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# federal register

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Tuesday
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**RESERVATIONS:** 202–523–4538

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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 591

RIN 3206–AF59

### Separate Maintenance Allowance for Duty at Johnston Island

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is adopting as final the interim regulations authorizing payment of a separate maintenance allowance to Federal civilian employees assigned to Johnston Island, a nonforeign post of duty dedicated to chemical weapon storage and disposal facilities. A separate maintenance allowance assists an employee in meeting some of the additional expenses of maintaining a spouse and/or dependents elsewhere who would normally reside with the employee. The final regulations provide for determining which employees are eligible for the separate maintenance allowance, which relatives qualify as dependents, the method of payment, and the payment amounts.

**EFFECTIVE DATE:** The final regulations are effective on July 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Roger M. Knadle, (202) 606–2858.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) published an interim rule on October 4, 1993 (58 FR 51565). The 30-day public comment period ended on November 3, 1993. No comments were received on the interim rule; therefore, OPM is adopting as final the interim rule implementing section 1092 of Public Law 102–190, December 5, 1991 (the National Defense Authorization Act for Fiscal Years 1992 and 1993). Section 1092 amended chapter 59 of title 5, United States Code, by adding section 5942a to provide a separate maintenance allowance to assist an employee assigned to Johnston Island to meet the additional expenses of maintaining a spouse and/or dependents elsewhere who would normally reside with the employee. On November 16, 1992, this regulatory authority was delegated to OPM by Executive Order 12822.

The final regulations provide procedures and rules under which the head of the agency may determine eligibility for a separate maintenance allowance and the appropriate payment amount. The regulations define: (1) Dependents, (2) the annual rate to be paid to an employee according to the number of his or her dependents, (3) the method of payment, and (4) the responsibilities of the agencies and OPM.

**Regulatory Flexibility Act**

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

**List of Subjects in 5 CFR Part 591**

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

**Lorraine A. Green,**

*Deputy Director.*

Accordingly, the interim rule adding subpart D to 5 CFR part 591, published at 58 FR 51565 on October 4, 1993, is adopted as a final rule without change.

[FR Doc. 94–13746 Filed 6–6–94; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 94–ANE–05; Amendment 39–8908; AD 94–10–01]**

### Airworthiness Directives; Hartzell Propeller Inc. HC–E4 Series Propellers

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Hartzell Propeller Inc. Model HC–E4A–3A/E10950() composite bladed propellers installed on but not limited to Beech Model 1900D aircraft. This action requires installation of new propeller blade pitch change knob twelve point flange head attachment bolts, new preload plates, and new propeller blade pitch change knob brackets. This amendment is prompted by reports of 15 propeller blade pitch change knob screw failures found during routine maintenance. The actions specified in this AD are intended to prevent a severe propeller vibration in flight and possible loss of propeller pitch control.

**DATES:** Effective June 22, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 22, 1994.

Comments for inclusion in the Rules Docket must be received on or before August 8, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–05, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634; telephone (513) 778–4200, fax (513) 778–4391. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tim Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, room 232, Des Plaines, IL 60018; telephone (708) 294–7130, fax (708) 294–7834.

**SUPPLEMENTARY INFORMATION:** The Federal Aviation Administration (FAA) received reports of 15 propeller blade pitch change knob screw failures found during routine maintenance on Hartzell Propeller Inc. Model HC–E4A–3A/E10950() composite bladed propellers installed on but not limited to Beech Model 1900D aircraft. The FAA also received pilot reports of vibration and

unusual propeller noise, and additional reports of several incidents when the propeller would not go completely into the feather position after engine shutdown on the ground. Investigation into these incidents revealed a failed screw head had lodged in the internal pitch change mechanism. Investigation further reveals that the screws failed due to high cycle fatigue. This condition, if not corrected, could result in a severe propeller vibration in flight and possible loss of propeller pitch control.

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. A190, dated January 17, 1994, that describes procedures for installation of new propeller blade pitch change knob twelve point flange head attachment bolts to replace the countersunk screws currently used, new preload plates, and new propeller blade pitch change knob brackets.

Since an unsafe condition has been identified that is likely to exist or develop on other Hartzell Propeller Inc. Model HC–E4A–3A/E10950() composite bladed propellers of the same type design, this airworthiness directive (AD) is being issued to prevent a severe propeller vibration in flight and possible loss of propeller pitch control. This AD requires installation of a design change to the propeller pitch change knob attachment. This installation consists of new propeller blade pitch change knob twelve point flange head attachment bolts to replace the countersunk screws currently used, new preload plates, and new propeller blade pitch change knob brackets. Propellers with serial numbers HJ199 and greater are excluded from this AD, as the propellers were modified during manufacturing. The actions are required to be accomplished in accordance with the service bulletin described previously.

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 notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–05." 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 that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. 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, Incorporation by reference, 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:

**94–10–01 Hartzell Propeller Inc.:** Amendment 39–8908. Docket 94–ANE–05.

*Applicability:* Hartzell Propeller Inc. Model HC–E4A–3A/E10950() propellers, except propellers with serial numbers HJ199 and greater, installed on but not limited to Beech Model 1900D aircraft.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent severe propeller vibration in flight and possible loss of propeller pitch control, accomplish the following:

(a) Install new propeller blade pitch change knob twelve point flange head attachment bolts to replace the countersunk screws currently used, new preload plates, and new propeller blade pitch change knob brackets, in accordance with Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. A190, dated January 17, 1994, as follows:

(1) For propellers with 800 or more hours time in service (TIS) since new on the effective date of this airworthiness directive (AD), or 800 or more hours TIS since the new pitch change knob screws were last installed in accordance with Hartzell Propeller Inc. ASB No. A184, dated July 19, 1993, or Hartzell Propeller Inc. ASB No. A184(A), dated December 2, 1993, install within 50 hours TIS after the effective date of this AD.

(2) For propellers with less than 800 hours TIS since new on the effective date of this AD, or less than 800 hours TIS since the new pitch change knob screws were last installed in accordance with Hartzell Propeller Inc. ASB No. 184, dated July 19, 1993, or Hartzell Propeller Inc. ASB No. A184(A), dated December 2, 1993, install prior to exceeding the later of:

(i) 850 hours TIS since new; or

(ii) 850 hours TIS since the new pitch change knob screws were last installed in accordance with Hartzell Propeller Inc. ASB No. 184, dated July 19, 1993, or Hartzell Propeller Inc. ASB No. A184(A), dated December 2, 1993;

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with the following service document:

| Document No. | Pages | Date |
|---|---|---|
| Hartzell Propeller Inc. ASB No. A190. | 1–4 | January 12, 1994. |
| Total pages. | 4 | |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634; telephone (513) 778–4200, fax (513) 778–4391. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 22, 1994.

Issued in Burlington, Massachusetts, on May 24, 1994.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 94–13233 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–13–P

## 14 CFR Part 39

**[Docket No. 93–NM–202–AD; Amendment 39–8925; AD 94–11–09]**

## Airworthiness Directives; Beech Aircraft Corporation Model 400A and 400T Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400A and 400T airplanes, that requires inspection to detect damage of the wire harness in the wheel well of the main landing gear (MLG), and modification, if necessary. This amendment is prompted by reports of damage to wire harnesses due to abrasion. The actions specified by this AD are intended to prevent loss of control of the fuel supply to the engine or loss of control of the retraction/extension system for the MLG and MLG door.

**DATES:** Effective July 7, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1994.

**ADDRESSES:** The service information referenced in this AD may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Larry Engler, Aerospace Engineer, Airframe Branch, ACE–115W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Beech Model 400A and 400T airplanes was published in the **Federal Register** on February 9, 1994 (59 FR 5965). That action proposed to require inspection to detect damage of the wire harness in the wheel well of the main landing gear (MLG), and modification, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 59 Model 400A and 400T airplanes of the affected design in the worldwide fleet. The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,060, or $110 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, Safety. Adoption of the Amendment.

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

**94–11–09 Beech:** Amendment 39–8925, Docket 93–NM–202–AD.

*Applicability:* Model 400A airplanes having serial numbers RK–1 through RK–41 inclusive, and Model 400T airplanes having serial numbers TT–2 through TT–19 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously

To prevent loss of control of the fuel supply to the engine or loss of control of the retraction/extension system for the main landing gear (MLG) and MLG door, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, perform a general visual inspection to detect damage of the wire harness in the wheel well of the MLG in accordance with Beechcraft Service Bulletin 2479, Revision 1, dated November 1993.

(1) If no damage is found, no further action is required by this AD.

(2) If damage is found, prior to further flight, modify the wiring in accordance with the service bulletin.

**Note 1:** This service bulletin references Chapter 20–00 of the Aircraft Maintenance Manual and Air Force Technical Order P/N T O. 1–1A–14 for further service information regarding procedures for modification (removal and splicing) of the wiring.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21 197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and modification shall be done in accordance with Beechcraft Service Bulletin 2479, Revision 1, dated November 1993. (NOTE: The issue date of Revision 1 is indicated only on the title page; no other page of the document is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 Copies may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 7, 1994

Issued in Renton, Washington, on May 25, 1994.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94–13234 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–13–U

## 14 CFR Part 39

**[Docket No. 93–NM–226–AD; Amendment 39–8926; AD 94–11–10]**

## Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes Equipped With BFGoodrich Evacuation Door Slides

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

**ACTION:** Final rule.

**SUMMARY:** This document adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that requires modification of certain evacuation door slides. This amendment is prompted by a report that, during flight crew training, the toe end of the slide lane tore. The actions specified by this AD are intended to prevent damage to the slide, which could render the slide unusable, contribute to injury of passengers on the slide, and delay or impede the evacuation of passengers during an emergency.

**DATES:** Effective July 7, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1994.

**ADDRESSES:** The service information referenced in this AD may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, Department 7916, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5338; fax (310) 988–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300 series airplanes was published in the **Federal Register** on February 9, 1994 (59 FR 5964). That action proposed to require modification of certain evacuation door slides.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Currently there are no Airbus Industrie Model A300 series airplanes equipped with BFGoodrich evacuation door slides on the U.S. register. However, should an affected airplane be imported and placed on the U.S. Register in the future, the FAA estimates that it will take approximately 6.2 work hours per slide to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by BFGoodrich at no cost to the operators. Based on these figures, the total cost impact of the AD would be $341 per slide.

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.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, 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:

**94–11–10 Airbus Industrie:** Amendment 39–8926, Docket 93–NM–226–AD.

*Applicability:* Model A300 series airplanes, equipped with BFGoodrich evacuation slides having part numbers (P/N) 7A1299–001 and 7A1299–002, certificated in any category.

**Note 1:** The requirements of this AD are not applicable to Airbus Model A310, A300–600, or A320 series airplanes.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent tearing of the toe end of the slide, which could render the slide unusable, contribute to injury of passengers on the slide, and could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 3 months after the effective date of this AD, modify the evacuation door slides having P/N's 7A1299–001 and 7A1299–002, in accordance with BFGoodrich Alert Service Bulletin 7A1299–25A274, dated December 15, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), ANM–100L, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(d) The modification shall be done in accordance with BFGoodrich Alert Service Bulletin 7A1299–25A274, dated December 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, Department 7916, Phoenix, Arizona 85040. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 7, 1994.

Issued in Renton, Washington, on May 25, 1994.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94–13235 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–13–U

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**14 CFR Part 39**

**[Docket No. 93–NM–199–AD; Amendment 39–8924; AD 94–11–08]**

## Airworthiness Directives; Jetstream Model 4101 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires modification of the aileron drive quadrant support structure. This amendment is prompted by results of a stress analysis check, which revealed that the factor of safety of the aileron drive quadrant support structure on Model 4101 airplanes does not meet the tail-to-wind gust load design case strength requirements specified in the Federal Aviation Regulations. The actions specified by this AD are intended to prevent cracking of the support structure, which could result in reduced controllability of the airplane.

**DATES:** Effective July 7, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1994.

**ADDRESSES:** The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Jetstream 4101 airplanes was published in the Federal Register on February 4, 1994 (59 FR 5359). That action proposed to require modification of the aileron drive quadrant support structure below the flight compartment floor.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,400, or $1,100 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, 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:

**94–11–08 Jetstream Aircraft Limited:** Amendment 39–8924. Docket 93–NM–199–AD.

*Applicability:* Model 4101 airplanes; constructors numbers 41004 through 41018 inclusive, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 3 months after the effective date of this AD, modify the aileron drive quadrant support structure below the flight compartment floor in accordance with Jetstream Service Bulletin J41–53–011, dated October 15, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Jetstream Service Bulletin J41–53–011, dated October 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 7, 1994.

Issued in Renton, Washington, on May 25, 1994.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94–13237 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

**[TD 8543]**

**RIN 1545–AS60**

### Exhaustion of Administrative Remedies

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains the final regulations relating to the circumstances in which a party shall be deemed to have exhausted the administrative remedies available within the Internal Revenue Service for purposes of the recovery of court costs and certain fees in a civil tax proceeding brought in a court of the United States (including the Tax Court and the Court of Federal Claims). These regulations differ from the final regulations previously issued under section 7430, which were effective for civil tax proceedings commenced after February 28, 1983, and before January 1, 1986, and addressed the exhaustion of administrative remedies requirement for recovery of litigation costs incurred by taxpayers with respect to a court proceeding in connection with the determination, collection, or refund of any tax, interest, or penalty. Portions of the final regulations previously issued under section 7430 were held to be invalid by the United States Tax Court in *Minahan* v. Commissioner, 88 T.C. 492 (1987). This regulation does not contain those provisions of the previous final regulation found to be invalid.

**DATES:** The final regulations are effective June 7, 1994, and apply to court proceedings described in section 7430 filed in a court of the United States (including the Tax Court and the Court of Federal Claims) after May 7, 1992.

**FOR FURTHER INFORMATION CONTACT:** Thomas D. Moffitt of the Office of Assistant Chief Counsel (Field Service), Internal Revenue Service, (202) 622–7900 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

Proposed amendments to the Income Tax Regulations (26 CFR part 301) under section 7430 of the Internal Revenue Code (the Code) were published in the **Federal Register** on May 8, 1992 (57 FR 19828 [IA–003–89, 1992–1 C.B. 1100]). The amendments were issued under the authority contained in section 7805 of the Code.

One public comment was received concerning these regulations. After consideration of the public comment received, the proposed regulations are adopted, as revised by this Treasury decision.

**Explanation of Regulatory Provisions**

In general, under section 7430 of the Code, a prevailing party may recover the reasonable litigation costs incurred in a civil proceeding if the proceeding relates to the determination, collection or refund of any tax, interest or penalty under the Internal Revenue Code and the party has exhausted all the administrative remedies related to that party's tax matter. These final regulations provide information concerning the circumstances in which a party's administrative remedies shall be deemed to have been exhausted. In general, administrative remedies are deemed to have been exhausted if the party has requested (and if granted, participated in) an Appeals office conference on the party's tax matter prior to filing an action in a court of the United States (including the Tax Court and the Court of Federal Claims). A party has participated in an Appeals office conference if the party has disclosed all relevant information regarding the matter to the Appeals office. In the case of the revocation of a determination that an organization is described in section 501(c)(3), a party must complete the procedures set forth in section 7428 and in regulations, rules and revenue procedures thereunder to exhaust its administrative remedies. Where no administrative procedure

covering a party's tax matter allows the party to request an Appeals office conference, the party's administrative remedies will not be deemed to have been exhausted unless the party has filed a written claim for relief with the district director having jurisdiction over the tax matter and allowed the district director a reasonable period of time to act on the claim. A party is not required to pursue its administrative remedies if the Internal Revenue Service has notified the party in writing that such pursuit is unnecessary, has not given the party an opportunity to request an Appeals office conference before sending a statutory notice of deficiency, or has failed to grant the party an Appeals office conference with respect to a claim for refund within six months of the filing of such claim for refund. A party must participate in an Appeals office conference during either the deficiency procedures or the refund procedures with respect to the tax matter, but is not required to participate during both procedures. Thus, if a party participated in an Appeals office conference with respect to a tax matter prior to the issuance of the statutory notice of deficiency, the party does not need to request an Appeals office conference after filing a claim for refund with respect to the same tax matter.

**Comments on the Proposed Regulations**

One public comment objected to, and requested deletion of, the requirement that a party request (and if granted, participate in) an Appeals office conference on the party's tax matter prior to filing an action in a court of the United States (including the Tax Court and the Court of Federal Claims). This suggestion was not adopted in the final regulations because conferences with Appeals have historically been a fundamental method for providing administrative remedies to taxpayers who do not agree with the Internal Revenue Service. Such remedies are pivotal to the effort to resolve issues promptly, efficiently, fairly and without resort to litigation. In order to avoid costly litigation consistent with the legislative intent and to encourage usage of this process to resolve disputes, the regulations require taxpayers, in order to be deemed to have exhausted their administrative remedies, to pursue such remedies with the Appeals office, if available, prior to instituting litigation.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these regulations is Thomas D. Moffitt, Office of Assistant Chief Counsel (Field Service), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements, State taxes.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

**Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 301.7430–1 is revised to read as follows:

**§ 301.7430–1 Exhaustion of administrative remedies.**

(a) *In general.* Section 7430(b)(1) provides that a court shall not award reasonable litigation costs in any civil tax proceeding under section 7430(a) unless the court determines that the prevailing party has exhausted the administrative remedies available to the party within the Internal Revenue Service. This section sets forth the circumstances in which such administrative remedies shall be deemed to have been exhausted.

(b) *Requirements*—(1) *In general.* A party has not exhausted the administrative remedies available within the Internal Revenue Service with respect to any tax matter for which an Appeals office conference is available under §§ 601.105 and 601.106 of this chapter (other than a tax matter described in paragraph (c) of this section) unless—

(i) The party, prior to filing a petition in the Tax Court or a civil action for refund in a court of the United States (including the Court of Federal Claims), participates, either in person or through a qualified representative described in § 601.502 of this chapter, in an Appeals office conference; or

(ii) If no Appeals office conference is granted, the party, prior to the issuance of a statutory notice in the case of a petition in the Tax Court or the issuance of a notice of disallowance in the case of a civil action for refund in a court of the United States (including the Court of Federal Claims)—

(A) Requests an Appeals office conference in accordance with §§ 601.105 and 601.106 of this chapter; and

(B) Files a written protest if a written protest is required to obtain an Appeals office conference.

(2) *Participates.* For purposes of this section, a party or qualified representative of the party described in § 601.502 of this chapter participates in an Appeals office conference if the party or qualified representative discloses to the Appeals office all relevant information regarding the party's tax matter to the extent such information and its relevance were known or should have been known to the party or qualified representative at the time of such conference.

(3) *Tax matter.* For purposes of this section, "tax matter" means a matter in connection with the determination, collection or refund of any tax, interest, penalty, addition to tax or additional amount under the Internal Revenue Code.

(c) *Revocation of a determination that an organization is described in section 501(c)(3).* A party has not exhausted the administrative remedies available within the Internal Revenue Service with respect to a revocation of a determination that it is an organization described in section 501(c)(3) unless, prior to filing a declaratory judgment action under section 7428, the party has exhausted its administrative remedies in accordance with section 7428, and any regulations, rules, and revenue procedures thereunder.

(d) *Actions involving summonses, levies, liens, jeopardy and termination assessments, etc.* (1) A party has not exhausted the administrative remedies available within the Internal Revenue Service with respect to a matter other than one to which paragraph (b) or (c) of this section applies (including summonses, levies, liens, and jeopardy and termination assessments) unless, prior to filing an action in a court of the United States (including the Tax Court and the Court of Federal Claims)—

(i) The party submits to the district director of the district having jurisdiction over the dispute a written claim for relief reciting facts and circumstances sufficient to show the

nature of the relief requested and that the party is entitled to such relief; and

(ii) The district director has denied the claim for relief in writing or failed to act on the claim within a reasonable period after such claim is received by the district director.

(2) For purposes of this paragraph (d)(2), a reasonable period is—

(i) The 5-day period preceding the filing of a petition to quash an administrative summons issued under section 7609;

(ii) The 5-day period preceding the filing of a wrongful levy action in which a demand for the return of property is made;

(iii) The period expressly provided for administrative review of the party's claim by an applicable provision of the Internal Revenue Code that expressly provides for the pursuit of administrative remedies (such as the 16-day period provided under section 7429(b)(1)(B) relating to review of jeopardy assessment procedures); or

(iv) The 60-day period following receipt of the claim for relief in all other cases.

(e) *Exception to requirement that party pursue administrative remedies.* If the conditions set forth in paragraph (e)(1), (e)(2), (e)(3), or (e)(4) of this section are satisfied, a party's administrative remedies within the Internal Revenue Service shall be deemed to have been exhausted for purposes of section 7430.

(1) The Internal Revenue Service notifies the party in writing that the pursuit of administrative remedies in accordance with paragraphs (b), (c), and (d) of this section is unnecessary.

(2) In the case of a petition in the Tax Court—

(i) The party did not receive a notice of proposed deficiency (30-day letter) prior to the issuance of the statutory notice and the failure to receive such notice was not due to actions of the party (such as a failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter); and

(ii) The party does not refuse to participate in an Appeals office conference while the case is in docketed status.

(3) In the case of a civil action for refund involving a tax matter other than a tax matter described in paragraph (e)(4) of this section, the party—

(i) Participates in an Appeals office conference with respect to the tax matter prior to issuance of a statutory notice of deficiency with respect to such tax matter; or

(ii) Did not receive written notification that an Appeals office conference was available prior to issuance of a notice of disallowance and the failure to receive such a notification was not due to the actions of the party (such as the failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter); or

(iii) Did not receive either written or oral notification that an Appeals office conference had been granted within six months from the date of the filing of the claim for refund and the failure to receive such notice was not due to actions of the party (such as the failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter).

(4) In the case of a civil action for refund involving a tax matter under sections 6703 or 6694—

(i) The party did not receive a notice of proposed disallowance prior to issuance of a notice of disallowance and the failure to receive such notice was not due to actions of the party (such as the failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter); or

(ii) During the six-month period following the day on which the party's claim for refund is filed, the party's claim for refund is not denied, and the Internal Revenue Service has failed to process the claim with due diligence.

(f) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example 1.* Taxpayer A exchanges property held for investment for similar property and claims that the gain on the exchange is not recognized under section 1031. The Internal Revenue Service conducts a field examination and determines that there has not been a like-kind exchange. No agreement is reached on the matter and a notice of proposed deficiency (30-day letter) is sent to A. A does not file a request for an Appeals office conference. A pays the amount of the proposed deficiency and files a claim for refund. A notice of proposed disallowance is issued by the Internal Revenue Service. A does not request an Appeals office conference and, instead, files a civil action for refund in a United States District Court. A has not exhausted the administrative remedies available within the Internal Revenue Service.

*Example 2.* Assume the same facts as in *Example 1* except that, after receiving the notice of proposed deficiency (30-day letter), A files a request for an Appeals office conference. No agreement is reached at the conference. A pays the amount of the proposed deficiency and files a claim for refund. A notice of proposed disallowance is issued by the Internal Revenue Service. A does not request an Appeals office conference and files a civil action for refund in a United States District Court. A has exhausted the administrative remedies available within the Internal Revenue Service.

*Example 3.* Assume the same facts as in *Example 1* except A first requests an Appeals office conference after A's receipt of the notice of proposed disallowance. A is granted an Appeals office conference and A participates in such conference. A has exhausted the administrative remedies available within the Internal Revenue Service.

