program number is 14.853.)

**Authority:** 42 U.S.C. 1437r; 42 U.S.C. 3535(d).

Dated: May 18, 1993.

**Michael B. Janis,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

**Appendix—Names, Addresses, and Telephone Numbers of HUD Regional and Field Offices and Offices of Indian Programs Accepting Applications for Resident Management Technical Assistance**

**Region I**

Jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

*Boston, Massachusetts Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway St., room 375, Boston, MA 02222–1092, (617) 565–5234.

*Hartford, Connecticut Office*

Manager, HUD—Hartford Office, 330 Main St., Hartford, Connecticut 06106–1860, (203) 240–4523.

*Manchester, New Hampshire Office*

Manager, HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut St., Manchester, New Hampshire 03101–2487, (603) 666–7681.

*Providence, Rhode Island Office*

Manager, HUD—Providence Office, 330 John O. Pastore Federal Building & U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1785, (401) 528–5351.

**Region II**

Jurisdiction: New York, New Jersey.

*New York Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—New York Regional Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–8068.

*Buffalo, New York Office*

Manager, HUD—Buffalo Office, Lafayette Court, 5th Fl., 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755.

*Newark, New Jersey Office*

Manager, HUD—Newark Office, Military Park Building, 60 Park Place, Newark, New Jersey 07102–5504, (201) 877–1662.

**Region III**

Jurisdiction: Pennsylvania, Washington, DC, Maryland, Delaware, Virginia, West Virginia.

*Philadelphia, Pennsylvania Regional Office*

Regional Administrator, HUD—Philadelphia Regional Office, Liberty Square Building, 105 South 7th St., Philadelphia, Pennsylvania 19106–3392, (215) 597–2560.

*Washington, D.C. Office*

Manager, HUD—Washington Office, Union Center Plaza, Phase II, 820 First St. NE., Suite 300, Washington, DC 20002–4502, (202) 275–9200.

*Baltimore, Maryland Office*

Manager, HUD—Baltimore Office, 10 North Calvert St., 3rd Fl., Baltimore, Maryland 21202–1865, (301) 962–2121.

*Pittsburgh, Pennsylvania Office*

Manager, HUD—Pittsburgh Office, 412 Old Post Office Courthouse Building, 7th Ave. & Grant St., Pittsburgh, Pennsylvania 15219–1906, (412) 644–6428.

*Richmond, Virginia Office*

Manager, HUD—Richmond Office, 400 North 8th St., Richmond, Virginia 23240, (804) 771–2721.

*Charleston, West Virginia Office*

Manager, HUD—Charleston Office, 405 Capitol St., Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000.

**Region IV**

Jurisdiction: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands.

*Atlanta, Georgia Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—Atlanta Regional Office, Richard B. Russell Federal Building, 75 Spring St, SW., Atlanta, Georgia 30303–3388, (404) 331–5136.

*Birmingham, Alabama Office*

Manager, HUD—Birmingham Office, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 731–1617.

*Louisville, Kentucky Office*

Manager, HUD—Louisville Office, 601 W. Broadway, PO Box 1044, Louisville, Kentucky 40201–1044, (502) 582–5251.

*Jackson, Mississippi Office*

Manager, HUD—Jackson Office, Dr. A.H. McCoy Federal Building, 100 West Capitol St., room 910, Jackson, Mississippi 39269–1096, (601) 965–4738.

*Greensboro, North Carolina Office*

Manager, HUD—Greensboro Office, 415 North Edgewood St., Greensboro, North Carolina 27401–2107, (919) 333–5361.

*Caribbean Office*

Manager, HUD—Caribbean Office, San Juan Center, 159 Carlos E. Chardon Ave., San Juan, Puerto Rico 00918–1804, (809) 766–5201.

*Columbia, South Carolina Office*

Manager, HUD—Columbia Office, Strom Thurmond Federal Building, 1835–45 Assembly St., Columbia, South Carolina 29201–2480, (803) 765–5592.

*Knoxville, Tennessee Office*

Manager, HUD—Knoxville Office, John J. Duncan Federal Building, 710 Locust St., SW., Knoxville, Tennessee 37902–2526, (615) 549–9384.