*Example 4.* Taxpayer B receives a notice of proposed deficiency (30-day letter) after completion of a field examination. B provided to the Internal Revenue Service during the examination all relevant information under the taxpayer's control and all relevant legal arguments supporting the taxpayer's position. B properly requests an Appeals office conference. The Appeals office, to obtain an additional period of time to consider the tax matter, requests that B sign Form 872 to extend the time for an assessment of tax, but B declines. Appeals then denies the request for a conference and issues a notice of deficiency. B has exhausted the administrative remedies available within the Internal Revenue Service.

*Example 5.* Taxpayer C receives a notice of proposed deficiency (30-day letter) and a written statement that C need not file a written protest or request an Appeals office conference since a conference will not be granted. C files a petition in the Tax Court after receiving the statutory notice of deficiency. C's administrative remedies within the Internal Revenue Service are deemed to have been exhausted.

*Example 6.* On January 2, the Internal Revenue Service serves a summons issued under section 7609 on third-party recordkeeper D to produce records of taxpayer E. On January 5, notice of the summons is given to E. The last day on which E may file a petition in a court of the United States to quash the summons is January 25. Thereafter, E files a written claim for relief with the district director having jurisdiction over the matter together with a copy of the summons. The claim and copy are received by the district director on January 20. On January 25, E files a petition to quash the summons. E has exhausted the administrative remedies available within the Internal Revenue Service.

*Example 7.* A notice of Federal tax lien is filed in County M on March 3, in the name of F. On April 2, F pays the entire liability thereby satisfying the lien. On May 2, F files a written claim with the district director having jurisdiction over the tax matter demanding a certificate of release of lien. Thereafter, F provides the district director with a copy of the notice of Federal tax lien and a copy of the canceled check in satisfaction of the lien, which are received by the district director on May 15. F's claim is deemed to have been filed on May 15. Accordingly, F must wait until after July 14 (60 days following the filing of the claim for

relief on May 15) to commence an action, in order to have exhausted the administrative remedies available within the Internal Revenue Service.

*Example 8.* A revenue officer seizes an automobile to effect collection of G's liability on January 10. On January 22, H submits a written claim to the district director having jurisdiction over the tax matter claiming that H purchased the automobile from G for an adequate consideration before the tax lien against G arose, and demands immediate return of the automobile. A copy of the title certificate and H's canceled check are submitted with the claim. The claim is received by the district director on January 25. On January 30, H brings a wrongful levy action. H has exhausted the administrative remedies available within the Internal Revenue Service.

*Example 9.* The Internal Revenue Service issues a revenue ruling which holds that ear piercing does not affect a function or structure of the body within the meaning of section 213 and therefore is not deductible. Taxpayer I deducts the costs of ear piercing and, following an examination, receives a notice of proposed deficiency (30-day letter) disallowing the treatment of such costs. Because of the revenue ruling, I believes a conference would not aid in the resolution of the tax dispute. Accordingly, I does not request an Appeals office conference. After receiving a statutory notice of deficiency, I files a petition in the Tax Court. I has not exhausted the administrative remedies available within the Internal Revenue Service. The issuance of a revenue ruling covering the same fact situation but taking a contrary position does not constitute notification by the Internal Revenue Service to I that the pursuit of administrative remedies is unnecessary. Similarly, the issuance to I of a private letter ruling or technical advice does not constitute notification by the Internal Revenue Service that the pursuit of administrative remedies is unnecessary.

*Example 10.* Taxpayer J is assessed a penalty under section 6701 for aiding in the understatement of the tax liability of another person. J pays 15% of the penalty in accordance with section 6703 and files a claim for refund on June 15. J is not issued a notice of proposed disallowance and thus cannot participate in an Appeals office conference within six months of the filing of the claim for refund. J brings an action on December 23. J has exhausted the administrative remedies available within the Internal Revenue Service.

*Example 11.* Taxpayer K receives a notice of proposed deficiency (30-day letter) and neither requests nor participates in an Appeals office conference. The Service then issues a statutory notice of deficiency (90-day letter). Upon receiving the statutory notice, and after filing a petition with the Tax Court, K requests an Appeals office conference. K has not exhausted the administrative remedies available within the Internal Revenue Service because the request for an Appeals office conference was made after the issuance of the statutory notice.

(g) *Effective date.* This section applies to court proceedings described in section 7430 filed in a court of the United States (including the Tax Court after May 7, 1992.

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

Approved: May 9, 1994.

**Leslie Samuels,**

*Assistant Secretary of the Treasury.*

[FR Doc. 94–12827 Filed 6–6–94; 8:45 am]

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## 26 CFR Parts 301 and 602

[TD 8542]

RIN 1545–AN02

## Recovery of Reasonable Administrative Costs

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains the final regulations relating to the recovery of reasonable administrative costs incurred by taxpayers in connection with an administrative proceeding within the Internal Revenue Service. Changes to the applicable law were made by section 6239(a) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. No. 100–647, 102 Stat. 3342). These regulations affect all taxpayers involved in an administrative proceeding within the Internal Revenue Service, and provide guidance regarding the definition of reasonable administrative costs and the period within which the costs must be incurred in order to be recoverable. These regulations also set forth the requirements and procedures for the recovery of such costs, and the definitions of prevailing party, administrative proceeding and administrative proceeding date. A table of contents to the regulations under section 7430 is provided in § 301.7430–0.

**DATES:** Sections 301.7430–0 and 301.7430–2 through 301.7430–6, except for § 301.7430–2(c)(5), are effective June 7, 1994, and apply to claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992, with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430–2(c)(5) is effective March 23, 1993. The amendment to part 602 is effective June 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Thomas D. Moffitt of the Office of Assistant Chief Counsel (Field Service), Internal Revenue Service, (202) 622–7900 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1356. The estimated average annual burden per respondent is 120 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

### Background

Proposed additions to the Income Tax Regulations (26 CFR Part 301) under section 7430 of the Internal Revenue Code (the Code) were published in the **Federal Register** on December 23, 1992 (57 FR 61020 [IA–003–89, 1993–1 C.B. 789]). These proposed additions were issued under the authority contained in section 7805 of the Code. A summary of the proposed additions is contained in the preamble that was published with the proposed additions.

### Changes to the Proposed Regulations

No changes have been made to the proposed regulations. One public comment objected to the failure of the regulations to provide for the recovery of amounts expended by taxpayers during the examination of their returns. As section 7430 does not provide for such awards, this suggestion was not adopted. After consideration of the public comment received, the proposed regulations are adopted as revised by this Treasury decision.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small

Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these regulations is Thomas D. Moffitt, Office of Assistant Chief Counsel (Field Service), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 301*

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *.

**Par. 2.** Sections 301.7430–0 and 301.7430–2 through 301.7430–6 are added to read as follows:

**§ 301.7430–0 Table of contents.**

This section lists the captions that appear in §§ 301.7430–1 through 301.7430–6.

*§ 301.7430–1 Exhaustion of administrative remedies.*

(a) In general.
(b) Requirements.
(1) In general.
(2) Participates.
(3) Tax matter.
(c) Revocation of a determination that an organization is described in section 501(c)(3).
(d) Actions involving summonses, levies, liens, jeopardy and termination assessments, etc.
(e) Exception to requirement that party pursue administrative remedies.
(f) Examples.
(g) Effective date.

*§ 301.7430–2 Requirements and procedures for recovery of reasonable administrative costs.*

(a) Introduction.
(b) Requirements for recovery.
(1) Determination by the Internal Revenue Service.
(i) Jurisdiction.
(ii) Administrative proceeding.
(iii) Administrative proceeding date.
(iv) Reasonable administrative costs.
(v) Prevailing party.
(vi) Not unreasonably protracted.
(vii) Procedural requirements.
(2) Determination by court.
(c) Procedure for recovering reasonable administrative costs.
(1) In general.
(2) Where request must be filed.
(3) Contents of request.
(i) Statements.
(ii) Affidavit or affidavits.
(iii) Documentation and information.
(4) Form of request.
(5) Period for requesting costs from the Internal Revenue Service.
(6) Notice.
(7) Appeal to Tax Court.
(d) Unreasonable protraction of administrative proceeding.
(e) Examples.

*§ 301.7430–3 Administrative proceeding and administrative proceeding date.*

(a) Administrative proceeding.
(b) Collection action.
(c) Administrative proceeding date.
(1) General rule.
(2) Notice of the decision of the Internal Revenue Service Office of Appeals.
(3) Notice of deficiency.
(d) Examples.

*§ 301.7430–4 Reasonable administrative costs.*

(a) In general.
(b) Costs described.
(1) In general.
(2) Representative and specially qualified representative.
(i) Representative.
(ii) Specially qualified representative.
(3) Limitation on fees for a representative.
(i) In general.
(ii) Cost of living adjustment.
(iii) Special factor adjustment.
(c) Certain costs excluded.
(1) Costs not incurred in an administrative proceeding.
(2) Costs incurred in an administrative proceeding but not reasonable.
(i) In general.
(ii) Special rule for expert witness' fees on issue of prevailing market rates.
(3) Litigation costs.
(4) Examples.

*§ 301.7430–5 Prevailing party.*

(a) In general.
(b) Position of the Internal Revenue Service.
(c) Substantially justified.
(1) In general.
(2) Exception.
(d) Amount in controversy.
(e) Most significant issue or set of issues presented.
(f) Net worth and size limitations.
(1) Individuals and estates.
(2) Others.
(3) Special rule for charitable organizations and certain cooperatives.
(g) Determination of prevailing party.
(h) Examples.

*§ 301.7430–6 Effective date.*

**§ 301.7430–2 Requirements and procedures for recovery of reasonable administrative costs.**

(a) *Introduction.* Section 7430(a)(1) provides for the recovery, under certain circumstances, of reasonable administrative costs incurred in connection with an administrative proceeding before the Internal Revenue Service. Paragraph (b) of this section lists the requirements that a taxpayer must meet to be entitled to an award of reasonable administrative costs.

(b) *Requirements for recovery—(1) Determination by the Internal Revenue Service.* The Internal Revenue Service will grant a taxpayer's request for recovery of reasonable administrative costs incurred in connection with an administrative proceeding under section 7430 and this section only if—

(i) *Jurisdiction.* The underlying substantive issues or the issue of reasonable administrative costs are not, and have never been, before any court of the United States (including the Tax Court or United States Court of Federal Claims) with jurisdiction over those issues;

(ii) *Administrative proceeding.* The costs were incurred in connection with an administrative proceeding as defined in § 301.7430–3(a);

(iii) *Administrative proceeding date.* The costs were incurred on or after the administrative proceeding date as defined in § 301.7430–3(c);

(iv) *Reasonable administrative costs.* The costs were reasonable administrative costs as defined in § 301.7430–4;

(v) *Prevailing party.* The taxpayer is a prevailing party as defined in § 301.7430–5;

(vi) *Not unreasonably protracted.* The administrative proceeding was not unreasonably protracted by the taxpayer as discussed in paragraph (d) of this section; and

(vii) *Procedural requirements.* The taxpayer follows the procedures set forth in paragraph (c) of this section.

(2) *Determination by court.* Although the Internal Revenue Service will not grant a request for reasonable administrative costs where the requirements of paragraph (b)(1)(i) of this section are not met, a taxpayer may file a claim for reasonable administrative costs with the court with jurisdiction over the judicial proceeding. The court may award the taxpayer reasonable administrative costs under section 7430(a). Under section 7430(c)(4)(B)(ii), where the final determination with respect to the tax, interest, or penalty at issue is made by

a court, the court determines whether the taxpayer qualifies as a prevailing party. Thus, where the requirements of paragraph (b)(1)(i) of this section are not met, the taxpayer's only possibility of obtaining an award of reasonable administrative costs is to obtain an award of such costs from the court. In the event the court awards reasonable administrative costs, it may also award litigation costs for the reasonable costs of pursuing the claim for reasonable administrative costs, provided the requirements under section 7430 regarding an award of reasonable administrative costs are satisfied with respect to such costs. A claim filed with the court should be made in accordance with the rules of the court.

(c) *Procedure for recovering reasonable administrative costs*—(1) *In general.* The Internal Revenue Service will not award administrative costs under section 7430 unless the taxpayer files a written request to recover reasonable administrative costs in accordance with the provisions of this section.

(2) *Where request must be filed.* A request required by paragraph (c)(1) of this section must be filed with the Internal Revenue Service personnel who have jurisdiction over the tax matter underlying the claim for the costs. However, if those persons are unknown to the taxpayer making the request, the taxpayer may send the request to the District Director for the district that considered the underlying matter.

(3) *Contents of request.* The request must be in writing and must contain the following statements, affidavits, documentation, and information with regard to the taxpayer's administrative proceeding:

(i) *Statements.* (A) A statement that the underlying substantive issues or the issue of reasonable administrative costs are not, and have never been, before any court of the United States (including the Tax Court or United States Court of Federal Claims) with jurisdiction over those issues;

(B) A clear and concise statement of the reasons why the taxpayer alleges that the position of the Internal Revenue Service in the administrative proceeding was not substantially justified;

(C) A statement sufficient to demonstrate that the taxpayer has substantially prevailed as to the amount in controversy or with respect to the most significant issue or set of issues presented in the proceeding;

(D) A statement that the taxpayer has not unreasonably protracted the portion of the administrative proceeding for which the taxpayer is requesting costs; and

(E) A statement supported by a detailed affidavit executed by the taxpayer or the taxpayer's representative that sets forth the nature and amount of each specific item of reasonable administrative costs for which the taxpayer is seeking recovery.

(ii) *Affidavit or affidavits.* (A) An affidavit executed by the taxpayer stating that the taxpayer meets the net worth and size limitations of § 301.7430–5(f);

(B) An affidavit supporting the statement described in paragraph (c)(3)(i)(E) of this section; and

(C) If more than $75 per hour, as adjusted by an increase in the cost of living as set forth in § 301.7430–4(b)(3), is claimed for the fees of a representative in connection with the administrative proceeding, then an affidavit that specialized skills and distinctive knowledge as described in that section were necessary in the representation of the taxpayer in the proceeding and that there is a limited availability of representatives possessing such skills and knowledge as described in that section, or an affidavit that another special factor is applicable.

(iii) *Documentation and information.* (A) A copy of the billing records of the representative for the requested fees; and

(B) An address at which the taxpayer wishes to receive notice of the determination of the Internal Revenue Service with regard to the request for reasonable administrative costs.

(4) *Form of Request.* No specific form is required for the request other than one which satisfies the requirements of paragraph (c)(3) of this section. Where practicable the required statements may be included in a single document. Similarly, where practicable, the required affidavits may be combined in a single affidavit to the extent they are to be executed by the same person.

(5) *Period for requesting costs from the Internal Revenue Service.* To recover reasonable administrative costs pursuant to section 7430 and this section, the taxpayer must file a request for costs no later than 90 days after the date the final decision of the Internal Revenue Service with respect to all tax, additions to tax and penalties at issue in the administrative proceeding is mailed, or otherwise furnished, to the taxpayer. The final decision of the Internal Revenue Service for purposes of this section is the document which resolves the tax liability of the taxpayer with regard to all tax, additions to tax and penalties at issue in the administrative proceeding (such as a Form 870 or closing agreement), or a notice of assessment for that liability (such as the notice and demand under section 6303), whichever is earlier mailed, or otherwise furnished, to the taxpayer. For purposes of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term legal holiday means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia but within an internal revenue district, the term legal holiday also means a Statewide legal holiday in the State where such office is located.

(6) *Notice.* The Internal Revenue Service is authorized, but not required, to notify the taxpayer of its decision to grant or deny (in whole or in part) an award for reasonable administrative costs under section 7430 and this section by certified mail or registered mail. If the Internal Revenue Service does not respond on the merits to a request by the taxpayer for an award of reasonable administrative costs filed under paragraph (c)(1) of this section within 6 months after such request is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a decision of the Internal Revenue Service denying an award for reasonable administrative costs.

(7) *Appeal to Tax Court.* A taxpayer may appeal a decision by the Internal Revenue Service denying (in whole or in part) a request for reasonable administrative costs under section 7430 and this section by filing a petition for reasonable administrative costs with the Tax Court. The petition must be in accordance with the Tax Court's Rules of Practice and Procedure and must be filed with the Tax Court after the Internal Revenue Service denies (in whole or in part) the taxpayer's request for reasonable administrative costs.

(d) *Unreasonable protraction of administrative proceeding.* An award of reasonable administrative costs will not be made where the taxpayer unreasonably protracted the administrative proceeding. However, a taxpayer that unreasonably protracted only a portion of the administrative proceeding, but not other portions of the administrative proceeding, may recover reasonable administrative costs for the portion(s) of the administrative proceeding that the taxpayer did not unreasonably protract, if the requirements of paragraph (b)(1) of this section are otherwise satisfied.

(e) *Examples.* The provisions of this section are illustrated by the following examples:

*Example 1.* Taxpayer A receives a notice of proposed deficiency (30-day letter). A requests and is granted Appeals office consideration. Appeals requests that A submit certain documents as substantiation for the tax matters at issue. Although A complies with this request, the information is misdirected and not considered by Appeals. Appeals then issues a notice of deficiency. A does not file a petition with the Tax Court. After receiving the notice of deficiency, A convinces Appeals that the notice of deficiency is incorrect and that A owes no tax. Appeals then closes the case showing a zero deficiency and mails A a notice to this effect. Assuming that the other requirements of this section are satisfied, A may recover reasonable administrative costs incurred after the date of the notice of deficiency (the administrative proceeding date). To recover these costs, A must file a request for costs with the Appeals office personnel who settled A's tax matter, or if that person is unknown to A, with the District Director of the district which considered the underlying matter, within 90 days after the date of mailing of the Office of Appeals' final decision that A owes no tax.

*Example 2.* Assume the same facts as in *Example 1*, except that after receipt of the notice of deficiency, A meets with an Appeals officer, but no agreement is reached on the tax matters at issue. A then files a petition with the Tax Court and prevails. Since the underlying tax issues have been determined by a court, the Internal Revenue Service will not grant a request for recovery of the reasonable administrative costs incurred by A. To recover reasonable administrative costs, A must file a claim with the Tax Court as prescribed under the Tax Court's Rules of Practice and Procedure.

**§ 301.7430–3 Administrative proceeding and administrative proceeding date.**

(a) *Administrative proceeding.* For purposes of section 7430, an administrative proceeding generally means any procedure or other action before the Internal Revenue Service that is commenced after November 10, 1988. However, an administrative proceeding does not include—

(1) Proceedings involving matters of general application, including hearings on regulations, comments on forms, or proceedings involving revenue rulings or revenue procedures;

(2) Proceedings involving requests for private letter rulings or similar determinations;

(3) Proceedings involving technical advice memoranda, except those submitted after the administrative proceeding date (as defined in paragraph (c) of this section); and

(4) Proceedings in connection with collection actions (as defined in paragraph (b) of this section), including proceedings under sections 7432 or 7433.

(b) *Collection action.* A collection action generally includes any action taken by the Internal Revenue Service to collect a tax (or any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax) or any action taken by a taxpayer in response to the Internal Revenue Service's act or failure to act in connection with the collection of a tax (including any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax). For example, a collection action for purposes of section 7430 and this section includes any action taken by the Internal Revenue Service under Chapter 64 of Subtitle F to collect a tax. Collection actions also include those actions taken by a taxpayer to remedy the Internal Revenue Service's failure to release a lien under section 6325 and to remedy any unauthorized collection action as defined by section 7433. However, an action or procedure directly relating to a claim for refund filed with the Service Center's Collection Branch or District Director's Collection Division after payment of an assessed tax is not a collection action.

(c) *Administrative proceeding date*—(1) *General rule.* For purposes of section 7430 and the regulations thereunder, the term administrative proceeding date means the earlier of—

(i) The date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals; or

(ii) The date of the notice of deficiency.

(2) *Notice of the decision of the Internal Revenue Service Office of Appeals.* For purposes of section 7430 and the regulations thereunder, a notice of the decision of the Internal Revenue Service Office of Appeals is the final written document, mailed or delivered to the taxpayer, that is signed by an individual in the Office of Appeals who has been delegated the authority to settle the dispute on behalf of the Commissioner, and states or indicates that the notice is the final determination of the entire case. A notice of claim disallowance issued by the Office of Appeals is a notice of the decision of the Internal Revenue Service Office of Appeals. Solely for purposes of determining the administrative proceeding date, a notice of deficiency issued by the Office of Appeals is not a notice of the decision of the Internal Revenue Service Office of Appeals.

(3) *Notice of deficiency.* A notice of deficiency is a notice described in section 6212(a), including a notice rescinded pursuant to section 6212(d). For purposes of determining reasonable administrative costs under section 7430 and the regulations thereunder, a notice of final partnership administrative adjustment described in section 6223(a)(2) will be treated as a notice of deficiency. A notice of final S corporation administrative adjustment issued pursuant to section 6223(a)(2) as made applicable to subchapter S items by section 6244 will also be treated as a notice of deficiency.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

*Example 1.* Taxpayer A receives a notice of proposed deficiency (30-day letter). A files a request for and is granted an Appeals office conference. At the conference, an agreement is reached on the tax matters at issue. A cannot recover any costs because they were not incurred on or after the administrative proceeding date, which is the earlier of the date of receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or the date of the notice of deficiency.

*Example 2.* Taxpayer B receives a notice of proposed deficiency (30-day letter). B pays the amount of the proposed deficiency and files a claim for refund. B's claim is disallowed and a notice of proposed disallowance is issued by the District Director. B does not request an Appeals office conference and the District Director issues a notice of claim disallowance. B then files suit in a United States District Court. B cannot recover reasonable administrative costs because, although the District Director issued a notice of claim disallowance, the Internal Revenue Service did not issue either a notice of decision of the Internal Revenue Service Office of Appeals or a notice of deficiency.

*Example 3.* Assume the same facts as in *Example 2*, except that after B files a claim for refund and receives the notice of proposed disallowance, B requests and is granted Appeals office consideration. No agreement is reached with Appeals and the Office of Appeals issues a notice of claim disallowance. B does not file suit in District Court but instead contacts the Appeals office to attempt to reverse the decision. B convinces the Appeals officer that the notice of claim disallowance is in error. The Appeals officer then abates the assessment. Because a notice of claim disallowance issued by Appeals is a notice of the decision of the Internal Revenue Service Office of Appeals, B may recover reasonable administrative costs incurred on or after the receipt of the notice of claim disallowance (the administrative proceeding date), but only if the other requirements of section 7430 and the regulations thereunder are satisfied. B cannot recover the costs incurred prior to receipt of the notice of claim disallowance because they were incurred before the administrative proceeding date.

*Example 4.* Taxpayer C receives a notice of proposed deficiency (30-day letter). C files a request for and is granted an Appeals office conference. At the Appeals conference no

agreement is reached on the tax matters at issue. The Office of Appeals then issues a notice of deficiency. Upon receiving the notice of deficiency C does not file a petition with the Tax Court. Instead, C pays the deficiency and files a claim for refund. The claim for refund is considered by the Internal Revenue Service and the District Director issues a notice of proposed disallowance. C requests and is granted Appeals office consideration. C convinces Appeals that C's claim is correct and Appeals allows C's claim. C may recover reasonable administrative costs incurred on or after the date of the notice of deficiency (the administrative proceeding date), but only if the other requirements of section 7430 and the regulations thereunder are satisfied.

*Example 5.* Taxpayer D receives a District Director's Collection Division (Collection) proposed assessment of trust fund taxes (Trust Fund Recovery Penalty) pursuant to section 6672. D requests and is granted Appeals office consideration. Upon consideration, Appeals upholds D's position. D cannot recover reasonable administrative costs because the costs were not incurred on or after the administrative proceeding date.