*Nashville, Tennessee Office*

Manager, HUD—Nashville Office, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213.

*Jacksonville, Florida Office*

Manager, HUD—Jacksonville Office, 325 West Adams St., Jacksonville, Florida 32202–4303, (904) 791–2626.

**Region V**

Jurisdiction: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

*Chicago, Illinois Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—Chicago Regional Office, 626 West Jackson Blvd., Chicago, IL 60606–5601, (312) 353–5680.

*Chicago Office of Indian Programs*

Director, HUD—Chicago Office of Indian Programs, 626 West Jackson Blvd., Chicago, IL 60606–1683, (312) 353–1683.

*Detroit, Michigan Office*

Manager, HUD—Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Ave. Detroit, Michigan 48226–2592, (313) 226–7900.

*Indianapolis, Indiana Office*

Manager, HUD—Indianapolis Office, 151 North Delaware St., Indianapolis Indiana 46204–2526, (317) 226–6303.

*Grand Rapids, Michigan Office*

Manager, HUD—Grand Rapids Office, 2922 Fuller Ave., NE., Grand Rapid, Michigan 49505–3499, (616) 456–2100.

*Minneapolis-St. Paul, Minnesota Office*

Manager, HUD—Minneapolis-St. Paul Office, 220 2nd St. S., Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3002.

*Cincinnati, Ohio Office*

Manager, HUD—Cincinnati Office, Federal Office Building, Room 9002, 550 Main St., Cincinnati, Ohio 45202–3253, (513) 684–2884.

*Cleveland, Ohio Office*

Manager, HUD—Cleveland Office, One Playhouse Square, 1375 Euclid Ave., room 420, Cleveland, Ohio 44114–1670, (216) 522–4065.

*Columbus, Ohio Office*

Manager, HUD—Columbus Office, 200 N. High St., Columbus, Ohio 43215–2499, (614) 469–5737.

*Milwaukee, Wisconsin Office*

Manager, HUD—Milwaukee Office, Henry S. Reuss Federal Plaza, 310 W. Wisconsin Ave., Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 291–3214.

**Region VI**

Jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

*Fort Worth, Texas Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401.

*Houston, Texas Office*

Manager, HUD—Houston Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098–4096, (713) 653–3274.

*San Antonio, Texas Office*

Manager, HUD—San Antonio Office, Washington Square Building, 800 Dolorosa St., San Antonio, Texas 78207–4563, (512) 229–6800.

*Little Rock, Arkansas*

Manager, HUD—Little Rock Office, TCBY Tower, 425 West Capitol Avenue, Little Rock, Arkansas 72201–3488, (501) 324–5931.

*New Orleans, Louisiana Office*

Manager, HUD—New Orleans Office, Fisk Federal Building, 1661 Canal St., PO Box 70288, New Orleans, Louisiana 70112–2887, (504) 589–7200.

*Oklahoma City, Oklahoma Office*

Manager, HUD—Oklahoma City Office, Murrah Federal Building, 200 NW. 5th St., Oklahoma City, Oklahoma 73102–3202, (405) 231–4181.

*Oklahoma City Indian Programs Division*

Director, HUD—Oklahoma City Office IPD, Murrah Federal Building, 200 NW. 5th St., Oklahoma City, OK 73102–3202, (405) 231–4102.

*Albuquerque, NM Office*

Manager, HUD—Albuquerque Office, 625 Truman Street NE., Albuquerque, NM 87110–6443, (505) 262–6463.

**Region VII**

Jurisdiction: Iowa, Kansas, Missouri, Nebraska.

*Kansas City, Kansas Regional Office*

Regional Administrator, Regional Housing Commissioner, Kansas City Regional Office, Gateway Tower II, 400 State Ave., Kansas City, Kansas 66101–2506, (913) 236–2162.

*Omaha, Nebraska Office*

Manager, HUD—Omaha Office, Braiker/Brandeis Building, 210 S. 16th St., Omaha, Nebraska 68102–1622, (402) 221–3703.

*St. Louis, Missouri Office*

Manager, HUD—St. Louis Office, 1222 Spruce St., St. Louis, Missouri 63103–2836, (314) 539–6583.

*Des Moines, Iowa Office*

Manager, HUD—Des Moines Office, Federal Building, 210 Walnut St., room 239, Des Moines, Iowa 50309–2155, (515) 284–4512.

**Region VIII**

Jurisdiction: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

*Denver, Colorado Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—Denver Regional Office, Executive Office Building, 1405 Curtis St., Denver, Colorado 80202–2349, (303) 844–4513.

*Denver, Colorado Office of Indian Programs*

Director, HUD—Denver Office OIP, Executive Tower Building, 1405 Curtis St., Denver, CO 80202–2349, (303) 844–4513.

**Region IX**

Jurisdiction: Arizona, California, Hawaii, Nevada, Guam, America Samoa.

*San Francisco, California Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—San Francisco Regional Office, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, California 94102–3448. (415) 556–4752.

*Honolulu, Hawaii Office*

Manager, HUD—Honolulu Office, 300 Ala Moana Blvd., Room. 3318, Honolulu, Hawaii 96850–4991, (808) 541–1323.

*Los Angeles, California Office*

Manager, HUD—Los Angeles Office, 1615 W. Olympic Blvd., Los Angeles, California 90015–3801, (213) 251–7122.

*Sacramento, California Office*

Manager, HUD—Sacramento Office, 777 12th Ave., Suite 200, P.O. Box 1978, Sacramento, California 96814–1997, (916) 551–1351.

*Phoenix, Arizona Office*

Manager, HUD—Phoenix Office, Two Arizona Center, 400 N. 5th St., Phoenix, Arizona 85004–2361, (602) 261–4434.

*Phoenix, Arizona Indian Programs Office*

Director, HUD—Phoenix Office of Indian Programs, Two Arizona Center, Suite 1650, Phoenix, Arizona 85004, (602) 379–4156.

**Region X**

Jurisdiction: Alaska, Idaho, Oregon, Washington.

*Seattle, Washington Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—Seattle Regional Office, Arcade Plaza Building, 1321 2nd Ave., Seattle, Washington 89101–2058, (206) 553–5414.

*Seattle, Washington Office of Indian Programs*

Director, HUD—Office of Indian Programs, Arcade Plaza Building, 1321 2nd Ave., Seattle, WA 98101–2058, (206) 553–5414.

*Portland, Oregon Office*

Manager, HUD—Portland Office, Cascade Building, 520 S.W. 6th Ave., Portland, Oregon 97203–1596, (503) 326–2561.

*Anchorage, Alaska Office*

222 West 8th Avenue, #64, Anchorage, Alaska 99513–7537, (907) 271–4170.

*Anchorage, Alaska Office of Indian Programs*

Director, HUD—Anchorage Indian Housing Division, 701 C Street, Box 64, Anchorage, Alaska 99513, (907) 271–4170.

[FR Doc. 93–13477 Filed 6–7–93; 8:45 am]

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federal register

Tuesday
June 8, 1993

Part XI

# The President

## Proclamation 6571—Lyme Disease Awareness Week, 1993 and 1994

Federal Register
Vol. 58, No. 108
Tuesday, June 8, 1993

# Presidential Documents

Title 3—

The President

**Proclamation 6571 of June 4, 1993**

## Lyme Disease Awareness Week, 1993 and 1994

**By the President of the United States of America**

**A Proclamation**

Lyme disease has become the most common arthropod-borne infection in the United States since it was first recognized as a clinical entity in 1975. Although most prevalent in the coastal northeastern and north central States, a significant number of cases have been reported in the Pacific Coast States, primarily northern California and Oregon.

Lyme disease is caused by a bacterium that is transmitted from ticks to warm-blooded animals. The major reservoirs of infection are deer and rodents, although the ticks can be carried on dogs, cats, and occasionally birds. Persons who live near or who work in wooded areas are at risk of contracting Lyme disease. Lyme disease can develop into a chronic multisystem disorder that can elicit a wide range of symptoms and run an unpredictable course. Clinical manifestations include arthritis, neurological symptoms, heart problems, and sometimes eye inflammation, hepatitis, and severe fatigue.