*Example 6.* Taxpayer E files an individual income tax return showing a balance due. No payment is made with the return and the Internal Revenue Service assesses the amount shown on the return. The Internal Revenue Service issues a notice and demand for tax pursuant to section 6303. E contacts the Collection Division (Collection) regarding E's outstanding liability. No agreement is reached with respect to the timing of E's payment, and Collection issues a notice of intent to levy pursuant to section 6331(d). Prior to the levy, E enters into an installment agreement with Collection. The costs that E incurred in connection with the notice and demand were not incurred in an administrative proceeding, but rather in a collection action. Accordingly, E may not recover those costs as reasonable administrative costs under section 7430 and the regulations thereunder.

*Example 7.* Taxpayer F receives a District Director's Collection Division (Collection) proposed assessment of trust fund taxes (Trust Fund Recovery Penalty) pursuant to section 6672. F requests and is granted Appeals office consideration. Appeals considers the issues and decides to uphold Collection's recommended assessment. Appeals notifies F of this decision in writing. Collection then assesses the tax. Pursuant to section 6672(b), within 30 days after the notice and demand is made, F pays the minimum amount required to commence a court proceeding, files a claim for refund, and furnishes the required bond. Collection then considers and disallows the claim. Appeals then reconsiders the claim and reverses its original position, thus upholding F's position. Appeals then abates the assessment. F may recover reasonable administrative costs incurred after the receipt of the original decision of Appeals (the administrative proceeding date) that Appeals was upholding Collection's recommended assessment, but only if the other requirements of section 7430 and the regulations thereunder are satisfied. F cannot recover costs that are attributable to any procedure or other action before Collection prior to filing F's administrative claim for refund.

**§ 301.7430–4 Reasonable administrative costs.**

(a) *In general.* For purposes of section 7430 and the regulations thereunder, reasonable administrative costs are any costs described in paragraph (b) of this section that are incurred in connection with an administrative proceeding (as defined in § 301.7430–3(a)) and incurred on or after the administrative proceeding date (as defined in § 301.7430–3(c)).

(b) *Costs described*—(1) *In general.* The costs described in this paragraph are the reasonable and necessary amount of costs incurred by the taxpayer to present the taxpayer's position with respect to the merits of the tax controversy or the recovery of reasonable administrative costs. These costs include—

(i) Any administrative fees or similar charges imposed by the Internal Revenue Service;

(ii) Reasonable expenses of expert witnesses;

(iii) Reasonable costs of any study, analysis, engineering report, test or project that is necessary for, and incurred in preparation of, the taxpayer's case; and

(iv) Reasonable fees paid or incurred for the services of a representative (as defined in paragraph (b)(2) of this section) in connection with the administrative proceeding.

(2) *Representative and specially qualified representative*—(i) *Representative.* A representative is a person compensated for services rendered in connection with the administrative proceeding, who is authorized to practice before the Internal Revenue Service or the Tax Court.

(ii) *Specially qualified representative.* For purposes of paragraphs (b)(3)(iii) and (c)(2)(ii) of this section, a specially qualified representative is a representative (as defined in paragraph (b)(2)(i) of this section) possessing a distinctive knowledge or a unique and specialized skill that is necessary to adequately represent the taxpayer in the proceeding. Examples of a unique and specialized skill or distinctive knowledge would be an identifiable practice specialty such as patent law or knowledge of a foreign law or language where such specialty or knowledge is necessary to adequately represent the taxpayer in the proceeding. For purposes of this paragraph, neither knowledge of tax law nor experience in representing taxpayers before the Internal Revenue Service is considered distinctive knowledge or a unique and specialized skill. An extraordinary level of general representational knowledge and ability that is useful in all proceedings is not considered, in and of itself, distinctive knowledge or a unique and specialized skill. Specially qualified representatives also do not include those who have a distinctive knowledge of the underlying subject matter of the controversy in circumstances where such distinctive knowledge could reasonably be supplied through the use of an expert, or could readily be obtained through literature pertaining to the subject.

(3) *Limitation on fees for a representative*—(i) *In general.* Except as otherwise provided in this section, fees described in paragraph (b)(1)(iv) of this section that are recoverable under section 7430 and the regulations thereunder as reasonable administrative costs may not exceed $75 per hour increased by a cost of living adjustment (and if appropriate, a special factor adjustment).

(ii) *Cost of living adjustment*—(A) *In general.* The Internal Revenue Service will make a cost of living adjustment to the $75 per hour limit by using the Consumer Price Index of All-Urban Consumers (CPI–U) published by the Department of Labor, Bureau of Labor Statistics and referenced in Internal Revenue Code section 1(f)(5). If the CPI–U is no longer published, a comparable index will be used, and any reference in this section to the CPI–U will be considered to refer to such comparable index.

(B) *Percentage adjustment.* For purposes of paragraph (b)(3)(ii)(A) of this section, the base year for determining the cost of living adjustment is the calendar year 1986. The cost of living adjustment for fees incurred in any calendar year subsequent to 1986 is the percentage (if any) by which the yearly average CPI–U for the calendar year immediately prior to the year in which the fees are incurred exceeds the January CPI–U for the calendar year 1986.

(iii) *Special factor adjustment*—(A) *In general.* If the presence of a special factor is demonstrated by the taxpayer, the amount reimbursable is the amount of reasonable fees paid or incurred by the taxpayer in connection with the proceeding for the services of a representative as defined in paragraph (b)(2)(i) of this section.

(B) *Special factor.* A special factor is a factor, other than an increase in the cost of living, which justifies an increase in the $75 per hour limitation

of section 7430(c)(1)(B)(iii). The novelty and difficulty of the issues, the undesirability of the case, the work and the ability of counsel, the results obtained, and customary fees and awards in other cases, are factors applicable to a broad spectrum of litigation and do not constitute special factors for the purpose of increasing the $75 per hour limitation. The limited availability of a specially qualified representative for the proceeding does constitute a special factor justifying an increase in the $75 per hour limitation.

(C) *Limited availability.* Unless disputed by the Internal Revenue Service, limited availability of a specially qualified representative is established by demonstrating that a specially qualified representative for the proceeding is not available at the $75 per hour rate (as adjusted for an increase in the cost of living). Initially, this showing may be made by submission of an affidavit signed by the taxpayer or by the taxpayer's counsel, that in a case similar to the taxpayer's, a specially qualified representative that practices within a reasonable distance from the taxpayer's principal residence or principal office would normally charge a client similar to the taxpayer at a rate in excess of this amount. If the Internal Revenue Service challenges this initial showing, the taxpayer may submit additional evidence to establish the limited availability of a specially qualified representative at the rate specified above.

(D) *Example.* The provisions of this section are illustrated by the following example:

*Example.* Taxpayer A is represented by B, a CPA and attorney with an LL.M. Degree in Taxation with Highest Honors and who regularly handles cases dealing with TEFRA partnership issues. B represents A in an administrative proceeding involving TEFRA partnership issues and subject to the provisions of this section. Assuming the taxpayer qualifies for an award of reasonable administrative costs by meeting the requirements of section 7430, the amount of the award attributable to the fees of B may not exceed the $75 per hour limitation (as adjusted for the cost of living), absent a special factor. Under these facts alone, B is not a specially qualified representative since even extraordinary knowledge of the tax laws does not constitute distinctive knowledge or a unique and specialized skill constituting a special factor.

(c) *Certain costs excluded*—(1) *Costs not incurred in an administrative proceeding.* Costs that are not reasonable administrative costs for purposes of section 7430 include any costs incurred in connection with a proceeding that is not an administrative proceeding within the meaning of § 301.7430–3.

(2) *Costs incurred in an administrative proceeding but not reasonable*—(i) *In general.* Costs incurred in an administrative proceeding that are incurred on or after the administrative proceeding date, and that are otherwise described in paragraph (b) of this section, are not recoverable unless they are reasonable in both nature and amount. For example, costs normally included in the hourly rate of the representative by the custom and usage of the representative's profession, when billed separately, are not recoverable separate and apart from the representative's hourly rate. Such costs typically include costs such as secretarial and overhead expenses. In contrast, costs which are normally billed separately may be reasonable administrative costs that may be recoverable in addition to the representative's hourly rate. Therefore, necessary costs incurred for travel; expedited mail delivery; messenger service; expenses while on travel; long distance telephone calls; and necessary copying fees imposed by the Internal Revenue Service, any court, bank or other third party, when normally billed separately from the representative's hourly rate, may be reasonable administrative costs.

(ii) *Special Rule for Expert Witness' Fees on Issue of Prevailing Market Rates.* Under paragraph (b)(3)(iii)(C) of this section, the taxpayer may initially establish a limited availability of specially qualified representatives for the proceeding by submission of an affidavit signed by the taxpayer or by the taxpayer's representative. The Internal Revenue Service may endeavor to rebut the affidavit submitted on this issue by demonstrating either that a specially qualified representative was not necessary to represent the taxpayer in the proceeding, that the taxpayer's representative is not a specially qualified representative or that the prevailing rate for specially qualified representatives does not exceed $75 per hour (as adjusted for an increase in the cost of living). Unless the Internal Revenue Service endeavors to demonstrate that the prevailing rate for specially qualified representatives does not exceed $75 per hour (as adjusted for an increase in the cost of living), fees for expert witnesses used to establish prevailing market rates are not included in the term reasonable administrative costs.

(3) *Litigation costs.* Litigation costs are not reasonable administrative costs because they are not incurred in connection with an administrative proceeding. Litigation costs include—

(i) Costs incurred in connection with the preparation and filing of a petition with the United States Tax Court or in connection with the commencement of any other court proceeding; and

(ii) Costs incurred after the filing of a petition with the United States Tax Court or after the commencement of any other court proceeding.

(4) *Examples.* The provisions of this section are illustrated by the following examples:

*Example 1.* Taxpayer A receives a notice of proposed deficiency (30-day letter). A files a request for and is granted an Appeals office conference. At the conference no agreement is reached on the tax matters at issue. The Internal Revenue Service then issues a notice of deficiency. Upon receiving the notice of deficiency, A discontinues A's administrative efforts and files a petition with the Tax Court. A's costs incurred in connection with the preparation and filing of a petition with the Tax Court are litigation costs and not reasonable administrative costs. Furthermore, A's costs incurred before the administrative proceeding date (date of the notice of deficiency as set forth in § 301.7430–3(c)(3)), are not reasonable administrative costs.

*Example 2.* Assume the same facts as in *Example 1* except that after A receives the notice of deficiency, A recontacts Appeals. Again, A's costs incurred before the administrative proceeding date, the date of the notice of deficiency as set forth in § 301.7430–3(c)(3), are not reasonable administrative costs. A's costs incurred in recontacting and working with Appeals after the issuance of the notice of deficiency, and up to and including the time of filing of the petition, are reasonable administrative costs. A's costs incurred in connection with the filing of a petition with the Tax Court are not reasonable administrative costs because those costs are litigation costs. Similarly, A's costs incurred after the filing of the petition are not reasonable administrative costs, as those are litigation costs.

**§ 301.7430–5 Prevailing party.**

(a) *In general.* For purposes of an award of reasonable administrative costs under section 7430, a taxpayer is a prevailing party only if the taxpayer—

(1) Establishes that the position of the Internal Revenue Service was not substantially justified;

(2) Substantially prevails as to the amount in controversy or with respect to the most significant issue or set of issues presented; and

(3) Satisfies the net worth and size limitations referenced in paragraph (f) of this section.

(b) *Position of the Internal Revenue Service.* The position of the Internal Revenue Service in an administrative proceeding is the position taken by the Internal Revenue Service as of the administrative proceeding date (as

defined in § 301.7430–3(c)) or any date thereafter.

(c) *Substantially justified*—(1) *In general.* The position of the Internal Revenue Service is substantially justified if it has a reasonable basis in both fact and law. A significant factor in determining whether the position of the Internal Revenue Service is substantially justified as of a given date is whether, on or before that date, the taxpayer has presented all relevant information under the taxpayer's control and relevant legal arguments supporting the taxpayer's position to the appropriate Internal Revenue Service personnel. The appropriate Internal Revenue Service personnel are personnel responsible for reviewing the information or arguments, or personnel who would transfer the information or arguments in the normal course of procedure and administration to the personnel who are responsible.

(2) *Exception.* If the position of the Internal Revenue Service was substantially justified with respect to some issues in the proceeding and not substantially justified with respect to the remaining issues, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to those issues with respect to which the position of the Internal Revenue Service was not substantially justified. If the position of the Internal Revenue Service was substantially justified for only a portion of the period of the proceeding and not substantially justified for the remaining portion of the proceeding, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to that portion during which the position of the Internal Revenue Service was not substantially justified. Where an award of reasonable administrative costs is limited to that portion of the administrative proceeding during which the position of the Internal Revenue Service was not substantially justified, whether the position of the Internal Revenue Service was substantially justified is determined as of the date any cost is incurred.

(d) *Amount in controversy.* The amount in controversy shall include the amount in issue as of the administrative proceeding date as increased by any amounts subsequently placed in issue by any party. The amount in controversy is determined without increasing or reducing the amount in controversy for amounts of loss, deduction, or credit carried over from years not in issue.

(e) *Most significant issue or set of issues presented.* Where the taxpayer has not substantially prevailed with respect to the amount in controversy the taxpayer may nonetheless be a prevailing party if the taxpayer substantially prevails with respect to the most significant issue or set of issues presented. The issues presented include those raised as of the administrative proceeding date and those raised subsequently. Only in a multiple issue proceeding can a most significant issue or set of issues presented exist. However, not all multiple issue proceedings contain a most significant issue or set of issues presented. An issue or set of issues constitutes the most significant issue or set of issues presented if, despite involving a lesser dollar amount in the proceeding than the other issue or issues, it objectively represents the most significant issue or set of issues for the taxpayer or the Internal Revenue Service. This may occur because of the effect of the issue or set of issues on other transactions or other taxable years of the taxpayer or related parties.

(f) *Net worth and size limitations*—(1) *Individuals and estates.* An individual taxpayer or an estate meets the net worth and size limitations of this paragraph if, on the administrative proceeding date, the taxpayer's net worth does not exceed two million dollars. For this purpose, individuals filing a joint return shall be treated as 1 taxpayer, except in the case of a spouse relieved of liability under section 6013(e).

(2) *Others.* A taxpayer that is an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization (other than an organization described in paragraph (f)(3) of this section) meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date—

(i) The taxpayer's net worth does not exceed seven million dollars; and

(ii) The taxpayer does not have more than 500 employees.

(3) *Special rule for charitable organizations and certain cooperatives.* An organization described in Internal Revenue Code section 501(c)(3) exempt from taxation under Internal Revenue Code section 501(a), or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a) (as in effect on October 22, 1986), meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date, the organization or cooperative association does not have more than 500 employees.

(g) *Determination of prevailing party.* If the final decision with respect to the tax, interest, or penalty is made at the administrative level, the determination of whether a taxpayer is a prevailing party shall be made by agreement of the parties, or absent such agreement, by the Internal Revenue Service. See § 301.7430–2(c)(7) regarding the right to appeal the decision of the Internal Revenue Service denying (in whole or in part) a request for reasonable administrative costs to the Tax Court.

(h) *Examples.* The provisions of this section are illustrated by the following examples:

*Example 1.* The Internal Revenue Service, in the conduct of a correspondence examination of taxpayer A's individual income tax return, requests substantiation from A of claimed medical expenses. A does not respond to the request and the Service Center issues a notice of deficiency. After receiving the notice of deficiency, A presents sufficient information and arguments to convince a revenue agent that the notice of deficiency is incorrect and that A owes no tax. The revenue agent then closes the case showing no deficiency. Although A incurred costs after the issuance of the notice of deficiency, A is unable to recover these costs because, as of the date these costs were incurred, A had not presented relevant information under A's control and relevant legal arguments supporting A's position to the appropriate Internal Revenue Service personnel. Accordingly, the position of the Internal Revenue Service was substantially justified at the time the costs were incurred.

*Example 2.* In the purchase of an ongoing business, taxpayer B obtains from the previous owner of the business a covenant not to compete for a period of five years. On audit of B's individual income tax return for the year in which the business is acquired, the Internal Revenue Service challenges the basis assigned to the covenant not to compete and a deduction taken as a business expense for a seminar attended by B. Both parties agree that the covenant not to compete is amortizable over a period of five years. However, the Internal Revenue Service asserts that the proper basis of the covenant is $2X while the taxpayer asserts the basis is $4X. Thus, under the Internal Revenue Service's position, B is entitled to a deduction of two-fifths $X in the year under audit and for each of the subsequent four years. B's position, however, would result in a deduction of four-fifths $X for the year under audit and each of the subsequent four years. The deduction for the seminar attended by B was reported on the return in question in the amount of $X. The Internal Revenue Service's position is that the deduction for the seminar should be disallowed entirely. In the notice of deficiency, the Internal Revenue Service determines adjustments of two-fifths $X (the difference between the Internal Revenue Service's position of two-fifths $X and the reported four-fifths $X) regarding the basis of the covenant not to compete, and $X resulting from the disallowance of the

seminar expense. Thus, of the two adjustments determined for the year under audit, that attributable to the disallowance of the seminar is larger than that attributable to the covenant not to compete. However, due to the impact on the next succeeding four years, the covenant not to compete adjustment is objectively the most significant issue to both B and the Internal Revenue Service.

*Example 3.* The Collection Branch of a Service Center of the Internal Revenue Service determines in the matching process of various Forms 1099 and W–2 that taxpayer C has not filed an individual income tax return. The Internal Revenue Service sends notices to C requesting that C file an income tax return. C does not file a return, so the Service Center's Collection Branch prepares a substitute for return pursuant to section 6020(b). The calculation is sent to C requesting that C either sign the return pursuant to section 6020(a) or file a tax return prepared by C. C does not respond to the Internal Revenue Service's request and the Service Center's Collection Branch issues a notice of deficiency based on information in its possession. C does not file a petition with the Tax Court and does not pay the asserted deficiency. The Internal Revenue Service then assesses the tax shown on the notice of deficiency and issues a notice and demand for tax pursuant to section 6303. After receiving notice and demand, C contacts the Collection Branch and convinces Collection to stay the collection process because C does not owe any taxes. The Collection Branch recommends that the Examination Division examine the tax liability and make an adjustment to income. The Examination Division then redetermines the tax and abates the assessment due to information and arguments presented by C at that time. The costs C incurred before the Collection Branch are incurred in connection with an action taken by the Internal Revenue Service to collect a tax. Therefore, these costs are incurred with respect to a collection action and not an administrative proceeding. Accordingly, they are not recoverable as reasonable administrative costs. Costs incurred before the Examination Division are reasonable administrative costs; however, C may not recover any reasonable administrative costs with respect to the proceeding before the Examination Division because, as of the date the costs were incurred, C had not previously presented all relevant information under C's control and all relevant legal arguments supporting C's position to the Collection Branch or Examination Division personnel (the appropriate Internal Revenue Service personnel under § 301.7430–5(c)), and thus, the position of the Internal Revenue Service was substantially justified based upon the information it had.

**§ 301.7430–6 Effective date.**

Sections 301.7430–0, and 301.7430–2 through 301.7430–6, other than § 301.7430–2(c)(5), apply to claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992, with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430–2(c)(5) is effective March 23, 1993.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 3.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**§ 602.101 [Amended]**

**Par. 4.** Section 602.101(c) is amended by adding the entry "301.7430–2(c) . . . 1545–1356" in numerical order in the table.

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

Approved: May 9, 1994.

**Leslie Samuels,**

*Assistant Secretary of the Treasury.*

[FR Doc. 94–12828 Filed 6–6–94; 8:45 am]

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## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Part 70

**[T.D. ATF–358]**

**RIN 1512–AB27**

## Clarification of Periods of Interest With Respect to Certain Overpayments (T92–122)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Treasury decision, final rule.

**SUMMARY:** This Treasury decision amends 27 CFR 70.92, in Part 70, Procedure and Administration. The amendments clarify the period during which interest is allowed on taxpayer overpayments which are credited against other liabilities of the same taxpayer for interest and certain additions to the tax. The amendments are necessary as a result of changes to the law made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Deficit Reduction Act of 1984. The regulations affect all taxpayers who have overpayments credited against underpayments.

**EFFECTIVE DATE:** These regulations are effective on June 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Jackie White of the Tax Compliance Branch, (202) 927–8220, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 ((202) 927–8220).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains amendments to the regulations on Procedure and Administration (27 CFR part 70) under § 6611 of the Internal Revenue Code of 1986 (IRC) to clarify the period during which interest is allowed on overpayments that are credited against a taxpayer's liability for interest and certain additions to the tax. The amendments will conform the regulations to § 344 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248, 96 Stat. 635), and § 158 of the Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98–369, 98 Stat. 696).

The Internal Revenue Service (IRS) applies § 6611 to the taxes it administers and enforces. The IRS published a notice of proposed rulemaking in the **Federal Register** on August 25, 1992 (57 FR 38457), and Treasury Decision 8524 (59 FR 10075) was published in the **Federal Register** on March 3, 1994, adopting final rules implementing the TEFRA and DEFRA amendments. ATF believes these regulations are equally applicable to its tax collection activities and is adopting such regulations.

### Interest on Overpayments That Are Credited Against Interest on Underpayments

Section 6611(a) of the IRC provides that interest shall be allowed and paid on any overpayment in respect of any internal revenue tax at the overpayment rate established under § 6621.

Under § 6402(a), the Secretary may credit any overpayment (including any interest allowed thereon) against any liability imposed on the taxpayer under the IRC. Under § 6611(b)(1), interest is allowed on an overpayment that is so credited from the date of the overpayment to the due date of the taxpayer's liability against which the overpayment is credited. For purposes of this interest computation, a definition of the term "due date" is provided in § 70.92(d) of the regulations.

Generally, § 6601(f) provides that once an overpayment is credited to satisfy a taxpayer's liability, interest no longer accrues on that liability. Section 344 of TEFRA added § 6622 of the IRC, which requires interest imposed by the IRC to be compounded daily. The effect of § 6601(f) on the compounding requirement of § 6622 is that once an overpayment is credited to satisfy the taxpayer's liability for interest, that credit cuts off any further compounding of the interest (i.e., interest no longer accrues on the taxpayer's interest

liability against which the credit has been made).

Similarly, it is appropriate that no interest liability to the taxpayer accrues on the overpayment once the overpayment is credited to satisfy the taxpayer's liability for interest. Thus, the regulations amend § 70.92(d)(2)(iii) to clarify that interest ceases to accrue on any portion of an overpayment that is credited against the taxpayer's liability for interest.

**Interest on Overpayments That Are Credited Against Certain Additions to the Tax**

Prior to DEFRA, interest only accrued on additions to the tax from the date of notice and demand, and then only if not paid within 10 days from the date of notice and demand. In § 158 of DEFRA, Congress added § 6601(e)(2)(B) to the IRC, requiring taxpayers to pay interest on certain additions to tax from the due date of the relevant return (including any extensions) until the addition to the tax is paid. The number of additions to the tax that bear interest from the due date of the return was increased by Congress in 1988 and again in 1989. This regulation amends § 70.92(d)(2)(iv) to clarify that interest ceases to accrue on any portion of an overpayment that is credited against certain additions to the tax for any period after the due date of the return (including extensions) to which the addition to the tax relates.

*Prior Regulations Obsolete*

When ATF assumed responsibility for the collection and enforcement of taxes imposed under Subtitle E of the IRC, it patterned many of its procedural regulations upon those already promulgated by the IRS. *See, e.g.*, T.D. ATF–301, 55 Fed. Reg. 47608 (November 14, 1990); T.D. ATF–251, 52 Fed. Reg. 19314 (May 22, 1987). However, since enactment of § 6622 of the IRC in TEFRA and § 6601(e)(2)(B) in DEFRA, the prior regulations regarding interest and certain additions to tax have been obsolete. Accordingly, ATF has been computing interest consistent with the statutory changes and these regulatory amendments acknowledge existing agency practice.

*Regulatory Flexibility Act*

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. A copy of this final rule has been submitted to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business, pursuant to 26 U.S.C. 7805(f).

*Executive Order 12866*

It has been determined that this rule is not a significant regulatory action because (1) it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the Presidents priorities, or the principles set forth in Executive Order 12866.

*Administrative Procedures Act*

Because this final rule merely adopts existing IRS procedural regulations regarding overpayment interest, it is found to be unnecessary to issue this Treasury decision for notice and public procedure pursuant to 5 U.S.C. 553(b) or subject to the effective date limitation in 5 U.S.C. 553(d).

*Paperwork Reduction Act*

The provisions of the Paperwork Reduction Act of 1980, Pub. L. No. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because it does not impose any new recordkeeping or reporting requirements.

*Drafting Information*

The principal author of this document is Jackie White of the Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 70**

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Bankruptcy, Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

**Authority and Issuance**

Title 27 CFR is amended as follows:

**PART 70—[AMENDED]**

**Paragraph 1.** The authority citation for part 70 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

**Para. 2.** Section 70.92 is amended by revising paragraphs (d)(2)(iii) and (d)(2)(iv) to read as follows:

**§ 70.92 Interest on overpayments.**

* * * * *

(d) * * *

(2) * * *

(iii) *Interest.* In the case of a credit against interest that accrues for any period ending prior to January 1, 1983, the due date is the earlier of the date of assessment of such interest or December 31, 1982. In the case of a credit against interest that accrues from any period beginning on or after December 31, 1982, such interest is due as it economically accrues on a daily basis, rather than when it is assessed.

(iv) *Additional amount, addition to the tax, or assessable penalty.* In the case of a credit against an additional amount, addition to the tax, or assessable penalty, the due date is the earlier of the date of assessment or the date from which such amount would bear interest if not satisfied by payment or credit.

* * * * *

Signed: May 11, 1994.

**Daniel R. Black,**

*Acting Director.*

Approved: May 19, 1994.

**John P. Simpson,**

*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 94–13742 Filed 6–6–94; 8:45 am]

BILLING CODE 4810–31–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 251

[DoD Directive 4175.1]

### Sale of Government-Furnished Equipment or Material and Services to U.S. Companies

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense hereby removes 32 CFR part 251 concerning the sale of Government-furnished equipment. This part has served the purpose for which it was intended and is no longer valid.

**EFFECTIVE DATE:** June 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** L.M. Bynum, Correspondence and Directives Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155.

**List of Subjects in 32 CFR Part 251**

Arms and munitions, Exports, Government property.

**PART 251—[REMOVED]**

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 251 is removed.

Dated: June 2, 1994.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 94–13779 Filed 6–6–94; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

[CGD01–94–046]

RIN 2115–AA97

### Safety Zone; Branford, CT 350th Fireworks Celebration

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone in Branford Harbor, around the fireworks barge GT 1000 located approximately 1200 feet southwest of Parker Memorial Park, Branford, CT, on July 1, 1994. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

**EFFECTIVE DATES:** This regulation is effective from 9:15 p.m. through 10 p.m. on July 1, 1994, unless extended or terminated sooner by the Captain of the Port. In case of inclement weather, this regulation will be effective on the rain dates of July 9 or 10, 1994, at the same times.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander T.V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The drafters of this notice are LCDR T.V. Skuby, project officer for Captain of the Port, Long Island Sound, and LCDR J. Stieb, project attorney, First Coast Guard District Legal Office.

**Regulatory History**

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation. The Coast Guard did not receive from the sponsor the final details concerning the event's exact location, which is essential information for the purposes of establishing a safety zone in sufficient time to publish a NPRM. If the event, which is centered around a national holiday and the Town of Branford's 350th birthday, were required to be postponed by publishing a NPRM, the event would be cancelled. Publishing a NPRM and delaying the event would be contrary to the public interest since the fireworks display is for the benefit of the public.

**Background and Purpose**

The sponsor, The Town of Branford and American Legion Post 83, Branford, CT has requested that a 45 minute fireworks display, launched from a floating platform, be permitted in the port of Branford in the vicinity of Parker Memorial Park, Branford, CT. This zone is required to protect the maritime community from the dangers associated with this fireworks display which is occurring over Branford Harbor. The safety zone covers all waters of Branford Harbor within a 1200 foot radius of the fireworks barge GT 1000.

**Regulatory Evaluation**

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The event will last approximately 45 minutes. The area affected by this event receives infrequent commercial traffic. Because of the short duration of the event and the extensive advisories which will be made, commercial entities will be able to adjust to any disruptions.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism**

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

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

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

**Final Regulation**

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—[AMENDED]**

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

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–046 is added to read as follows:

**§ 165.T01–046 Safety zone; Branford, CT 350th Fireworks Celebration.**

(a) *Location.* The safety zone includes all waters of Branford Harbor within a 1200 foot radius of the barge GT 1000, the fireworks launching platform, which will be located approximately 1200 feet southwest of Parker Memorial Park in approximate position 41°15′32″ N, 072°49′35″ W.

(b) *Effective date.* This section is effective from 9:15 p.m. through 10 p.m. on July 1, 1994, unless extended or terminated sooner by the Captain of the Port. In case of inclement weather, this section will be effective on the rain dates of July 9 or 10, 1994, at the same times.

(c) *Regulations.* The general regulations covering safety zones contained in section 165.23 of this part apply.

Dated: May 24, 1994.

**T.W. Allen,**

*Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 94–13800 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**[CGD01–94–048]**

**RIN 2115–AA97**

## Safety Zone; Sippican Harbor, MA Fireworks Display

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in Sippican Harbor, Marion, MA, during the Marion Fourth of July fireworks display. The safety zone will cover the area of Sippican Harbor along the Silver Shell Beach shoreline out to 400 yards east of the shoreline. The safety zone is necessary to protect pleasure craft and personnel aboard these vessels from injury due to potential hazards associated with the fireworks.

**EFFECTIVE DATES:** This regulation is effective between the hours of 8 p.m. and 10 p.m. on July 4, 1994. In the event of inclement weather, the regulation will be in effect on the rain date of July 5, 1994 at the same times.

**FOR FURTHER INFORMATION CONTACT:** LT Eric Washburn, Marine Safety Field Office Cape Cod, (508) 968–6556.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The principal persons involved in drafting this document at LT E. A. Washburn, Project Manager, and LCDR J. D. Stieb, Project Counsel, First District Legal Office.

**Regulatory History**

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the date when this office received the application, there was not sufficient time to publish proposed rules in advance of the event. Publishing a NPRM and delaying the event would be contrary to public interest since the fireworks display is for public viewing and is intended to celebrate the 4th of July holiday weekend.

**Background and Purpose**

On July 4, 1994, the town of Marion, Massachusetts, plans to sponsor a Fourth of July Fireworks display between the hours of 9 p.m. and 10 p.m. The fireworks will be launched from a site on Silver Shell Beach and will project onto the waters of Sippican Harbor. Approximately 200 spectator boats are expected to attend this event.

A safety zone is needed to prohibit spectator vessels from transiting or anchoring in the area of Sippican Harbor over which the fireworks will be launched. The Coast Guard will establish this safety zone from the shoreline of Silver Shell Beach (north end of safety zone is buoy C "7" and runs south to Sprague Cove), extending eastward 400 yards into Sippican Harbor, between the hours of 8 p.m. and 10 p.m. on July 4, 1994. In the event of inclement weather, the rain date will be July 5, 1994 at the same times.

**Regulatory Evaluation**

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies of DOT is unnecessary. These regulations will be in effect for only a short period, specifically for two hours on one day. The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water. These vessels will still be able to view the fireworks from the water but will be required to do so at a distance more than 400 yards from the shoreline, which will not cause them undue hardship. The effect on commercial traffic is negligible due to the minimal amount of commercial vessel traffic in that area.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominate in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism**

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

**Environment**

The Coast Guard considered the environmental impact of this proposal

and concludes that under § 2.B.2.C of Commandant Instruction M16475.1B, this proposal is an action to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

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

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

**Final Regulation**

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—[AMENDED]**

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

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section 165.T01–048 is added to read as follows:

**§ 165.T01–048 Safety Zone: Sippican Harbor, MA. Fireworks Display.**

(a) *Location.* The following area is a safety zone: All waters of Sippican Harbor, MA, from the shoreline of Silver Shell Beach (north end of safety zone is buoy C "7" and runs south to Spragues Cove), extending eastward 400 yards into Sippican Harbor.

(b) *Effective dates.* This section becomes effective at 8 p.m. on July 4, 1994. It terminates at 10 p.m. on July 4, 1994, unless terminated sooner by the Captain of the Port. In the event of inclement weather, the section will be in effect on the rain date of July 5, 1994 at the same times.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply.

Dated: May 24, 1994.

**H.D. Robinson,**

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

[FR Doc. 94–13801 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**[CGD01–94–052]**

**RIN 2115–AA97**

## Safety Zone; Onset, MA Fire Department Centennial Celebration

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in Onset Harbor, Onset, MA, on July 9, 1994 during the Onset Fire Department Centennial Celebration. While this safety zone is in effect, no vessel traffic will be allowed into or out of Sunset Cove. This safety zone is necessary to protect pleasure craft and personnel aboard these vessels from injury due to potential hazards associated with the fireworks.

**EFFECTIVE DATES:** This regulation is effective between the hours of 9 p.m. and 10 p.m. on July 9, 1994. In the event of inclement weather, the regulation will be in effect on the rain date of July 10, 1994 at the same times.

**FOR FURTHER INFORMATION CONTACT:** LT Eric Washburn, Marine Safety Field Office Cape Cod, (508) 968–6556.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The principal persons involved in drafting this document are LT E. A. Washburn, Project Manager, and LCDR J. D. Stieb, Project Counsel, First District Legal Office.

**Regulatory History**

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the date when this office received the application, there was not sufficient time to publish proposed rules in advance of the event. Publishing a NPRM and delaying the event would be contrary to the public interest since the fireworks display is for the centenial celebration of this weekend.

**Background and Purpose**

On July 9, 1994, the town of Onset, Massachusetts, plans to sponsor a Onset Fire Works Centennial Celebration between the hours of 9 p.m. and 10 p.m. Approximately 200 spectator boats are expected to attend this event.

A safety zone is needed to prohibit spectator vessels from transiting or anchoring in the area over which the fireworks will be launched. The safety zone will include all waters from the Shell Point Beach south to buoy C "1" then southwest to a danger buoy at position 41 degrees 44.13′ North and 70 degrees 39.83′ West then northwest to the mouth of Sunset Cove, between the hours of 9 p.m. and 10 p.m. on July 9, 1994. While this safety zone is in effect, no vessel traffic will be allowed into or out of Sunset Cove.

**Regulatory Evaluation**

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies of DOT is unnecessary. These regulations will be in effect for only a short period, specifically for one hour on one day. The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water. These vessels will still be able to view the fireworks from the water but will be required to do so at a distance more than 300 yards from the staging area, which will not cause them undue hardship. The effect on commercial traffic is negligible due to the minimal amount of commercial vessel traffic in that area.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominate in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism**

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

**Environment**

The Coast Guard considered the environmental impact of this proposal and concludes that under § 2.B.2.C of Commandant Instruction M16475.1B, this proposal is an action to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

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

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

**Final Regulation**

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**Part 165—[AMENDED]**

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

**Authority:** 33 U S.C. 1231, 50 U S.C. 191, 33 CFR 1.05–1(g), 6.04–1 6.04–6 and 160.5, 49 CFR 1 46.

2. A temporary section 165 T01–052 is added to read as follows:

**§ 165.T01–052 Safety Zone: Onset, MA. Fire Department Centennial.**

**Celebration**

(a) *Location.* The following area is a safety zone: LL WATERS OF Onset Harbor, MA., from the Shell Point Beach south to buoy C "1" then southwest to a danger buoy at position 41 degrees 44.13′ North and 70 degrees 39.83′ West then northwest to the mouth of Sunset Cove.

(b) *Effective Dates.* This section becomes effective at 9 p.m. on July 9, 1994. It terminates at 10 p.m. on July 9, 1994, unless terminated sooner by the Captain of the Port. In the event of inclement weather, this section will be in effect on the rain date of July 10, 1994 at the same times.

(c) *Regulations.*

(1) While this safety zone is in effect, no vessel traffic will be allowed into or out of Sunset Cove unless authorized by the COTP or the COTP representative on-scene.

(2) The general regulations governing safety zones contained in 33 CFR 165.23 apply

Dated: May 24, 1994.

**H.D. Robinson,**

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

[FR Doc. 94–13802 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–14–M

**33 CFR Part 165**

**[CGD01–94–049]**

**RIN 2115–AA97**

## Safety Zone; Onset, MA Fireworks Display

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in Onset Harbor, Onset, MA, on July 2, 1994 during the Onset Fire Department Centennial display. While this safety zone is in effect, no vessel traffic will be allowed into or out of Sunset Cove. This safety zone is necessary to protect pleasure craft and personnel aboard these vessels from injury due to potential hazards associated with the fireworks.

**EFFECTIVE DATES:** This regulation is effective between the hours of 9 p.m. and 10 p.m. on July 2, 1994. In the event of inclement weather, the regulation will be in effect on the rain date of July 3, 1994 at the same times.

**FOR FURTHER INFORMATION CONTACT:** LT Eric Washburn, Marine Safety Field Office Cape Cod, (508) 968–6556.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The principal persons involved in drafting this document are LT E.A. Washburn, Project Manager, and LCDR J.D. Stieb, Project Counsel, First District Legal Office.

**Regulatory History**

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the date when this office received the application, there was not sufficient time to publish proposed rules in advance of the event. Publishing a NPRM and delaying the event would be contrary to the public interest since the fireworks display is for the celebration of the Fourth of July holiday weekend.

**Background and Purpose**

On July 2, 1994, the town of Onset, Massachusetts, plans to sponsor an Onset Fire Department Centennial Fireworks display between the hours of 9 p.m. and 10 p.m. The fireworks will be launched from shore at the town beach on Shell Point. Approximately 200 spectator boats are expected to attend this event.

A safety zone is needed to prohibit spectator vessels from transiting or anchoring in the area over which the fireworks will be launched. The safety zone will include all waters from the Shell Point Beach south to buoy C "1" then southwest to a danger buoy at position 41 degrees 44.13′ North and 70 degrees 39.83′ West then northwest to the mouth of Sunset Cove, between the hours of 9 p.m.and 10 p.m. on July 2, 1994. While this safety zone is in effect, no vessel traffic will be allowed into or out of Sunset Cove.

**Regulatory Evaluation**

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies of DOT is unnecessary. These regulations will be in effect for only a short period, specifically for one hour on one day The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water. These vessels will still be able to view the fireworks from the water but will be required to do so at a distance more than 300 yards from the staging area, which will not cause them undue hardship. The effect on commercial traffic is negligible due to the minimal amount of commercial vessel traffic in that area.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This proposal contains no collection of information requirements under the

Paperwork Reduction Act (44 U.S.C. 3501).

**Federalism**

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

**Environment**

The Coast Guard considered the environmental impact of this proposal and concludes that under § 2.B.2.C of Commandant Instruction M16475.1B, this proposal is an action to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

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

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

**Final Regulation**

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—[AMENDED]

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

**Authority:** 33 U.S.C. 1231, 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section 165.T01–049 is added to read as follows:

**§ 165.T01–049 Safety Zone: Onset, MA. Fireworks Display.**

(a) *Location.* The following area is a safety zone: All waters of Onset Harbor, MA., from the Shell Point Beach south to buoy C "1" then southwest to a danger buoy at position 41 degrees 44.13′ North and 70 degrees 39.83′ West then northwest to the mouth of Sunset Cove.

(b) *Effective date.* This section becomes effective at 9 p.m. on July 2, 1994. It terminates at 10 p.m. on July 2, 1994, unless terminated sooner or by the Captain of the Port. In the event of inclement weather, this section will be in effect on the rain date of July 3, 1994 at the same times.

(c) *Regulations.*

(1) While this safety zone is in effect, no vessel traffic will be allowed into or out of Sunset Cove unless authorized by the COTP or the COTP representative on-scene.

(2) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

Dated: May 24, 1994.

**H.D. Robinson,**

*Captain, U' S. Coast Guard, Captain of the Port, Providence, RI.*

[FR Doc. 94–13803 Filed 6–6–94, 8:45 am]

BILLING CODE 4910–14–M

## POSTAL SERVICE

### 39 CFR Part 946

### Addition of the Delegate of the Chief Postal Inspector for Disposition of Abandoned Property

**AGENCY:** United States Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Postal Service regulations by making clear that the Chief Postal Inspector can delegate the authority to dispose of abandoned property.

**EFFECTIVE DATE:** June 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Postal Inspector-Attorney Frederick I. Rosenberg, (202) 268–5477.

**SUPPLEMENTARY INFORMATION:** Postal Service regulations concerning the disposition of stolen mail matter and property acquired by the Postal Inspection Service for use as evidence are published in title 39 of the Code of Federal Regulations (CFR) as part 946. Section 946.11, disposition of property declared abandoned, is amended to authorize the Chief Postal Inspector to delegate authority to approve the sharing of property declared abandoned with federal, state, or local law enforcement agencies. This will make section 946.11 consistent with the other sections of part 946.

**List of Subjects in 39 CFR Part 946**

Claims, Law enforcement, Postal Service.

Accordingly, 39 CFR part 946 is amended as set forth below:

## PART 946—RULES OF PROCEDURE RELATING TO THE DISPOSITION OF STOLEN MAIL MATTER AND PROPERTY ACQUIRED BY THE POSTAL INSPECTION SERVICE FOR USE AS EVIDENCE

1. The authority citation for part 946 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401 (2), (5), (8), 404(a)(7), 2003, 3001.

2. Section 946.11 is revised to read as follows:

**§ 946.11 Disposition of property declared abandoned.**

Property declared abandoned, including cash, and proceeds from the sale of property subject to this part may be shared by the Postal Inspection Service with federal, state, or local law enforcement agencies. Unless the Chief Postal Inspector determines that cash or the proceeds of the sale of the abandoned property are to be shared with other law enforcement agencies, such cash or proceeds shall be deposited in the Postal Service Fund established by 39 U.S.C. 2003. The authority to make this determination may be delegated by the Chief Postal Inspector

**Stanley F. Mires,**

*Chief Counsel, Legislative Division*

[FR Doc. 94–13724 Filed 6–6–94 8 45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 270

[FRL–4892–3]

### Extension of Date for Submission of Part A Permit Applications for Facilities Managing Ash From Waste-to-Energy Facilities

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

**ACTION:** Notice of extension of permit application deadline.

**SUMMARY:** In *City of Chicago* v *Environmental Defense Fund, Inc* , No 92–1639 (____ U.S. ____, decided May 2, 1994), the Supreme Court held that ash generated by certain municipal waste-to-energy facilities that burn household wastes alone or in combination with nonhazardous wastes from industrial and commercial sources is not exempt from regulation as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). When the decision takes effect, persons who generate such ash will need to determine whether it is a hazardous waste under Subtitle C of RCRA. Ash that is hazardous will need to be managed in compliance with all applicable hazardous waste regulations.

In response to the Court's decision, EPA is today announcing that there has been substantial confusion as to when the owners and operators of facilities managing such ash were required to file applications for RCRA hazardous waste permits. EPA is exercising its authority under 40 CFR 270.10(e)(2) to extend the deadline for filing permit applications

EPA also is announcing today that it considers ash from these combustion facilities to be a newly identified waste for purposes of the land disposal restrictions under sections 3004(d)-(m) of RCRA. Current land disposal restrictions do not apply. Rather, the Agency has a duty to promulgate ash-specific restrictions 6 months from the date of today's document. All other hazardous waste regulations will apply to hazardous ash when the decision takes effect.

**EFFECTIVE DATE:** June 7, 1994.

**ADDRESSES:** Docket Clerk, OSW (OS–305), Docket No. F–94–XAPN-FFFFF, U.S Environmental Protection Agency Headquarters, 401 M Street SW., Washington, D.C. 20460. The public docket is located in M2616 at EPA Headquarters and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260–9327. Copies cost $0.15/page. Charges under $25.00 are waived.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, (800) 424–9346, TDD (800) 553–7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920–9810, TDD (703) 486–3323.

For more detailed information on specific aspects of this Notice, contact Scott Ellinger, Office of Solid Waste (5306), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–1099.

**SUPPLEMENTARY INFORMATION:**

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## I. Authority

These actions interpreting the hazardous waste regulations in 40 CFR parts 260–271 are being taken under the authority of sections 2002, 3004, 3005 and 3006 of the Solid Waste Disposal Act of 1970 as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6924, 6925, and 6926).

## II. Background

### *A. Overview*

On May 2, 1994 the Supreme Court issued an opinion interpreting Section 3001(i) of the Resource Conservation and Recovery Act (RCRA), 42 USC 6921(i). *City of Chicago* v. *EDF*, No. 92–1639 (____ U.S. ____, decided May 2, 1994). The Court held that this provision does not exempt ash generated at resource recovery facilities burning household wastes and nonhazardous commercial wastes (hereafter "waste-to-energy facilities") from the hazardous waste requirements of Subtitle C of RCRA. The Court also held that Section 3001(i) terminated a 1980 regulatory exemption for ash generated at waste-to-energy facilities that burn only household wastes. The opinion requires EPA to revise its prior position that both types of ash were exempt from hazardous waste regulation. It abruptly ends nearly a decade of controversy over the regulatory status of ash from these facilities.

As a result of this decision, ash from waste-to-energy facilities has the same status as other solid wastes. Persons who generate such wastes must determine whether that waste is a hazardous waste under EPA's hazardous waste identification rules at 40 CFR part 261. Since EPA has not listed ash as a hazardous waste, generators must determine whether ash exhibits any of the characteristics of hazardous waste at 40 CFR 261.21–.24. Ash that exhibits a characteristic must be managed in compliance with Subtitle C requirements.

As explained below, the regulatory status of ash has been the subject of confusion for several years. EPA's action today responds by giving owners and operators of facilities that manage ash that is determined to be characteristically hazardous a reasonable opportunity to obtain interim status by applying for a RCRA hazardous waste permit. Without this opportunity, persons managing hazardous ash would be out of compliance with RCRA's permit requirements and face potentially significant civil and criminal penalties.

In this notice EPA is also announcing that it will consider ash that is characteristically hazardous to be a "newly identified" waste under the land disposal restrictions. EPA needs time to determine what treatment standards would be appropriate. By considering such ash to be a newly identified waste under the land disposal restrictions, EPA will have an opportunity to evaluate the efficacy of the existing standards and, if necessary, develop new ash-specific standards.

EPA notes that all other applicable Subtitle C regulations will apply to ash on the date that the Court's decision takes effect. See the discussion of state authorization below for assistance in determining when the Court's decision will affect particular facilities. The Agency interprets the Court's decision to cut-off the exemption for waste management at waste-to-energy facilities at the point that ash is generated. Subsequent management of hazardous ash on-site is subject to regulation under Subtitle C.

### *B. Nature of Ash From Waste-to-Energy Facilities*

Combustion of municipal solid waste, particularly through waste-to-energy facilities, can be an important component of a local government's waste management practices. As of 1990, approximately 196 million tons of municipal solid waste were generated annually in the U.S., 16 percent of which (32 million tons) was combusted. The states with the greatest municipal waste combustion capacity are Florida, New York and Massachusetts. There are approximately 150 municipal waste combustors in the U.S., 80 percent of which are waste-to-energy facilities. The remaining 20 percent incinerate waste without recovering energy.