Early symptoms may include one or more of the following: a rash at the site of the tick bite, headache, fever, joint pain, and fatigue. Though the disease usually responds to antibiotic treatment at this stage, in later stages it may develop into a persistent chronic infection that affects joints or the nervous system. The bacteria also may be transmitted from an infected pregnant woman to her fetus.

Scientists at the National Institute of Allergy and Infectious Diseases, along with their colleagues at the National Institute of Arthritis and Musculoskeletal and Skin Diseases, are supporting dozens of research projects on Lyme disease. Along with several other components of the National Institutes of Health and the Centers for Disease Control and Prevention, they are devoting considerable effort to eradicate the disease. Experts from a wide range of disciplines are focusing on improving diagnostic techniques and therapeutic strategies and on developing an effective human vaccine. Animal models of the disease have been developed that promise to hasten progress in all of these areas.

In support of these efforts, the Congress, by Senate Joint Resolution 43, has designated the weeks beginning June 6, 1993, and June 5, 1994, as "Lyme Disease Awareness Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the weeks of June 6, 1993, and June 5, 1994, as Lyme Disease Awareness Week. I urge all government agencies, health organizations, communications media, and private citizens to observe this week with appropriate programs and activities in order to ensure better understanding of Lyme disease.

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

William J. Clinton

[FR Doc. 93–13666
Filed 6–7–93; 10:40 am]
Billing code 3195–01–P

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Vol. 58, No. 108

Tuesday, June 8, 1993

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# Public Laws

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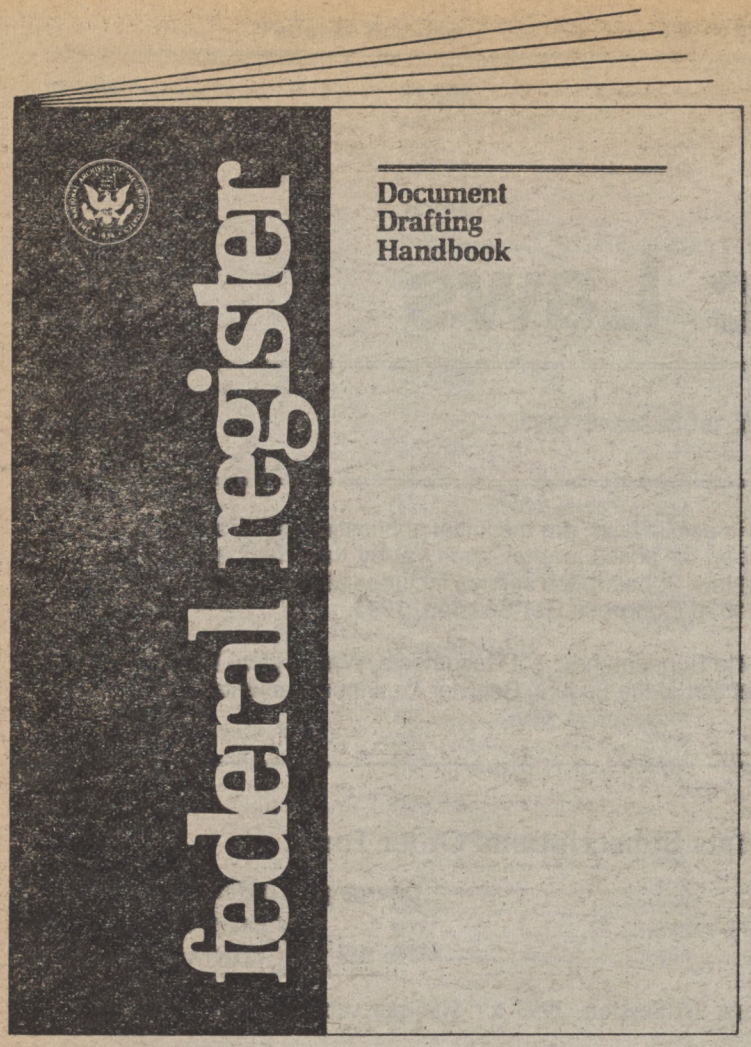
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