Approximately 25 percent (by weight) of the waste that is combusted remains as ash, amounting to around eight million tons of municipal waste combustor ash generated annually. Generally, these combustion facilities generate two basic types of ash—bottom ash and air pollution control residuals, commonly referred to as "fly ash." Bottom ash collects at the bottom of the combustion unit and comprises approximately 75–80% of the total ash. Fly ash collects in the air pollution control devices that "clean" the gases produced during the combustion of the waste and comprises around 20–25% of the total. Based on several analytical studies, fly ash generally contains the highest concentrations of inorganic chemical constituents.

Studies also show that ash (usually fly ash) has sometimes exhibited EPA's

Toxicity Characteristic ("TC"). Typically, ash that "fails" the TC leaches lead or cadmium above levels of concern. Because a number of factors can influence whether ash passes or fails the TC (e.g., the nature of the incoming waste stream, the type of combustion unit, the nature of the air pollution control device and the ash sampling location), EPA cannot predict an overall failure rate for ash from municipal waste combustors.

**III. Extension of Permit Deadline Due to Substantial Confusion**

*A. Permit Requirements and Deadline Extensions*

RCRA requires any person treating, storing or disposing of hazardous waste to obtain a permit or a pre-permit authorization called "interim status." Section 3005; 40 CFR 270.1(b). To qualify for interim status a facility must meet criteria set out in RCRA section 3005(e), which include filing a permit application.

When EPA promulgates RCRA rules subjecting a new group of facilities to hazardous waste permitting requirements, the permit regulations provide 6 months for the filing of part A of the permit application. 40 CFR 270.10 (e). EPA routinely publishes in the **Federal Register** the specific permit deadline for persons regulated by the new rules. See 270.10 (e), note. Section 270.10(e)(2) provides that EPA can extend the date for permit applications by **Federal Register** notice if it finds that there has been "substantial confusion" as to whether the owner or operator was required to file a permit application and the confusion was due to ambiguities in EPA's regulations. For the reasons explained below, EPA today is exercising its discretion to extend the submission dates for part A permit applications for facilities treating, storing and disposing of ash from waste-to-energy facilities that exhibits a characteristic of hazardous waste.

*B. Regulatory History of Waste-to-Energy Ash*

In 1980, EPA promulgated a rule exempting household wastes from all RCRA requirements for hazardous wastes. 40 CFR 261.4(b)(1). EPA interpreted this exemption to extend to residuals from the treatment of household wastes, including ash from the combustion of household wastes. The exemption, however, did not address ash from the combustion of household wastes combined with nonhazardous commercial and industrial wastes.

In 1984 Congress added to RCRA a new Section 3001(i), entitled "Clarification of Household Waste Exemption." This provision addressed waste-to-energy facilities burning household wastes and nonhazardous commercial and industrial wastes to produce energy. In July 1985, EPA promulgated a rule that codified this provision. In the preamble accompanying this rule, EPA announced that it interpreted the statute and the rule to exempt the facilities—but not their ash—from Subtitle C, 50 FR 28702, 28725–26 (July 15, 1985). EPA did not publish any statement informing owners of facilities managing ash of any deadline for obtaining RCRA permits.

In the late 1980's, various EPA officials began taking the position that Section 3001(i) could be interpreted to exempt ash from Subtitle C. They also expressed the opinion that ash could be managed safely in nonhazardous waste disposal facilities. The Environmental Defense Fund (EDF) filed citizen suits in two separate U.S. District Courts to enforce the 1985 interpretation of the statute against two specific waste-to-energy facilities. *EDF* v. *City of Chicago*, 727 F. Supp. 419 (N.D. Ill. 1989); *EDF* v. *Wheelabrator Technologies, Inc.*, 725 F. Supp. 758 (S.D.N.Y. 1989). Both courts held that Section 3001(i) exempted ash. On appeal, the Second Circuit ruled in favor of the exemption, but the Seventh Circuit reversed, finding that the statute did not exempt ash. *EDF* v. *City of Chicago*, 948 F.2d 345 (7th Cir. 1991); *EDF* v. *Wheelabrator Technologies, Inc.*, 931 F.2d 211 (2d Cir. 1991), cert. denied 112 S.Ct. 453 (1991). The City of Chicago, which operated the facility adversely affected by the 7th Circuit's decision, appealed to the Supreme Court.

Also in the late 1980's, Congress considered a number of bills that would have explicitly exempted ash from Subtitle C requirements. In November 1990, Congress enacted an uncodified amendment to the Clean Air Act prohibiting EPA from regulating ash as a hazardous waste under Section 3001 of RCRA for a period of two years. Clean Air Act Amendments of 1990, Pub.L. No. 101–549, 104 Stat. 2399.

In response to these events, a number of states authorized to implement Subtitle C programs in lieu of EPA began treating ash from waste-to-energy facilities as exempt. Some interpreted their own regulations virtually identical to Section 3001(i). Others promulgated specific ash exemptions. Many of these specific exemptions were accompanied by detailed regulations for the management of ash as a nonhazardous waste. Consistent with the evolving federal position on the regulation of ash, EPA took no action affecting these state programs.

Finally, in September 1992, just before the expiration of the Clean Air Act ash "moratorium," EPA Administrator William Reilly signed a memorandum announcing that the Agency now interpreted Section 3001(i) to exempt ash from waste-to-energy facilities burning household wastes and nonhazardous wastes from Subtitle C requirements. This memorandum also announced that EPA believed that ash could be disposed of safely in landfills meeting new standards for municipal solid waste facilities promulgated in 1991 and codified at 40 CFR part 258.

*C. Findings*

EPA finds that the events above have created substantial confusion about the status of ash under the rule EPA wrote to codify the exemption in Section 3001(i). Although EPA's 1980 and 1985 preambles indicated that there was no exemption for ash from combined sources, later events suggested that ash was not regulated. Persons may have relied on the two District Court decisions, the 1990 ash moratorium, or the 1992 Reilly memorandum to conclude that Section 3001(i) and 40 CFR 261.4(b)(2) were ambiguous about the status of ash from combined sources. They could quite reasonably have concluded that they could manage ash from combined sources without obtaining hazardous waste permits. If EPA did not act to extend the Part A deadline, however, these facilities would be unable to obtain interim status because the Court's action is not a statutory or regulatory change establishing a new period for obtaining interim status under RCRA section 3005(e). Such facilities would have to cease handling hazardous ash until EPA took final action on their completed permit applications—a process that typically takes several years.

Section 270.10(e)(2) was written to prevent such harsh results. EPA is today invoking its authority to provide a reasonable opportunity for persons managing combined ash to satisfy RCRA's permitting requirements. Applying the substantial confusion approach to facilities managing this ash is consistent with previous precedents. See, e.g., 52 FR 34779–81 (Sept. 15, 1987) (notice of substantial confusion for big city cement kilns).

Persons handling ash from the combustion of 100% household waste could have relied with even greater justification on the Agency's 1980 interpretation of the household waste

exemption to handle such waste without a hazardous waste permit. They are also entitled to an opportunity to satisfy the permit requirement. Since they are becoming subject to Subtitle C without the enactment of a statute or the promulgation of a rule, they do not technically qualify for the normal 6 months provided for persons newly subject to Subtitle C regulation. See section 40 CFR 270.10(e)(1). Section 270.10(e)(1)(ii), which provides 30 days for filing a Part A after a facility "first becomes subject to the [Subtitle C] standards" could apply to these facilities. EPA, however, interprets this provision to apply to facilities whose own actions subject them to Subtitle C rather than to facilities affected by regulatory events. (An example would be a generator that exceeded the small quantity generator monthly waste generation limit.) See generally 45 FR 76630, 76633 (November 19, 1980). Consequently, EPA believes the "substantial confusion" approach is also appropriate for persons who manage 100% household waste. Moreover, it reduces confusion by establishing a single deadline for both types of ash from waste-to-energy facilities.

Accordingly, EPA today establishes that facilities that are handling hazardous ash from waste-to-energy facilities that wish to continue to do so may file Part A applications anytime before December 7, 1994. See the discussion of state authorization below for guidance on where to request and submit an application.

Another statutory requirement for obtaining interim status is the filing of any notification required under section 3010(a) of RCRA. Under section 3010, EPA may require all persons that handle hazardous wastes—including generators and transporters—to notify EPA of the location of their activities within 90 days of the promulgation of a new rule identifying additional characteristics or listing a waste. This provision does not literally apply because EPA is not promulgating or revising a rule. However, failure to satisfy it could cloud a facility's claim that it obtained interim status. In order to prevent this result, EPA is exercising its discretion to waive filing of section 3010 notifications by facilities managing ash from resource recovery facilities. EPA notes that persons who manage ash will be required to obtain EPA identification numbers in the near future. This process will furnish the information that the notifications would have provided.

## IV. Land Disposal Restrictions

The RCRA land disposal restrictions (LDRs) prohibit land disposal of hazardous wastes unless those wastes are first treated to substantially reduce toxicity or mobility of the hazardous constituents in the wastes so as to minimize threats to human health and the environment. RCRA sections 3004 (d), (e), (g), (m). The restrictions specify dates on which particular groups of wastes are prohibited from land disposal unless they are treated. RCRA sections 3004 (d), (e), (g). For wastes which are "newly identified or listed" after November 8, 1984, EPA must promulgate treatment standards within 6 months of the date of identification or listing. RCRA section 3004(g)(4).

On June 1, 1990, EPA promulgated treatment standards for constituents in wastes identified as hazardous under the "EP toxicity" characteristic, the predecessor to the current TC. 55 FR 22520. The treatment standards for metal constituents are levels identical to the EP toxicity standards themselves. 40 CFR 268.41. (EPA notes that it must revise these standards under *Chemical Waste Management, Inc.* v. *EPA*, 976 F.2d 2 (D.C. Cir. 1992) (the "Third Third" decision).) Persons generating wastes that fail the current TC test must determine whether their TC wastes exceed these EP levels, and, if they do, comply with the treatment standards.

EPA, however, believes that ash from waste-to-energy facilities is "newly identified" for purposes of the land disposal restrictions. Although technically ash would be identified as hazardous under the existing TC rather than a new characteristic rule, the Supreme Court's decision is bringing ash into the Subtitle C system for the first time (for ash from 100% household waste) or returning it to the system after a period of uncertainty and actual legislative exemption (for ash from combined sources).

EPA dealt with a similar situation in a 1990 LDR rule. In that notice, EPA interpreted section 3004(g)(4) for mineral processing wastes brought into RCRA by a decision of the U.S. Court of Appeals for the District of Columbia Circuit holding that EPA had improperly considered them to be exempt from Subtitle C under the statute's "Bevill amendment". (The mineral processing wastes also sometimes exceed the TC and EP toxicity levels for metals.) In that notice, EPA explained that section 3004(g)(4) is ambiguous as to whether it applies to wastes brought into the system after 1984 due to regulatory reinterpretation. See 55 FR 22667 (June 1, 1990). EPA determined that it was preferable to read section 3004(g)(4) to include such wastes because that reading was more consistent with the policy goals that prompted Congress to establish a separate schedule for new wastes in the first place: the need to study such wastes separately to set appropriate treatment standards, and the established priority of subjecting older wastes to the land ban first. *Id.*

EPA also noted that, before it developed specific treatment standards for the newly-identified mineral processing wastes, the wastes could be regulated under existing treatment standards for EP toxicity metals. EPA determined that it would not be appropriate to apply those treatment standards, however, because it had not analyzed and tested the wastes to determine whether those standards would meet the statuary requirements of reduced toxicity and mobility. *Id.*

Ash from 100% household waste clearly fits this precedent. It, too, is being regulated under Subtitle C for the first time as the result of a court decision narrowing an Agency interpretation of an existing Subtitle C exemption. Further, as explained in more detail below, EPA needs to determine whether exiting EP toxicity treatment standards will meet land treatment standard requirements for this ash. Accordingly, EPA interprets section 3004(g)(4) to apply to this ash. EPA will not apply the current treatment standards for the EP toxicity characteristic to ash which is identified as hazardous under the TC. Section 3004(g)(4) will require EPA to promulgate treatment standards for this ash within 6 months of the date of this notice.

Ash from combined sources is not entering Subtitle C jurisdiction for the first time—it was not exempt under EPA's original household waste exemption, and was not originally viewed as exempt under section 3001(i). Nevertheless, EPA believes that it would be appropriate and consistent with the goals of the LDRs to view it as a newly identified waste under section 3004(g)(4). Section 3004(g)(4) is ambiguous as to wastes reentering Subtitle C after several years of confusion and two years of clear statutory exemption. Moreover, EPA has not studied ash to determine what treatment standards would meet the requirements of Section 3004(m) of RCRA, and in fact is reviewing what the appropriate treatment standards are for all of the wastes with metal constituents exhibiting the Toxicity Characteristic. 58 FR 48116 (Sept. 14, 1993). Congress priority scheme for land disposal restrictions directs EPA to promulgate standards for post-1984 wastes in chronological order. If EPA were required to immediately determine

whether the current EP toxicity standards for ash were appropriate, it would have to postpone work on treatment standards for new listings and a new characteristic promulgated several years prior to the *City of Chicago* decision. Additionally, EPA needs time to determine whether current treatment standards are appropriate for ash.

For these reasons, EPA will also consider ash from combined sources to be newly identified for purposes of the land disposal restrictions. Furthermore, it will not apply the existing treatment standards for EP toxicity. As a result of this decision, Section 3004(g)(4) requires EPA to promulgate treatment standards for combined ash within 6 months of the date of this notice.

## V. Other Subtitle C Requirements

EPA is not extending compliance dates for any other aspect of the hazardous waste regulations. Facilities generating, transporting, or treating, storing or disposing of hazardous ash must, as a matter of federal law, comply with the substantive requirements of 40 CFR parts 260–270 on the effective date of the Court's decision. (See the discussion of state authorization below to determine when the decision takes effect under authorized state RCRA programs.) EPA reminds generators, transporters and treatment, storage and disposal facilities that they must promptly obtain EPA identification numbers. See, e.g., 40 CFR 262.12. EPA intends to issue an implementation strategy in the near future that will provide additional information on complying with other RCRA requirements.

To facilitate compliance with Subtitle C, EPA has developed draft guidance for the sampling of ash from waste-to-energy facilities. EPA has already released this draft. Interested parties may obtain a copy by calling the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424–9346, TDD (800) 553–7672 (hearing impaired); in the Washington, DC metropolitan area, the number is (703) 920–9810, TDD (703) 486–3323. EPA soon will publish a separate **Federal Register** notice requesting comment on the draft.

EPA notes that by following certain waste management practices, some facilities may not need interim status or a RCRA permit. For example, under federal regulations, generators of hazardous ash may accumulate and treat ash onsite in tanks or containers for up to 90 days without obtaining hazardous waste permits under 40 CFR 262.34. See also 51 FR 10186 (May 24, 1986.)

## VI. State Authorization and Implementation

### *A. Permit Deadline Extension*

#### 1. General Principles

Section 3006(b) of RCRA allows states to obtain authorization to implement state hazardous waste programs in lieu of federal law. To obtain authorization, a state must show that its program is equivalent to the Federal program. EPA interprets this requirement to mean that state laws and rules must be no less stringent than federal requirements. Section 3009, however, expressly allows states the option of establishing more stringent requirements.

Forty-eight states and territories are now authorized for all of the RCRA requirements established prior to November 1984 (the RCRA "base program"). In these states, the state's definition of hazardous waste—including any exemptions—operates in lieu of the federal definition. Changes to the federal definition do not automatically revise independently promulgated state regulations. Rather, the states are required to revise their programs and submit the revisions to EPA for approval. The revision does not take effect under federal law until EPA approves the revision. As explained below, in a few of these states, the Court's decision may not take effect on its federal law effective date. EPA believes that there are very few states in this category.

Where the Court's decision does eliminate an exemption for ash, the hazardous waste characteristic most likely to apply to ash is the TC as determined by the Toxicity Characteristic Leaching Procedure ("TCLP") promulgated by EPA in 1990. This rule was promulgated under one of the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). Section 3006(g) provides that rules promulgated under HSWA take effect in all states at the same time, displacing state rules unless the state rules are more stringent. EPA implements the new HSWA rule until the state adopts an equivalent provision, submits it to EPA, and obtains EPA approval. 50 FR 28728–30. (July 15, 1985). The TC and TCLP displaced the 1980 EP toxicity characteristic and leaching procedure. The EP, however, also remains in effect as a matter of state law in many states.

Sixteen states are now authorized for the TC and TCLP (see list in Table 1). EPA continues to implement the TC and the TCLP in the remaining states. EPA takes the position that, where it implements the TC, it uses federal permitting procedures. Consequently, EPA will implement the permit deadline extension announced today in all states where it implements the TC. Owners and operators in those states would file Part A applications with EPA Regional Offices. (See list in Table 2.) Where a state has been authorized to implement the TC, however, state permit procedures are in effect. Today's deadline extension is not in effect in those states. Moreover, since the extension makes permit requirements less stringent, states are not required to adopt equivalent extensions. If any of these states chooses to provide equivalent relief, owners and operators would file permit applications with the state agency.

To summarize, in order to determine the impact of today's action, persons handling ash must determine (1) the impact of the Court's decision on the RCRA program in each state (primarily an issue of whether a state's base program contains an *authorized* exemption for ash) and (2) whether the entity authorized to implement the TC and TCLP has extended its permit deadline.

#### 2. Application of Principles: Status of Court Decision and Permit Exemption in Individual States

*a. Unauthorized states.* In the eight states and territories where EPA implements all portions of the RCRA program (see Table 1 for a list of these states and territories), including the base program, the Court's decision will eliminate EPA's interpretative ash exemption on the opinion's effective date. Since EPA implements the TC, the permit deadline extension will take effect today. Owners and operators of facilities who wish to obtain interim status to manage hazardous ash may file Part A applications with EPA Regional Offices. (See list in Table 2.)

*b. Authorized states.* The issues in authorized states are very complex. Table 3 summarizes the status of the decision and the permit deadline for major categories of states. This text presents a few explanatory notes.

**Table 1.—List of States and Territories Without RCRA Subtitle C Base Program Authorization**

Wyoming
Hawaii
Alaska
Iowa
Puerto Rico
Virgin Islands
American Samoa
Northern Mariana Islands

**List of States and Territories Authorized for the Toxicity Characteristic**

Alabama
Florida
Georgia
Kentucky
Mississippi
North Carolina
South Carolina
Tennessee
Minnesota
Arkansas
Texas
Arizona
California
Guam
Nevada
Idaho

**Table 2.—U.S. EPA Regional Contacts for the Part A Permit Application**

U.S. EPA Region 1, RCRA Support Section, JFK Federal Building, Boston, MA 02203–2211, (617) 573–5750, CT, ME, MA, NH, RI, VT

U.S. EPA Region 2, Air and Waste Management Division, Hazardous Waste Facilities Branch, 26 Federal Plaza, room 1037, New York, NY 10278, (212) 264–0504, NJ, NY, PR, VI

U.S. EPA Region 3, RCRA Programs Branch (3HW50), 841 Chestnut Street, Philadelphia, PA 19107, (215) 597–8116 (PA, DC), (215) 597–3884 (VA, WV, DE, MD), DE, DC, MD, PA, VA, WV

U.S. EPA Region 4, Hazardous Waste Management Division, RCRA Permitting Section, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 347–3433, AL, FL, GA, KY, MS, NC, SC, TN

U.S. EPA Region 5, RCRA Activities, P.O. Box A3587, Chicago, IL 60690 (Call State Offices), IL, IN, MI, MN, OH, WI

U.S. EPA Region 6, Hazardous Waste Management Division, First Interstate Bank Tower, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 655–8541, AR, LA, NM, OK, TX

U.S. EPA Region 7, RCRA Branch, Permitting Section, 726 Minnesota Avenue, Attn: WSTM/RCRA/PRMT, Kansas City, KS 66101, (913) 551–7654, IA, KN, MO, NE

U.S. EPA Region 8, Hazardous Waste Management Division, 999 18th Street, Suite 500, Denver, CO 80202–2405, (303) 294–1361, CO, MT, ND, SD, UT, WY

U.S. EPA Region 9, Hazardous Waste Management Division, Attn: H–2–3, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–2098, AZ, CA, HI, NV, AS, GU, No. Mariana Is.

U.S. EPA Region 10, Waste Management Branch, HW–105, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–0151, AK, ID, OR, WA

TABLE 3.—PERMIT DEADLINE: IMPLEMENTATION IN AUTHORIZED STATES

| State has no ash exemption | State has unauthorized ash exemption | State has authorized ash exemption |
|---|---|---|
| **TC Authorization: EPA [1]** | | |
| 1. Court decision in effect | 1. Court decision in effect | 1. Decision may not be in effect (state law issue). |
| 2. No deadline extension needed | 2. Deadline extension in effect | 2. Deadline extension not in effect. EPA will extend deadline when it approves program revision. |
| 3. No state program revision needed | 3. State must revise state law and inform EPA informally.<br>4. Owners/operators file notifications and Part A's with EPA Regional Office. | 3. State must revise program and submit for review under 40 CFR 271.21(e)(2)(ii).<br>4. Owners/operators file notifications and Part A's with EPA Regional office. |
| **TC Authorization: State** | | |
| 1. Court decision in effect | 1 Court decision in effect | 1. Decision may not be in effect (state law issue). |
| 2. No deadline extension needed | 2. Deadline extension not in effect. State may provide equivalent relief. | 2. Deadline extension not in effect. State may provide equivalent relief when it eliminates exemption. |
| 3. No state program revision needed | 3. State must revise state law and inform EPA informally.<br>4. Owner/operators file with State if State grants relief. | 3. State must revise program and submit for review under 40 CFR 271.21(e)(2)(ii).<br>4. Owner/operators file with State if State grants relief. |

[1] Note: EP toxicity characteristic may still be in effect under state law. States that have ash exemptions may determine whether they want to provide similar relief for EP permitting deadline.

(i) States with no ash exemption.

Since states may maintain more stringent RCRA programs, some states may never have exempted ash from hazardous waste requirements. The *City of Chicago* decision has no impact in these states. No permit deadline extensions are needed.

(ii) States with unauthorized ash exemptions.

EPA knows that, during the years of confusion over the status of ash, some states exempted ash from their Subtitle C programs. Most of these states, nowever, did not submit these provisions to EPA for authorization reviews. Although they arguably may have made the state programs less stringent than the federal program, EPA would have taken no action to force the states to eliminate them.

(A) Effect of court's decision.

Some of these states adopted provisions resembling 3001(i) and interpreted them to exempt ash. Whether the *City of Chicago* decision requires these states to abandon these interpretations is an issue of state law that can be answered authoritatively only by state officials.

Other states promulgated rules under their solid waste authorities that established ash-specific management standards that implicitly—or explicitly—transferred ash management from their hazardous waste programs to their solid waste programs. The status of these provisions is again an issue of state law.

(B) Effect of today's deadline extension.

Since the state never obtained authorization for its exemption for ash, its authorized program still regulates ash as a hazardous waste. The regulated

community, however, could have been confused about the status of ash, so the relief provided by the deadline extension would be appropriate. Whether or not the extension is in effect, however, depends on which entity is authorized to implement the TC. As explained above, where EPA implements the TC, it will apply today's notice. Where states implement the TC, today's notice cannot operate to revise state permit rules. The state would need to determine whether it wanted to provide equivalent relief.

(C) Requirements for program revision.

As a result of the court's decision, states with unauthorized ash exemptions now have state law requirements that are less stringent than the federal Subtitle C program. EPA is today notifying those states that they must revise their laws and regulations to eliminate the less stringent provisions. Although EPA is not today initiating any withdrawals of state programs, it advises states to take timely action to eliminate their ash exemptions. Since these provisions are not part of states' authorized RCRA programs, no Subtitle C program revisions will be necessary. Rather, EPA advises states to notify Regional Offices informally by letter when they have eliminated their exemptions.

(D) Where to file Part A applications.

Where EPA implements the TC, owners and operators must file Part A applications with the appropriate EPA Regional Office.

Where a state that is authorized to implement the TC decides to extend the filing deadline, owners and operators must file with the state hazardous waste agency.

(iii) States with authorized ash exemptions.

EPA may have authorized a few ash exemptions during the late 1980's and early 1990's. EPA has not found any such authorization during a limited review prior to the publication of this emergency notice. Consequently, EPA believes that there are very few states in this category. Nevertheless, in case such states exist, EPA is explaining their obligations.

(A) Effect of court decision.

Whether or not the decision affected the state law or rule that EPA authorized is a state law issue. State officials will need to make that determination. If a state determines that its state provision is still in effect, both the state law and the authorized RCRA program will continue to exempt ash until such time as the state revises its program and obtains EPA approval for its revision.

(B) Effect of today's permit deadline extension.

If ash is still exempt under both state law and the authorized program, no permits are currently required. Today's filing date extension would not take effect. As explained in (D.) below, in some cases EPA will announce an extension when it approves a revision eliminating an ash exemption.

(C) State program revisions.

Where ash exemptions remain in effect, state programs will be less stringent than the federal program. Formal state program revisions, including notice and comment rulemaking, will be required under 40 CFR 271.21(e)(2)(ii). The deadline for these revisions will be July 1, 1995 under 40 CFR 271.21(e)(2)(ii). An additional year is available where states must make statutory changes. 40 CFR 271.21(e)(2)(v).

(D) Where to file Part A applications.

At the time that the state receives EPA authorization for the revision that eliminates its ash exemption, if EPA is still implementing the TC, it will make a finding of substantial confusion and extend the Part A deadline for that state. Owners and operators desiring interim status will need to file applications with the appropriate EPA Regional Office. EPA will not be able to provide this relief where a state is authorized to implement the TC. Those states must determine whether they want to extend permit deadlines. If they do, owners and operators wishing to obtain interim status will need to file applications with the appropriate state agency.

*B. Land Disposal Restrictions*

The LDRs are HSWA rules initially implemented by EPA. Moreover, EPA has established that it will not delegate its authority to set treatment standards to states. EPA views determinations linked to the need for and scope of treatment standards as similarly nondelegable. This includes today's interpretation that ash from waste-to-energy facilities is a newly identified waste under section 3004(g)(4). This interpretation is effective in all states, including those authorized to implement the delegable portions of the land disposal restrictions.

## VII. Good Cause Finding

Section 270.10(e)(2) does not require notice and comment rulemaking for substantial confusion notices. Rather, it simply requires EPA to publish a "notice" in the **Federal Register**. To the extent that this notice is a rulemaking for the purposes of section 553 of the Administrative Procedure Act (APA), EPA believes that it has "good cause" under section 553(b)(3)(B) of the APA to extend the permit application deadline without prior notice and opportunity for comment. First, EPA believes that its determination regarding the existence of regulatory confusion is an "interpretative rule" for which notice and comment is not required under section 553(b)(3)(A) of the APA. It clarifies and explains existing law rather than creating new duties. Moreover, the establishment of a due date for Part A permit applications is a procedural rule also exempt from notice and comment under section 553(b)(3)(A) of the APA. The effect of establishing this new date is that EPA will not take enforcement action for operation without a RCRA permit against a facility that submits its application in compliance with this notice and that meets the other conditions of RCRA section 3005(e). Finally, EPA views the issues of whether confusion existed and whether it was "substantial" as subjects on which comment would not be useful and would not serve the public interest.

EPA's findings concerning the land disposal restrictions are also "interpretative rules" exempt from notice and comment requirements. They provide EPA's views on the scope of section 3004(g)(4) of RCRA. Moreover, EPA would have good cause to eliminate notice and comment even if these determinations are regarded as legislative rules. The land disposal restrictions would take effect for ash approximately 25 days after the Court issued its opinion. It would be impossible for facilities managing ash to come into compliance with the restrictions in that short time. See 55 FR 22521 (June 1, 1990) (Third Third LDR rule—EPA provides 90 days for persons managing wastes subject to new treatment standards to come into compliance.) The Court's decision thus creates an emergency justifying use of the "good cause" exemption under section 553(b)(3)(B) of the APA.

## VIII. Regulatory Requirements

*A. Executive Order 12866*

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it involves novel policy issues arising out of legal mandates. However, OMB waived review of this action.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) requires the Agency to prepare and make available for public comment, a regulatory flexibility analysis that describes the impact of a

proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The ruling of the Supreme Court in *City of Chicago* v. *Environmental Defense Fund, Inc.* will result in additional costs for waste management facilities and some of those costs will be borne by small entities. The Agency does not have estimates of those costs. Today's rule extends the date by which affected facilities must submit a Part A permit application. This action will lower the costs to small entities that will have to comply with the Court's ruling. Therefore, pursuant to 5 U.S.C. 605b, I certify that this regulation will not have a substantial impact on small entities.

*C. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2050–0009; 2050–0120; 2050–0028; 2050–0034; 2050–0039; 2050–0035 ; 2050–0024.

This collection of information has an estimated average burden per respondent as stated below:

| OMB No. | Title | New respondents | Average burden (hours) | Total additional burden (hours) |
|---|---|---|---|---|
| 2050–0009 | Part B Permit Application | 6 | 242 | 1457 |
| 2050–0120 | General Facility Standards | 6 | 91 | 547 |
| 2050–0028 | Notification (for EPA ID) | 62 | 4.35 | 270 |
| 2050–0034 | Part A Permit Application | 68 | 72 | 4903 |
| 2050–0039 | Hazardous Waste Manifest | 12 | 1.8 | 22 |
| 2050–0035 | Generator Standards | 62 | 1.1 | 68 |
| 2050–0024 | Biennial Report | 62 | 20 | 1240 |

These estimates include 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; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Dated: May 27, 1994.

**Carol M. Browner,**

*Administrator*

[FR Doc. 94–13668 Filed 6–6–94; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Part 195

**[Docket No. PS–121; Amdt. 195–51]**

**RIN 2137–AB 46**

## Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule provides that operators may not transport a hazardous liquid in a steel interstate pipeline constructed before January 8, 1971, a steel interstate offshore gathering line constructed before August 1, 1977, or a steel intrastate pipeline constructed before October 21, 1985, unless the pipeline has been pressure tested hydrostatically according to current standards or operates at 80 percent or less of a qualified prior test or operating pressure. In addition, this final rule creates a comparable requirement for carbon dioxide pipelines constructed before July 12, 1991, except for production field distribution lines in rural areas. The purpose of this final rule is to ensure that the affected pipelines have an adequate safety margin between their maximum operating pressure and test pressure. This safety margin is essential to prevention of particular kinds of pipeline accidents.

**EFFECTIVE DATES:** The changes to part 195, except § 195.306(b), take effect July 7, 1994. The final rule under § 195.306(b) takes effect August 8, 1994, unless RSPA receives, by July 7, 1994, comments that illustrate that disallowing the use of petroleum as a test medium for pressure testing required by this rulemaking is not in the public interest. Upon receipt of such comments, RSPA will publish a document in the **Federal Register** withdrawing the final rule under § 195.306(b).

**ADDRESSES:** Written comments must be submitted in duplicate and mailed or hand-delivered to the Dockets Unit, room 8421, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Identify the docket and amendment number stated in the heading of this notice. Comments will become part of this docket and will be available for inspection or copying in room 8421 between 8:30 a.m. and 5 p.m. each business day.

**FOR FURTHER INFORMATION CONTACT:** L. M. Furrow, (202) 366–2392, regarding the subject matter of this final rule document, or Dockets Unit (202) 366–4453, for copies of this final rule document or other material in the docket.

**SUPPLEMENTARY INFORMATION:**

**Background.**

Any steel pipeline may contain hidden physical defects that result from the manufacture or transportation of pipe and from pipeline construction. Over the operational life of the pipeline, new physical defects can be created by external forces acting on the pipeline. When a physical defect is large enough, it can cause the pipeline to fail during operation. Also, during pipeline operation, internal or environmental stresses can cause smaller defects to grow and become large enough to cause the pipeline to fail.

Adequate pressure testing can disclose hidden physical defects in a pipeline. Pressure testing involves raising a pipeline's internal pressure above its maximum operating pressure (MOP) for a time sufficient for leaks to develop from defects. A test that is adequate in pressure level and duration will disclose physical defects that are large enough to cause pipeline failure

during operation. In addition, an adequate pressure test will provide a proven margin of safety against failure during operation from the growth of defects.

Line pipe research has demonstrated that 125 percent of MOP is the minimum test level adequate to protect hazardous liquid pipelines against failure in operation from physical defects. A pressure test at this level for a sufficient duration provides a 25 percent proven margin of safety against failures caused by the growth of physical defects.

Under § 195.302, new steel pipelines must be pressure tested to provide at least a 25 percent proven margin of safety. Hazardous liquid pipelines must be pressure tested hydrostatically, but carbon dioxide pipelines may be tested pneumatically, using inert gas or carbon dioxide as the test medium (see § 195.306). Portions of existing steel pipelines that are replaced, relocated, or otherwise changed are also subject to this pressure testing requirement. The requirement became effective as follows for pipelines subject to part 195: January 8, 1971, for interstate pipelines transporting hazardous liquid (35 FR 17183); August 1, 1977, for interstate offshore gathering lines transporting hazardous liquid (41 FR 34039); October 21, 1985, for intrastate pipelines transporting hazardous liquid (50 FR 15895); and July 12, 1991, for pipelines transporting carbon dioxide in a supercritical state (56 FR 26922).

Section 195.302 also requires that certain older pipelines transporting highly volatile liquids (HVL) must have at least a 25 percent proven margin of safety. These pipelines are onshore steel interstate pipelines constructed before January 8, 1971, and onshore steel intrastate pipelines constructed before October 21, 1985. If an older HVL pipeline has not been hydrostatically tested to part 195 standards, § 195.302(b) permits operators to provide the proven margin of safety either by hydrostatic testing or by establishing the pipeline's MOP under § 195.406(a)(5) at 80 percent or less of a qualified prior test or operating pressure. Establishing MOP under § 195.406(a)(5) and hydrostatic testing to part 195 standards provide equivalent proven margins of safety.

Apart from these older HVL pipelines, the 25 percent proven margin-of-safety requirement does not apply to older pipelines constructed before the dates (stated above) the pressure testing requirement went into effect for new pipelines. Consequently, many older pipelines subject to part 195 are not operated with a minimum 25 percent proven margin of safety. It was not common industry practice to test to at least 125 percent of MOP or to test to that pressure level for a sufficient duration.

**Notice of Proposed Rulemaking**

Older pipelines that do not have a minimum 25 percent proven margin of safety are more susceptible to failures from defect growth in service than pipelines that meet the part 195 pressure testing requirements. They are also more susceptible to failure from defect growth during instances of overpressure permitted by § 195.406(b). This increased potential for failure is prevalent in pipelines made of pre-1970 electric resistance welded (ERW) pipe.

RSPA's pipeline accident statistics show the benefits of requiring older pipelines to have a minimum 25 percent proven margin of safety. September 15, 1985, was the date by which onshore interstate pipelines constructed before January 8, 1971, that transport HVL had to have a minimum 25 percent proven margin of safety. By that date these pipelines had to have been pressure tested hydrostatically to part 195 requirements or operated at 80 percent or less of a qualified prior test or operating pressure. To learn the effect of the 25-percent-safety-margin requirement, RSPA compared the period for which accident data were available before the requirement was adopted with the period from September 15, 1985, through December 31, 1989. Onshore HVL interstate pipelines had a 68 percent lower rate of failure from material defects and corrosion during the latter period. RSPA attributed this dramatic drop in failure rate to the 25-percent-safety-margin requirement imposed on the older onshore HVL interstate pipelines. In addition, RSPA concluded that operators could achieve a comparable reduction in failure rate on all other older pipelines subject to part 195 that lack an adequate proven margin of safety.

To bring about this reduction in failure rate, RSPA published a Notice of Proposed Rulemaking (NPRM) (Docket PS–121; 56 FR 23538, May 22, 1991) on testing older pipelines. The notice proposed to extend the part 195 requirement for a proven margin of safety to all pipelines that are covered by part 195 but excepted from the testing standards in subpart E of part 195. These pipelines are (1) hazardous liquid steel interstate pipelines constructed before January 8, 1971, other than onshore HVL pipelines; (2) hazardous liquid steel interstate offshore gathering lines constructed before August 1, 1977; (3) hazardous liquid steel intrastate pipelines constructed before October 21, 1985, other than onshore HVL pipelines; and (4) carbon dioxide steel pipelines constructed before July 12, 1991.

In the NPRM, RSPA also discussed the unique safety problems with longitudinal seams on ERW pipe manufactured before 1970. RSPA proposed that operators give pipelines with a predominance of pre-1970 ERW pipe priority in scheduling tests. Under this proposal, testing of pipelines known to have more than 50 percent (by mileage) of pre-1970 ERW pipe would have to be completed within 4.5 years after a final rule is published.

Thirteen persons submitted written comments on the NPRM: 11 pipeline operators, the American Petroleum Institute (API), and the U.S. Department of the Interior (DOI). A discussion of the significant comments and their disposition in development of the final rules follows.

*General Comments*

Most commenters discussed specific problems they anticipated in carrying out the rulemaking proposals, without objecting to them outright. DOI favored adoption of the proposals, especially for offshore pipelines. One commenter, a major operator of hazardous liquid pipelines, clearly supported the proposed rules. A few other operators hedged their apparent agreement with the proposals by suggesting RSPA allow smart pigs as a substitute for pressure testing or MOP reduction, an issue discussed separately below. Another operator asserted that RSPA should require pressure testing or MOP reduction only where risk is heightened by factors such as adverse leak or corrosion history, environmental sensitivity, or high population. Only two operators strongly objected to the proposals. But, they aimed their remarks at carbon dioxide pipelines, and as discussed below, the final rule addresses their concerns. By and large, RSPA believes the commenters supported the objective of the notice concerning older untested or inadequately tested hazardous liquid pipelines.

Limiting the application of the proposed rules to older pipelines that have an increased risk of failure or that are near environmentally sensitive areas or a large number of people does not sufficiently address safety concerns. The problem of the growth of defects is common among all pipelines regulated by part 195. It is not limited to pipelines that are in a worrisome condition or a high risk location. For such problems, RSPA believes that all pipelines should

provide a basic level of protection. The proposals in the NPRM were consistent with this view. They would assure that older pipelines provide at least the same basic level of protection against the growth of defects as newer pipelines must provide. Also, limiting the proposed rules to pipelines that involve some added element of risk would leave many miles of older pipelines without adequate protection against failures caused by the growth of defects. RSPA strongly believes these potential failures and preventable damages should not go unchecked.

*Pump Stations and Tank Farms*

API and two operators argued that the proposed rules should not apply to pump stations, tank farms, or tank farm delivery facilities. They said compliance would be an extremely time-consuming task because of the many fittings, valves, tanks, and instrumentation. API also suggested the benefits would be questionable since most accidents, as described in the NPRM, occur on pipeline rights-of-way.

Part 195 has limited application at tank farms. In general, it applies to only receiving and reinjection lines, to tanks used as breakout tanks, and to facilities associated with breakout tanks.

Although the job of testing pump station and breakout tank facilities may be time-consuming, it is crucial to ensure public safety and protect the environment. Population has encroached on the older pump stations and tank farms since their construction, increasing their threat to public safety. Also, slow leaks at tank farms have polluted ground water and endangered neighborhoods.

In considering the issue of pump stations and tank farms, RSPA examined the existing rule in § 195.302 regarding the testing of older onshore HVL pipelines. Except for tank farm facilities to which the rule does not apply, § 195.302 does not exclude any of the facilities the commenters suggested RSPA exclude from the present rulemaking. RSPA believes non-HVL facilities should not be treated differently. Leaks at non-HVL hazardous liquid facilities can have fire and pollution consequences. Also, even minor accidents at breakout tanks in tank farms have the potential to become uncontrollable emergencies because of proximity to other large volume hazardous liquid storage tanks. Therefore, RSPA has adopted the final rule as proposed concerning pump stations and breakout tanks. The demands of testing these facilities should be mitigated, however, by the compliance deadlines, which are discussed next.

*Compliance Deadlines*

RSPA proposed a deadline of 1 year after publication of the final rule for operators to plan and schedule testing or to reduce MOPs. RSPA also proposed a deadline of 4.5 years after publication of the final rule for testing all pipelines with more than 50 percent pre-1970 ERW pipe, and for testing at least 50 percent of all other pipelines. Finally, RSPA proposed that operators complete all testing within 7.5 years after publication of the final rule.

One operator argued that RSPA should allow operators to use the entire test period to plan testing or to reduce MOPs. This commenter said that planning for testing or reduction in MOP would involve complicated analyses that would take longer than 1 year. The commenter also said any plan may need to be changed because of unforeseen operational problems that may arise during the test period.

RSPA proposed a 1-year deadline to assure that operators start their testing program early in the test period. Early planning is necessary to minimize unexpected delays and assure that operators complete testing within the time allowed. Also, RSPA assumed that when operators plan to reduce MOP, the reduction could be done without lengthy preparations. Further, RSPA strongly believes any MOP reduction should be done early in the program to lessen the continuing risk to the public. If unforeseen testing or operational problems arise during the test period, an operator could modify its initial testing plan and schedule as needed to resolve those problems. Of course, any modified plan or schedule would still have to provide for completion of testing before the applicable deadline.

The proposed 1-year deadline for MOP reduction or planning and scheduling testing was the same amount of time that § 195.302 allowed for similar activities on the older onshore HVL pipelines. However, the process will involve more mileage than it did for onshore HVL pipelines. Also, RSPA expects operators will need further planning to maintain the product-supply requirements of their customers. Therefore, RSPA has extended the proposed planning and scheduling deadline to 1.5 years in the final rule.

Another operator thought the proposed test period for pre-1970 ERW pipelines was unfair to operators who have many of these pipelines. These operators would not be able to spread costs and impacts on operations over as much time as other operators. This commenter suggested that an equitable approach would be to require that operators give pre-1970 ERW pipelines priority in testing over the full test period.

RSPA proposed a shorter test period for the pre-1970 ERW pipelines because these pipelines have unique safety problems. The unique problems cause pre-1970 ERW pipelines to have a greater potential for failure than other older pipelines. Since pre-1970 ERW pipelines pose a greater risk, requiring operators to test them sooner than other older pipelines is critical to safety.

API declared that the proposed testing periods would create an undue hardship on consumers and the pipeline industry. It suggested RSPA lengthen the period to 10 years for all older pipelines, with testing priorities based on risk. Operators and shippers need the additional time, API said, so the nation's pipeline network can adapt to the impact of the testing program on the market. The operators and shippers would use the time to arrange alternative transportation and to prevent regional supply disruptions.

Using similar reasoning, two operators also urged us to allow more time for testing. One operator thought a reasonable period would be 7 years for pre-1970 ERW pipelines, and 10 years for the others. The other operator thought the periods should be 5 and 10 years, respectively.

RSPA, too, is concerned about the potential adverse impact on the nation's fuel supplies that could result from testing thousands of miles of pipelines. Aside from the substantial planning that must be done before testing, many operators will need time to obtain waste water disposal permits from various jurisdictions. Operators will need time to prepare pipeline systems for testing and to arrange for personnel and equipment to conduct the tests.

System changes and actual testing must be coordinated with product-supply operations to minimize the impact on refineries, distributors, and users of the transported products. Also, operators need time to assure that testing is done safely, with the least environmental risk, and in accordance with applicable Federal and State regulations. However, RSPA weighed these time demands in deciding upon the compliance deadlines proposed in the NPRM. None of the commenters who addressed the compliance-time issue substantiated their opinions that more time should be allowed. Although it is admittedly difficult to predict how much time is appropriate, the comments do not convince us that there are too many pre-1970 ERW pipelines to test in

4.5 years or that a decade is needed to complete testing of all other pipelines. Therefore, the final rule adopts the testing deadlines as proposed.

RSPA has not adopted API's suggestion to allow 10 years for all older pipelines, with priorities based on risk, because the unique problems of pre-1970 ERW pipelines demand correction sooner. Also, considering the mileage involved, the potential savings from reusing test water, and the need to minimize market impacts, API's suggestion would further complicate the development of test schedules. Still, the final rule does provide operators flexibility in planning and scheduling tests. When feasible, operators could use this flexibility to select pipelines for testing according to leak history or other risk factors. RSPA encourages such testing priorities provided all required testing is completed within the periods allowed.

*Charts or Logs*

Two operators commenting on proposed § 195.406(a)(5) asked us not to limit allowable documentation of prior tests or operating pressures to recording charts or logs. They said the industry has never had to keep these charts and logs for older pipelines, and many have been lost. They suggested that the final rule allow alternative documentation, such as construction specifications, pipeline completion reports, and affidavits from responsible people.

Considering the importance of a minimum 25 percent proven margin of safety to the integrity of pipelines, public safety cannot tolerate doubts about whether a pipeline has been adequately tested. Only recording charts or logs made at the time of prior testing or operations show with certainty that the minimum margin exists for the pipeline concerned. Alternative documentation, including specifications, reports, or affidavits, is less probative. Such evidence leaves some room for doubt because it does not result directly from pipeline testing or operation. Although recording charts and logs may no longer be available for some older pipelines, RSPA does not believe a lack of proper records justifies allowing a lesser level of proof for a matter so serious as pipeline integrity. Therefore, the final rule allows only recording charts or logs to document a prior test or operating pressure.

Another operator was concerned that the documentation available for use under the proposed revision of § 195.406(a)(5) may not meet existing § 195.310. For example, the operator said calibration data may not be available. Section 195.310 specifies the records operators must keep for each pressure test required by subpart E of part 195. Section 195.310 does not affect the documentation required by existing § 195.406(a)(5), and would not affect documentation under the proposed revision of § 195.406(a)(5). Thus, operators need not have documentation under final § 195.406(a)(5) in the same detail as § 195.310 requires.

*Permits for Disposal of Test Water*

When existing petroleum pipelines are pressure tested hydrostatically, the testing process introduces hydrocarbons into the test water. If test water picks up unacceptable quantities of hydrocarbons, the National Pollutant Discharge Elimination System (NPDES) governs its discharge into the environment. (See 40 CFR parts 122–124.) The NPDES is a regulatory program administered by the U.S. Environmental Protection Agency (EPA) in cooperation with qualified State agencies under the Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. 1251 *et seq.*).

Several commenters were concerned that the procedure of obtaining NPDES permits from State agencies and EPA for treatment and disposal of test water could significantly delay testing. This potential for delay probably would be limited to areas where operators do not transport test water to refineries for treatment and discharge, or do not store it for use in subsequent tests. Although none of the commenters estimated the time that would be needed to secure the NPDES permits, RSPA has considered this potential for delay in setting deadlines for compliance.

Two operators and API suggested that RSPA somehow help the industry in obtaining from EPA a general NPDES permit for the disposal of treated test water. They also requested our assistance in obtaining a general waiver of the EPA requirement to measure the toxicity of test water. API said these actions would provide flexibility for efficient scheduling and implementation of testing.

EPA has procedures for issuing permits and waivers under its NPDES program. EPA's decisions on applications for permits and waivers depend on facts known to the industry. Under these circumstances, RSPA believes an operator is the appropriate party to apply for permits or waivers.

To hasten the process, RSPA will notify EPA of this final rule. RSPA will urge that agency to give prompt attention to requests for NPDES permits involving disposal of test water used to comply with the final rule. RSPA will also ask EPA to request its cooperating State agencies to give prompt attention to requests for permits and waivers.

*Smart Pig Alternative*

Several operators and API recommended that the final rule allow the use of smart pigs (internal inspection devices) as an alternative to pressure testing for all pipelines, except the pre-1970 ERW pipelines. Two of these operators said pigging is superior to pressure testing because it shows where potential problems lie. Two operators thought pigging is better at finding corrosion problems, particularly deep isolated pits that may survive a pressure test. One operator and API argued that smart pigs could alleviate potential disruptions of service and many environmental and scheduling problems.

Despite the capabilities of smart pigs, RSPA knows of no evidence that they can provide satisfactory long-term protection against the growth of defects. Only a minimum 25 percent proven margin of safety between MOP and a previous test or operating pressure is generally recognized as able to provide this protection.

Various manufacturers have significantly improved the data collection and recording capabilities of smart pigs. The ability of trained personnel to interpret recorded pig data has also improved. Yet smart pigs still cannot detect as many pipeline defects that could grow to failure during operation as can an adequate pressure test. Longitudinal defects, like cracks in a longitudinal weld seam, are particularly resistant to detection by smart pigs. More important, an adequate pressure test provides a basis for safe operation, with a proven margin of safety against the growth of defects that survive the test. Smart pigs cannot provide such a margin of safety. Thus, they are not an adequate substitute for pressure testing in achieving the objectives of this rulemaking proceeding.

*Carbon Dioxide Pipelines*

Two operators argued that RSPA should not adopt the proposed rules for older carbon dioxide pipelines, particularly production field distribution lines. They offered various reasons to exempt carbon dioxide pipelines:

- Carbon dioxide is non-polluting.
- The pipelines are relatively new, having been constructed in the 1980s.
- The pipelines have been pressure tested hydrostatically, but perhaps not to part 195 standards.

• The failure data used as a basis for the proposed rules did not include carbon dioxide pipelines.

• After hydrostatic pressure testing, carbon dioxide pipelines must be dehydrated, an expensive process that is not applicable to hazardous liquid pipelines.

• Pneumatic testing with carbon dioxide or inert gas poses a greater risk than hydrostatic testing because of the high pressures at which supercritical carbon dioxide pipelines operate.

• The alternative of MOP reduction would dramatically reduce enhanced oil recovery rates.

As for carbon dioxide distribution lines, the two operators said these pipelines generally are smaller than transmission lines, and only affect isolated areas in oil production fields. The commenters said pressure testing of carbon dioxide distribution systems would seriously disrupt oil field operations. One of these operators said that over 50 separate tests may be needed to minimize disruption, depending on the layout of the distribution system.

In view of these comments, RSPA has reviewed both the need to apply the proposed rules to carbon dioxide pipelines and the burden of compliance. Carbon dioxide pipelines have not been subject to part 195 long enough for us to develop an accident history for them. Still, because of their similarity to hazardous liquid pipelines, untested or inadequately tested carbon dioxide pipelines can fail in service from the growth of physical defects, whatever the pipeline's age. Although carbon dioxide is non-polluting and nonflammable, any failure that releases large quantities of carbon dioxide would expose nearby persons to the risk of suffocation.

This risk is less, however, for production field distribution lines that transport carbon dioxide than for transmission lines that transport carbon dioxide. Compared to transmission lines, which move large volumes of carbon dioxide over long distances, individual pipelines in a production field distribution system carry smaller volumes over localized areas. Normally these areas are rural. In addition, the burden of compliance would be greater for field distribution systems than for transmission lines. Testing field distribution systems could disrupt oil production and require a multiplicity of tests to minimize that disruption. RSPA believes this combination of decreased risk and increased burden of compliance justifies excluding from the final rule production field distribution lines that are in a rural area. As defined in § 195.2, the term "rural area" means "outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development."

In the final rules, § 195.302(b)(2)(ii) reflects our decision to exclude older carbon dioxide field distribution lines in rural areas from the 25-percent-safety-margin requirement. Consistent with the present pressure testing requirement, any portion of these older lines that is replaced, relocated, or otherwise changed on or after July 12, 1991, or any older line converted to carbon dioxide service under § 195.5 would have to be pressure tested to at least 1.25 times its MOP.

*Test Pressure*

In the NPRM, RSPA proposed to redesignate existing § 195.302(c), concerning the level and duration of test pressure, as new § 195.303. RSPA received no comments on this proposal, and has adopted it as final. However, the term "hydrostatic test" is replaced by "pressure test" because under existing requirements, carbon dioxide pipelines may be pressure tested either pneumatically or hydrostatically.

*Test Medium*

In most cases, operators must use water as the hydrostatic test medium for hazardous liquid pipelines (§ 195.306(a)). However, under specified conditions, onshore pipelines may be tested with petroleum that does not vaporize rapidly (§ 195.306(b)).

This exception allowing operators to use petroleum as the test medium was established when only newly constructed pipelines were subject to hydrostatic testing under part 195. Newly constructed pipelines are less likely to rupture during a hydrostatic test than pipelines that have been in operation for a number of years and never tested or inadequately tested. Therefore, RSPA is concerned that if existing pipelines subject to testing under the final rule were tested with petroleum, operators would not be able to contain all the petroleum that would spill from ruptures. To preclude this outcome, RSPA has revised § 195.306(b) to prohibit the use of petroleum as a test medium in pressure testing pipelines to meet the final rule.

Although RSPA's NPRM did not propose to limit the use of petroleum, the NPRM asked operators to estimate the pipeline mileage they would test with petroleum to learn the extent to which operators might use petroleum instead of water as the test medium. Only four operators responded, and the answers ranged from none to practically none. Based on this information and RSPA's experience in administering the hydrostatic testing rules of part 195, disallowing the use of petroleum as a test medium under the final rule should not significantly affect the burden of compliance with the rule.

Although RSPA believes this action is within the scope of the NPRM, because we did not specifically propose it, § 195.306(b) will be effective August 8, 1994, unless by July 7, 1994, RSPA receives comments that illustrate that this final rule is not in the public interest. Upon receipt of such comments, RSPA will withdraw § 195.306(b) before the effective date by simultaneously publishing two subsequent documents. One document will withdraw this section of the final rule. The other will announce a proposal to disallow the use of petroleum as a test medium for pressure testing required by this rulemaking and establish a new comment period. If RSPA does not receive comments that illustrate that § 195.306(b) is not in the public interest, RSPA will publish a notice advising that § 195.306(b) will be effective on August 8, 1994.

**Advisory Committee Review**

RSPA presented a draft of the NPRM to the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) for its consideration at a meeting in Washington, DC on September 14, 1988. THLPSSC is RSPA's statutory advisory committee for hazardous liquid pipeline safety. It is comprised of 15 members, representing industry, government, and the public, who are technically qualified to evaluate liquid pipeline safety.

THLPSSC's discussion of the draft centered on cost of compliance; problems of compliance, such as waste water disposal; and the smart-pig alternative. THLPSSC voted not to support the draft NPRM primarily because RSPA had not yet demonstrated that the proposed rules were cost beneficial.

At a meeting on September 14, 1989, RSPA updated THLPSSC on the status of the draft NPRM. Committee members discussed many issues, including product supply to customers, disposal of test water, and the time needed for compliance. Although no vote was taken, THLPSSC members representing industry indicated agreement with the need to test the older untested or inadequately tested pipelines.

RSPA has decided to adopt final rules in this proceeding despite THLPSSC's negative vote in 1988. RSPA did so because THLPSSC's primary concern

was that the rules be cost beneficial, and the final regulatory evaluation supports that conclusion. Also, RSPA has addressed THLPSSC's other concerns elsewhere in this preamble in response to similar concerns raised by commenters. The THLPSSC's reports of the 1988 and 1989 meetings are available in the docket of this proceeding.

**Wording of Final Rules**

The final rules are worded differently from the proposed rules. However, other than the substantive changes discussed above, the changes in wording are for editorial or clarification purposes. In several existing rules, the word "hydrostatic" or "hydrostatically" is replaced by "pressure," because under subpart E carbon dioxide pipelines may be pressure tested either hydrostatically or pneumatically. Also, the title of subpart E is changed from "Hydrostatic Testing" to "Pressure Testing." In §§ 195.304(b) (1) and (2), the word "hydrostatically" is not changed to "pressure," because these rules concern factory testing of components, not post-construction pipeline testing.

**Paperwork Reduction Act**

This final rule incrementally increases the current information collection burden under § 195.310. Section 195.310 requires operators to keep certain records of each test required by subpart E of part 195 for as long as the tested facility is in use. The Office of Management and Budget (OMB) has approved this increased burden under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. chap. 35). The OMB approval number is 2137–0047.

**Rulemaking Analyses**

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is a significant regulatory action under Executive Order 12866. Therefore, it was reviewed by the Office of Management and Budget. In addition, the final rule is significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979) because it involves a substantial change in regulations affecting certain existing pipelines.

Several operators and API suggested revisions to the draft "Economic Evaluation" RSPA prepared in support of the NPRM. Also, some of these commenters and others responded to our specific requests in the NPRM for information to aid us in assessing the impact of the final rule. How RSPA dealt with these comments is discussed in the final regulatory evaluation, a copy of which is in the docket. The final regulatory evaluation shows net benefits resulting from the final rule.

*Regulatory Flexibility Act*

Based on the facts available about the anticipated impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the action will not have a significant economic impact on a substantial number of small entities, because few, if any, small entities operate pipelines subject to part 195.

*Executive Order 12612*

This rulemaking action will not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612 (52 FR 41685), RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

*National Environmental Policy Act*

RSPA has analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined that this action would not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact are in the docket.

**List of Subjects in 49 CFR Part 195**

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends part 195 of title 49 of the Code of Federal Regulations as follows:

## PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

**Authority:** 49 App. U.S.C. 2001 *et seq.*, and 49 CFR 1.53.

## Subpart E—[Amended]

2. The title of subpart E is revised to read as follows: "Subpart E—Pressure Testing".

3. Section 195.300 is revised to read as follows:

**§ 195.300 Scope.**

This subpart prescribes minimum requirements for the pressure testing of steel pipelines. However, this subpart does not apply to the movement of pipe under § 195.424.

4. Section 195.302 is revised to read as follows:

**§ 195.302 General requirements.**

(a) Except as otherwise provided in this section and in § 195.304(b), no operator may operate a pipeline unless it has been pressure tested under this subpart without leakage. In addition, no operator may return to service a segment of pipeline that has been replaced, relocated, or otherwise changed until it has been pressure tested under this subpart without leakage.

(b) Except for pipelines converted under § 195.5, the following pipelines may be operated without pressure testing under this subpart:

(1) Any hazardous liquid pipeline whose maximum operating pressure is established under § 195.406(a)(5) that is—

(i) An interstate pipeline constructed before January 8, 1971;

(ii) An interstate offshore gathering line constructed before August 1, 1977, or

(iii) An intrastate pipeline constructed before October 21, 1985.

(2) Any carbon dioxide pipeline constructed before July 12, 1991, that—

(i) Has its maximum operating pressure established under § 195.406(a)(5); or

(ii) Is located in a rural area as part of a production field distribution system.

(c) Except for onshore pipelines that transport HVL, the following compliance deadlines apply to pipelines under paragraphs (b)(1) and (b)(2)(i) of this section that have not been pressure tested under this subpart:

(1) Before December 7, 1995, for each pipeline each operator shall—

(i) Plan and schedule testing according to this paragraph; or

(ii) Establish the pipeline's maximum operating pressure under § 195.406(a)(5).

(2) For pipelines scheduled for testing, each operator shall—

(i) Before December 7, 1998, pressure test—

(A) Each pipeline identified by name, symbol, or otherwise that existing records show contains more than 50 percent by mileage of electric resistance welded pipe manufactured before 1970; and

(B) At least 50 percent of the mileage of all other pipelines; and

(ii) Before December 7, 2001, pressure test the remainder of the pipeline mileage.

5. Section 195.303 is added to read as follows:

**§ 195.303 Test pressure.**

The test pressure for each pressure test conducted under this subpart must be maintained throughout the part of the

system being tested for at least 4 continuous hours at a pressure equal to 125 percent, or more, of the maximum operating pressure and, in the case of a pipeline that is not visually inspected for leakage during the test, for at least an additional 4 continuous hours at a pressure equal to 110 percent, or more, of the maximum operating pressure.

**§ 195.304 [Amended]**

6. In § 195.304, in paragraph (a), the word "hydrostatic" is removed and the word "pressure" is added in its place; and in the introductory text of paragraph (b), the word "hydrostatically" is removed and the word "pressure" is added in its place.

7. The introductory text of § 195.306(b) is revised to read as follows:

**§ 195.306 Test medium.**

* * * * *

(b) Except for offshore pipelines and pipelines to be tested under § 195.302(c), liquid petroleum that does not vaporize rapidly may be used as the test medium if—

* * * * *

**§ 195.308 [Amended]**

8. In § 195.308, the word "hydrostatically" is removed and the word "pressure" is added in its place.

**§ 195.310 [Amended]**

9. In § 195.310(a), the word "hydrostatic" is removed and the word "pressure" is added in its place.

10. In § 195.406, in paragraph (a)(3), the word "hydrostatically" is removed and the word "pressure" is added in its place; and paragraph (a)(5) is revised to read as follows:

**§ 195.406 Maximum operating pressure.**

(a) * * *

(5) For pipelines under §§ 195.302(b)(1) and (b)(2)(i) that have not been pressure tested under subpart E of this part, 80 percent of the test pressure or highest operating pressure to which the pipeline was subjected for 4 or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted.

* * * * *

Issued in Washington, DC, on May 27, 1994.

Ana Sol Gutiérrez,

*Acting Administrator, RSPA.*

[FR Doc. 94-13806 Filed 6-6-94, 8:45 am]

BILLING CODE 4910-60-P

# Proposed Rules

Federal Register
Vol. 59, No. 108
Tuesday, June 7, 1994

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 JUSTICE

### 8 CFR Parts 1, 3, 103, 208, and 242

[AG Order No. 1878–94]

### Executive Office for Immigration Review; Motions and Appeals in Immigration Proceedings

**AGENCY:** Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends Executive Office for Immigration Review regulations concerning motion and appeal practice in immigration proceedings. The rule is being promulgated to implement the directives of section 545 of the Immigration Act of 1990 ("IMMACT"). Both time and number limitations on motions to reopen proceedings or to reconsider decisions have been proposed in accordance with section 545(d) of IMMACT, and will reflect the intent of Congress to streamline the deportation proceedings of aliens in the United States.

**DATES:** Written comments must be received on or before August 8, 1994.

**ADDRESSES:** Please submit written comments to Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

**FOR FURTHER INFORMATION CONTACT:** Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470.

**SUPPLEMENTARY INFORMATION:** Section 545 of the Immigration Act of 1990, Public Law 101–649 (8 U.S.C. 1252b), modifies both substantive and procedural aspects of motion and appeal practice in immigration proceedings. Under the proposed rule, a party may file only one motion to reopen proceedings, and one motion to reconsider a decision of an Immigration Judge, the Board of Immigration Appeals ("Board"), or a Service Officer. A motion to reopen proceedings must be filed within 20 days of the final administrative decision or within 20 days of the effective date of the final rule, whichever is later. A motion to reconsider a decision must also be filed within 20 days of the decision or within 20 days of the effective date of the final rule, whichever is later. Under the proposed rule, provisions concerning motions to reopen or reconsider have been condensed into one section under 8 CFR 3.2. A new § 3.8 will concern fees.

The Board has previously addressed issues relating to the effect of an alien's loss of lawful permanent resident status on a motion to reopen proceedings to apply for or to further pursue an application for relief under section 212(c) of the Act. See *e.g., Matter of Cerna*, Interim Decision 3161 (BIA 1991) and *Matter of Lok*, 18 I&N Dec. 101 (BIA 1981), *aff'd on other grounds, Lok* v. *INS*, 681 F.2d 107 (2d Cir. 1982). These decisions have recently been the subject of litigation and conflicting court rulings. Subject to all of the other requirements pertaining to motions to reopen, the proposed rule will permit reopening of proceedings to consider or further consider an application for relief under section 212(c) of the Act if the alien demonstrates that he or she was statutorily eligible for such relief prior to the entry of the administratively final order of deportation or exclusion.

There are several exceptions to these general rules, as required by section 242B(c)(3) of the Act, 8 U.S.C. 1252b(c)(3). An alien who is ordered deported *in absentia* who can demonstrate that his or her failure to appear was due to exceptional circumstances may file a motion to reopen the proceedings within 180 days of the final order. An alien who is ordered deported *in absentia* without receiving notice of the proceedings, if notice was required, or who was in federal or state custody at the time of the proceedings and could not appear, may file a motion to reopen without regard to the above time limitations. The filing of a motion to reopen proceedings or a motion to reconsider a decision will not serve to stay the execution of any decision, unless the motion is filed by an alien who was ordered deported *in absentia*, pursuant to 8 CFR 3.23(b)(5). As in the past, an alien who files an asylum claim that arises after the initiation of deportation proceedings against the alien where the claim is based upon an alleged change in circumstances in the country of the alien's nationality may move to reopen the proceedings at any time.

When a party appeals a decision, the notice of appeal must meaningfully identify the reasons for the appeal in order to avoid summary dismissal. The notice must indicate whether the party will be filing a brief and whether the party desires oral argument before the Board. An appellant will be provided 30 days in which to file a brief unless the alien concerned is detained, in which case the appellant will be given 14 days to file a brief. The Immigration Judge or Service Officer may specify a shorter time in which to file a brief, but only the Board may extend the time for filing, and then only up to a total of 90 days for good cause shown. An appeal may be withdrawn by either party. In the event the alien concerned leaves the United States after taking an appeal but prior to a decision, the appeal will be deemed withdrawn. An appeal will not be permitted when an order of deportation or exclusion has been entered *in absentia*.

The rule more clearly outlines when the notice of appeal should be filed with the Immigration and Naturalization Service and when the notice of appeal should be filed with the Office of the Immigration Judge. The proposed rule also replaces the reference to discontinued Form I–290A with reference to the currently used Form EOIR–26 for filing an appeal from a decision of an Immigration Judge and Form EOIR–29 for filing an appeal from a decision of a district director. The proposed change will eliminate the requirement that the notice of appeal be filed in triplicate. Parties will still be required to file the original notice of appeal with the office having administrative control over the record of proceeding and serve a copy of the notice of appeal on the opposing party. The proposed rule will clarify that a notice of appeal will not be considered filed until the notice is actually received in the office having administrative control over the record of proceeding.

The rule clarifies that the period for filing a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) is extended from 10 to 13 days where the

decision of the Immigration Judge is served by mail. The proposed change will clearly define the event that commences the running of the period for filing an appeal and will reiterate which form should be used to file an appeal and where to file the form. These proposed changes will help unify practice and procedure throughout the country and will restrict the ability of parties to reopen or continue proceedings indefinitely. These goals are consistent with the directives of section 545 of IMMACT (8 U.S.C. 1252b).

This rule is promulgated as a proposed regulation to allow for comments prior to implementation.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule was not reviewed by the Office of Management and Budget pursuant to Executive Order No. 12866. In addition, this rule does not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

**List of Subjects**

*8 CFR Part 1*

Administrative practice and procedure, Aliens.

*8 CFR Part 3*

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

*8 CFR Part 103*

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

*8 CFR Part 208*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 242*

Administrative practice and procedure, Aliens.

Accordingly, title 8, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## PART 1—DEFINITIONS

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

**Authority:** 66 Stat. 173; 8 U.S.C. 1101; 28 U.S.C. 509, 510; 5 U.S.C. 301.

2. Section 1.1 is amended by adding a new paragraph (p) to read as follows:

**§ 1.1 Definitions.**

* * * * *

(p) The term *lawfully admitted for permanent residence* means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of exclusion or deportation.

## PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

3. The authority citation for part 3 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

4. Section 3.1 is amended by revising paragraphs (b)(1), (b)(2), and (c) to read as follows:

**§ 3.1 General Authorities.**

* * * * *

(b) * * *

(1) Decisions of Immigration Judges in exclusion cases, as provided in part 236 of this chapter, except that no appeal shall lie from an order of exclusion entered *in absentia*.

(2) Decisions of Immigration Judges in deportation cases, as provided in part 242 of this chapter, except that no appeal shall lie from an order of deportation entered *in absentia*, nor shall an appeal lie from an order of an Immigration Judge under § 244.1 of this chapter granting voluntary departure within a period of at least 30 days, if the sole ground of appeal is that a greater period of departure time should have been fixed.

* * * * *

(c) *Jurisdiction by certification.* The Commissioner, or any other duly authorized officer of the Service, any Immigration Judge, or the Board may in any case arising under paragraph (b) of this section require certification of such case to the Board. The Board in its discretion may review any such case by certification without regard to the provisions of § 3.7 of this chapter if it determines that the parties have already been given a fair opportunity to make representations before the Board regarding the case, including the opportunity to request oral regiment and to submit a brief.

* * * * *

5. Section 3.2 is revised to read as follows:

**§ 3.2 Reopening or reconsideration.**

(a) *General.* The Board may at any time reopen or reconsider on its own motion any case in which it has rendered a decision. A request to reopen or reconsider any case in which a decision has been made by the Board, which request is made by the Commissioner or any other duly authorized officer of the Service, or by the party affected by the decision, must be in the form of a written motion to the Board. The decision to grant or deny a motion to reopen or reconsider is within the discretion of the Board, subject to the restrictions of this section. The Board has discretion to deny a motion to reopen even if the party moving has made out a *prima facie* case for relief.

(b) *Motion to reconsider.* A motion to reconsider a decision must be filed within 20 days after the mailing of the decision or the stating of the oral decision for which reconsideration is being sought, or within 20 days of the effective date of the final rule, whichever is later. When service of the decision is made by mail, 3 days shall be added to the period prescribed for filing of the motion. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider. A motion to reconsider shall state the reasons for the motion and shall be supported by pertinent authority. A motion to reconsider a decision rendered by an Immigration Judge or Service Officer that is pending when an appeal is filed with the Board, or that is filed subsequent to the filing with the Board of an appeal from the decision sought to be reconsidered, shall be deemed a motion to remand the decision for further proceedings before the Immigration Judge or the Service Officer from whose decision the appeal was taken. Such motion, which shall be consolidated with and considered by the Board in connection with any appeal to the Board, is subject to the time and numerical limitations of this paragraph.

(c) *Motion to reopen.* (1) A motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material. A motion to reopen proceedings for the purpose of submitting an application for relief must be accompanied by the appropriate application for relief and all supporting documentation. A motion to reopen proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was

not available and could not have been discovered or presented at the former hearing; nor shall any motion to reopen for the purpose of affording the alien an opportunity to apply for any form of discretionary relief be granted if it appears that the alien's right to apply for such relief was fully explained to him or her and an opportunity to apply therefor was afforded at the former hearing, unless the relief is sought on the basis of circumstances that have arisen subsequent to the hearing. Subject to the other requirements and restrictions of this section, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 212(c) of the Act may be granted if the alien demonstrates that he or she was statutorily eligible for such relief prior to the entry of the administratively final order of deportation.

(2) Except as provided in paragraph (c)(3), a party may file only one motion to reopen proceedings and that motion must be filed not later than 20 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened, or within 20 days of the effective date of the final rule, whichever is later.

(3) The time and numerical limitations set forth in paragraph (c)(2) shall not apply to a motion to reopen proceedings:

(i) Filed pursuant to the provisions of § 3.23(b)(5) of this part.

(ii) To apply or reapply for asylum, or withholding of deportation, based on changed circumstances arising subsequent to the commencement of proceedings in the country of nationality or in the country to which deportation has been ordered, or

(iii) Agreed upon by all parties and jointly filed.

(4) A motion to reopen a decision rendered by an Immigration Judge or Service Officer that is pending when an appeal is filed, or that is filed subsequent to the filing of an appeal to the Board from the proceedings sought to be reopened, shall be deemed a motion to remand for further proceedings before the Immigration Judge or the Service Officer from whose decision the appeal was taken. Such motion, which shall be consolidated with, and considered by the Board in connection with, the appeal to the Board, is subject to the requirements set forth in paragraph (c)(1) and the time and numerical limitations set forth in paragraph (c)(2).

(d) *Departure or deportation.* A motion to reopen or a motion to reconsider shall not be made by or on behalf of a person who is the subject of deportation or exclusion proceedings subsequent to his or her departure from the United States. Any departure from the United States, including the deportation of a person who is the subject of deportation or exclusion proceedings, occurring after the filing of a motion to reopen or a motion to reconsider, shall constitute a withdrawal of such motion.

(e) *Judicial proceedings.* Motions to reopen or reconsider shall state whether the validity of the deportation order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. In any case in which a deportation order is in effect, any motion to reopen or reconsider such order shall include a statement by or on behalf of the moving party declaring whether the subject of the deportation order is also the subject of any pending criminal proceeding under section 242(e) of the Act, and, if so, the current status of that proceeding. If a motion to reopen or reconsider seeks discretionary relief, the motion shall include a statement by or on behalf of the moving party declaring whether the alien for whose relief the motion is being filed is subject to any pending criminal prosecution and, if so, the nature and current status of that prosecution.

(f) *Stay of deportation.* Except where a motion is filed pursuant to the provisions of § 3.23(b)(5) of this part, the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Board, the Immigration Judge, or an authorized officer of the Service.

(g) *Distribution of motion papers.* A motion to reopen to a motion to reconsider a decision of the Board pertaining to proceedings before an Immigration Judge shall be filed with the Office of the Immigration Judge having administrative control over the record of proceeding. A motion to reopen or a motion to reconsider a decision of the Board pertaining to a matter initially adjudicated by an officer of the Service shall be filed with the officer of the Service having administrative control over the record of proceeding; provided, however, that when a motion to reopen or a motion to reconsider is made by the Commissioner or any other duly authorized officer of the Service in proceedings in which the Service has administrative control over the record of proceedings, the record of proceedings in the case and the motion shall be filed directly with the Board. In all cases, the motion shall include proof of service on the opposing party and all attachments. The moving party may only file a brief if it is included with the motion. The opposing party shall have ten days from the date of service of the motion to submit a brief in opposition to the motion, which shall be filed with the Office where the motion was filed, along with proof of service of a copy of the brief on the opposing party. The Board, in its discretion, may extend the time within which such brief is to be submitted. A motion shall be deemed unopposed unless a timely response is made.

(h) *Oral argument.* A request for oral argument, if desired, shall be incorporated in the motion to reopen or reconsider. The Board in its discretion may grant or deny requests for oral argument.

(i) *Ruling on motion.* Rulings upon motions to reopen or motions to reconsider shall be by written order. If the order directs a reopening and further proceedings are necessary, the record shall be returned to the Office of the Immigration Judge or the officer of the Service having administrative control over the place where the reopened proceedings are to be conducted. If the motion to reconsider is granted, the decision upon such reconsideration shall affirm, modify, or reverse the original decision made in the case.

6. Section 3.3 is revised to read as follows:

**§ 3.3 Notice of appeal.**

(a) A party affected by a decision who is entitled under this chapter to appeal to the Board shall be given notice of his or her right to appeal. An appeal of a decision of an Immigration Judge shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) with the Office of the Immigration Judge having administrative control over the record of proceeding, within the time specified in the governing sections of this chapter. An appeal of a decision of a Service Officer shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals of Decision of District Director (Form EOIR–29) with the office of the Service having administrative control over the record of proceeding, within the time specified in the governing sections of this chapter. A notice of appeal of a decision of an Immigration Judge is not considered to be filed until the Form EOIR–26 is actually received in the appropriate Office of the Immigration Judge and the fee provisions of § 3.8 of this part are satisfied. A notice of appeal of a

decision of a district director is not considered to be filed until the Form EOIR–29 is actually received in the appropriate office of the Service and the fee provisions of § 3.8 of this part are satisfied. The certification of a case as provided in this part shall not relieve the party affected from compliance with the provisions of this section in the event that he or she is entitled, and desires, to appeal from an initial decision, nor shall it serve to extend the time specified in the applicable parts of this chapter for the taking of an appeal. Departure from the United States of a person in deportation proceedings prior to the taking of an appeal from a decision in his or her case shall constitute a waiver of his or her right to appeal.

(b) *Items to be included in the Notice of Appeal.* The party taking the appeal must meaningfully identify the reasons for the appeal in the notice of appeal in order to avoid summary dismissal pursuant to § 3.1(d)(1–a)(i) of this part. The statement on the notice of appeal must specifically identify the findings of fact, the conclusions of law, or both, that are being challenged. If a question of law is presented, supporting authority must be cited. If the dispute is over the findings of fact, the specific facts contested must be identified. Where the appeal concerns discretionary relief, the appellant must state whether the alleged error relates to statutory grounds of eligibility or to the exercise of discretion and must identify the specific factual and legal finding or findings that are being challenged. In addition, the statement of the reasons for appeal must be set forth with sufficient clarity and specificity that the Board may address the appeal without first reviewing the record and constructing the arguments. The appellant must also indicate in the notice of appeal whether he or she desires oral argument before the Board and whether he or she will be filing a separate written brief or statement in support of the appeal.

(c) *Briefs.* Briefs in support of or in opposition to an appeal shall be filed with the Office of the Immigration Judge or, where the appeal is from a decision of a Service Officer, with the officer of the Service having administrative control over the case. If the alien concerned is not detained, the appellant shall be provided 30 days in which to file a brief unless a shorter period is specified by the Immigration Judge or by the Service Officer from whose decision the appeal is taken. If the alien concerned is detained, the appellant shall be provided 14 days in which to file a brief, unless a shorter period is specified by the Immigration Judge or by the Service Officer from whose decision the appeal is taken. The appellee shall have the same period of time in which to file a reply brief that was initially granted to the appellant to file his or her brief. The time to file a reply brief commences from the date upon which the appellant's brief was due, as originally set or extended by the Board, or the date upon which such brief was filed, whichever is earlier. The Board, upon motion, may extend the period for filing a brief or a reply brief for up to 90 days for good cause shown and may authorize the filing of briefs directly with it. If, in its discretion, the Board determines that the interests of justice would be served thereby, it may consider a brief filed out of time in its adjudication of an appeal. All briefs and motions regarding the filing of briefs shall include proof of service of the brief or motion on the opposing party.

7. Section 3.4 is revised to read as follows:

**§ 3.4 Withdrawal of appeal.**

In any case in which an appeal has been taken, the party taking the appeal may file a written withdrawal thereof with the office at which the notice of appeal was filed. If the record in the case has not been forwarded to the Board on appeal in accordance with § 3.5 of this part, the decision made in the case shall be final to the same extent as if no appeal had been taken. If the record has been forwarded on appeal, the withdrawal of the appeal shall be forwarded to the Board and, if no decision in the case has been made on the appeal, the record shall be returned and the initial decision shall be final to the same extent as if no appeal had been taken. If a decision on the appeal shall have been made by the Board in the case, further action shall be taken in accordance therewith. Departure from the United States of a person who is the subject of deportation proceedings subsequent to the taking of an appeal but prior to a decision thereon shall constitute a withdrawal of the appeal and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

8. Section 3.5 is revised to read as follows:

**§ 3.5 Forwarding of record on appeal.**

If an appeal is taken from a decision, as provided in this chapter, the entire record of proceeding shall be forwarded to the Board by the office having administrative jurisdiction over the case upon timely receipt of the briefs of the parties, or upon expiration of the time allowed for the submission of such briefs. After an appeal to the Board has been filed, a district director or regional service center director need not forward such appeal to the Board, but may reopen and reconsider any decision made by the director, if the director's new decision will grant the benefit that has been requested in the appeal, provided that the director's new decision must be served on the appealing party within 45 days of receipt of any briefs or upon expiration of the time allowed for the submission of any briefs. If the director's new decision is not served within these time limits or the appealing party does not agree that the new decision disposes of the matter, the record of proceeding shall be immediately forwarded to the Board.

9. Section 3.6 is revised to read as follows:

**§ 3.6 Stay of execution of decision.**

(a) Except as provided under § 242.2(d) of this chapter and paragraph (b) of this section, the decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the Board by way of certification.

(b) The provisions of paragraph (a) of this section shall not apply to an order of an Immigration Judge under § 3.23 or § 242.22 of this chapter denying a motion to reopen or reconsider or to stay deportation, except where such order expressly grants a stay or where the motion was filed pursuant to the provisions of § 3.23(b)(5). The Board may, in its discretion, stay deportation while an appeal is pending from any such order if no stay has been granted by the Immigration Judge or a Service officer.

10. Section 3.7 is revised to read as follows:

**§ 3.7 Notice of certification.**

Whenever, in accordance with the provisions of § 3.1(c) of this part, a case is required to be certified to the Board, the alien or other party affected shall be given notice of certification. An Immigration Judge or Service Officer may certify a case only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is rendered that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is

rendered that the case will be certified, the office of the Service or Office of the Immigration Judge having administrative control over the record of proceeding shall cause a Notice of Certification to be served upon the parties. In either case, the notice shall inform the parties that the case is required to be certified to the Board and that they have the right to make representations before the Board, including the making of a request for oral argument and the submission of a brief. If either party desires to submit a brief, it shall be submitted to the office of the Service or Office of the Immigration Judge having administrative control over the record of proceeding for transmittal to the Board within the time prescribed in § 3.3(c) of this part. The case shall be certified and forwarded to the Board by the office of the Service or Office of the Immigration Judge having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief. The Board in its discretion may elect to accept for review or not accept for review any such certified case. If the Board declines to accept a certified case for review, the underlying decision shall become final on the date of the Board's declination.

11. Section 3.8 is revised to read as follows:

**§ 3.8 Fees.**

Except as otherwise provided in this section, a notice of appeal or motion filed under this subpart by any person other than an officer of the Service relating to a proceeding held before an Immigration Judge shall be accompanied by evidence that the specified fee has been remitted in accordance with the applicable provisions of §§ 3.38(c) and 103.7 of this chapter. Except as otherwise provided in this section, a notice of appeal or motion filed under this subpart by any person other than an officer of the Service relating to a matter involving an adjudication by an officer of the Service shall be accompanied by the specified fee and remitted in accordance with the applicable provisions of § 103.7 of this chapter. In any case in which an alien or other party affected is unable to pay the fee fixed for an appeal or a motion, he or she shall file with the notice of appeal or the motion his or her affidavit or unsworn declaration, made pursuant to 28 U.S.C. 1746, stating the nature of the motion or appeal and his or her belief that he or she is entitled to redress. Such document shall also establish his or her inability to pay the required fee, and shall request permission to prosecute the appeal or motion without payment of such fee. When such a document is filed with the officer of the Service or the Immigration Judge from whose decision the appeal is taken or with respect to whose decision the motion is addressed, such Service Officer or Immigration Judge shall, if he or she believes that the appeal or motion is not taken or made in good faith, certify in writing his or her reasons for such belief for consideration by the Board. The Board may, in its discretion, authorize the prosecution of any appeal or motion without payment of the required fee.

12. Section 3.23 is amended by revising paragraph (b) to read as follows:

**§ 3.23 Motions.**

* * * * *

(b) *Reopening/Reconsideration.* (1) The Immigration Judge may upon his or her own motion, or upon motion of the trail attorney or the alien, reopen or reconsider any case in which he or she has made a decision, unless jurisdiction in the case is vested in the Board of Immigration Appeals under part 3 of this chapter. Motions to reopen or reconsider a decision of the Immigration Judge must be filed with the Office of the Immigration Judge having administrative control over the record of proceeding. Such motions shall comply with applicable provisions of 8 CFR 208.4, 208.19, and 242.22. The Immigration Judge may set and extend time limits for replies to motions to reopen or reconsider. A motion shall be deemed unopposed unless timely response is made. A motion to reconsider shall state the reasons for the motion and shall be supported by pertinent authority. Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents. A motion to reopen will not be granted unless the Immigration Judge is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing; nor will any motion to reopen for the purpose of providing the alien an opportunity to apply for any form of discretionary relief be granted if the alien's rights to make such application were fully explained to him or her by the Immigration Judge and he or she was afforded an opportunity to do so at the hearing, unless circumstances have arisen thereafter on the basis of which the request is being made. Subject to the other requirements and restrictions of this section, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 212(c) of the Act may be granted if the alien demonstrates that he or she was statutorily eligible for such relief prior to the entry of the administratively final order of deportation.

(2) A motion to reconsider must be filed within 20 days after the date on which the decision for which reconsideration is being sought was rendered, or within 20 days of the effective date of the final rule, whichever is later. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider.

(3) Except as provided in paragraph (b)(4), a party may file only one motion to reopen proceedings and that motion must be filed not later than 20 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened, or within 20 days of the effective date of the final rule, whichever is later.

(4) The time and numerical limitations set forth in paragraph (b)(3) shall not apply to a motion to reopen filed pursuant to the provisions of paragraph (b)(5), or to a motion to reopen proceedings to apply or reapply for asylum or for withholding of deportation based on changed circumstances, which arise subsequent to the commencement of proceedings, in the country of nationality or in the country to which deportation has been ordered, or to a motion to reopen agreed upon by all parties and jointly filed.

(5) A motion to reopen deportation proceedings to rescind an order of deportation entered *in absentia* must be filed:

(i) Within 180 days after the date of the order of deportation. The motion must demonstrate that the failure to appear was because of exceptional circumstances beyond the control of the alien (such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances); or

(ii) At any time if the alien demonstrates that the alien did not receive notice in accordance with subsection 242B(a)(2) of the Act, 8 U.S.C. 1252b(a)(2), and notice was required pursuant to such subsection; or the alien demonstrates that the alien was in Federal or State custody and did not appear through no fault of the alien.

(6) When requested in conjunction with a motion to reopen or a motion to reconsider, the Immigration Judge may stay the execution of a final order of

deportation or exclusion. The filing of a motion to reopen pursuant to the provisions of paragraph (b)(5) shall stay the deportation of the alien pending decision on the motion and the adjudication of any properly filed administrative appeal.

13. Section 3.38 is amended by revising paragraph (b) to read as follows:

**§ 3.38 Appeals.**

* * * * *

(b) The Notice of Appeals to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) shall be filed with the Office of the Immigration Judge having administrative control over the record of proceeding within 10 calendar days after the Immigration Judge has rendered an oral decision on the record or within 10 calendar days after a written decision has been served in person to the parties. Where the decision of the Immigration Judge is served by mail, the Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) shall be filed with the Office of the Immigration Judge having administrative control over the record of proceeding within 13 calendar days after the date the decision is mailed. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day. A notice of appeals may not be filed by any party who has waived appeal.

* * * * *

## PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

14. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 166; 8 CFR part 2.

**§ 103.5 [Amended]**

15. Section 103.5 paragraph (a)(1)(i) is amended by revising the phrase "part 242" to read "parts 3 and 242".

## PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

16. The authority citation for part 208 is revised to read as follows:

**Authority:** 8 U.S.C. 1103, 1158, 1226, 1252, 1252 note, 1252b, 1253, and 1283.

17. Section 208.19 paragraph (a) is revised to read as follows:

**§ 208.19 Motion to reopen or reconsider.**

(a) A proceeding in which asylum or withholding of deportation was denied may be reopened or a decision from such a proceeding reconsidered for proper cause upon motion pursuant to the requirements of 8 CFR 3.2, 3.23, 103.5, and 242.22 where applicable.

* * * * *

## PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

18. The authority citation for part 242 is revised to read as follows:

**Authority:** 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362, 8 CFR part 2.

19. Section 242.21 paragraph (a) is revised to read as follows:

**§ 242.21 Appeals.**

(a) Pursuant to part 3 of this chapter, an appeal shall lie from a decision of an Immigration Judge to the Board of Immigration Appeals, except that no appeal shall lie from an order of deportation or exclusion entered *in absentia*. The procedures regarding the filing of a Notice of Appeal (Form EOIR–26), fees, and briefs are set forth in §§ 3.3, 3.31, and 3.38 of this chapter. An appeal may be summarily dismissed if it comes within the provisions of § 3.1(d)(1–a) of this chapter.

* * * * *

20. Section 242.22 is amended by revising the first sentence and by adding a sentence at the end, to read as follows:

**§ 242.22 Reopening or reconsideration.**

Motions to reopen or reconsider are subject to the requirements and limitations set forth in § 3.23 of this chapter. * * * The filing of a motion to reopen pursuant to the provisions of § 3.23(b)(5) of this chapter shall stay the deportation of the alien pending the disposition of the motion and the adjudication of any properly filed administrative appeal.

Dated: May 25, 1994.

**Janet Reno,**

*Attorney General.*

[FR Doc. 94–13547 Filed 6–6–94; 8:45 am]

BILLING CODE 1531–26–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 94–NM–26–AD]**

### Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, and –40 Series Airplanes, KC–10A (Military) Airplanes, and Model MD–11 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 and MD–11 series airplanes. This proposal would require the installation of retainers and supports at the lateral control mixer bracket on the center of the wing rear spar of the airplane. This proposal is prompted by an analysis conducted by the manufacturer, which revealed that failure of a lateral control mixer bracket could result in uncommanded deployment of the spoiler. The actions specified by the proposed AD are intended to prevent inadvertent asymmetric deployment of the spoiler, which may lead to reduced controllability of the airplane.

**DATES:** Comments must be received by August 1, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los

Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5324; fax (310) 988–5210.

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. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–26–AD." The postcard will be date stamped and returned to the commenter

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

A recent analysis conducted by the manufacturer revealed that the potential exists for uncommanded spoiler extension due to failure, for any reason, of a lateral control mixer bracket on Model MD–11 series airplanes. The FAA has reviewed the results of this analysis and has determined that failure of the lateral control mixer bracket could result in uncommanded deployment of the spoiler on Model DC–10–10, –15, –30, and –40 series airplanes, and KC–10A (military) airplanes, as well as on Model MD–11 series airplanes, since the brackets are designed similarly on these airplanes. This condition, if not corrected, could result in inadvertent asymmetric deployment of the spoiler, which may lead to reduced controllability of the airplane.

The FAA has reviewed and approved McDonnell Douglas DC–10 Service Bulletin 27–222 [for Model DC–10–10, –15, –30, and –40 series airplanes and KC–10 (military) airplanes], and MD–11 Service Bulletin 27–34 (for Model MD–11 series airplanes), both dated November 1, 1993, that describe procedures for installation of retainers and supports at the lateral control mixer bracket on the center of the wing rear spar of the airplane. This installation will minimize the possibility for uncommanded extension of the spoiler in the event of a bracket failure or separation from the airplane structure.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installation of retainers and supports at the lateral control mixer bracket on the center of the wing rear spar of the airplane. The actions would be required to be accomplished in accordance with the applicable service bulletin described previously

There are approximately 427 Model DC–10–10, –15, –30, and –40 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 241 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $6,497 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators of DC–10 series airplanes is estimated to be $1,605,542 or $6,662 per airplane.

There are approximately 114 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $6,497 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators of Model MD–11 series airplanes is estimated to be $306,452, or $6,662 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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 power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting 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

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

**McDonnell Douglas:** Docket 94–NM–26–AD.

*Applicability:* Model DC–10–10, –15, –30, and –40 series airplanes and KC–10A (military) airplanes, as listed in McDonnell Douglas DC–10 Service Bulletin 27–222, dated November 1, 1993; and Model MD–11 series airplanes, as listed in McDonnell Douglas MD–11 Service Bulletin 27–34 dated November 1, 1993; certificated in any category

*Compliance:* Required as indicated, unless accomplished previously

To prevent inadvertent asymmetric deployment of the spoiler, which may lead to reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, install retainers and supports at the lateral control right- and left-hand mixer bracket on the center of the wing rear spar of the airplane in accordance with McDonnell Douglas DC–10 Service Bulletin 27–222, dated November 1, 1993 [for Model DC–10–10, –15, –30, and –40 series airplanes and KC–10A (military) airplanes]; or McDonnell Douglas MD–11 Service Bulletin 27–34, dated November 1, 1993 (for Model MD–11 series airplanes); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

Issued in Renton, Washington, on June 1, 1994.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94–13755 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–13–U

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## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 240 and 249

**[Release No. 34–34140; File No. S7–17–94]**

**RIN 3235–AG15**

## Proposed Rule Changes of Self Regulatory Organizations; Annual Filing of Amendments to Registration Statements of National Securities Exchanges, Securities Associations, and Reports of the Municipal Securities Rulemaking Board

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Securities and Exchange Commission ("Commission") is proposing to amend Rule 19b–4 and Form 19b–4, the rule and form that set forth the procedures for the filing by self-regulatory organizations ("SROs") of proposed rule changes under the Securities Exchange Act of 1934. The amendments would expand the scope of those proposed rule changes that may become effective under Section 19(b)(3)(A) of the Act. The proposed amendments are intended to expedite and streamline the process through which proposed rule changes are filed and become effective. The Commission also is proposing to amend the rules and forms applicable to the annual filing of amendments to registration statements of national securities exchanges, securities associations, and reports of the Municipal Securities Rulemaking Board, to streamline those requirements.

**DATES:** Comments should be received on or before August 8, 1994.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–17–94. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Catherine McGuire, Chief Counsel, or Andrew S. Margolin, Attorney, at (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 7–10, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:**

### I. Background on SRO Rule Filings

#### *A. Statutory Framework for Filing of Proposed Rule Changes*

Section 19(b)(1)[1] of the Securities Exchange Act of 1934[2] ("Exchange Act" or "Act") requires a self-regulatory organization[3] to file with the Commission its proposed rule changes[4] accompanied by a concise general statement of the basis and purpose of the proposed rule change. Once a proposed rule change has been filed, the Commission is required to publish notice of it and provide an opportunity for public comment. The proposed rule change may not take effect unless it is approved by the Commission or is otherwise permitted to become effective under Section 19(b) of the Act.[5]

Section 19(b)(2) of the Act[6] sets forth the standards and time periods for Commission action either to approve a proposed rule change or to institute and conclude a proceeding to determine whether a proposed rule change should be disapproved. Generally, the Commission must either approve the proposed rule change or institute disapproval proceedings within 35 days of the publication of notice of the filing or within such longer period if the Commission finds appropriate or to which the SRO consents. The Commission must approve a proposed rule change if it finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the SRO proposing the rule change. If the Commission does not make that finding, it must institute proceedings to determine whether to disapprove the proposed rule change. The Commission also may approve a proposed rule change on an accelerated basis prior to 30 days after publication of the notice if the Commission finds good cause for so doing and publishes its reasons for so finding.[7]

Section 19(b)(3) of the Act[8] provides that, in certain circumstances, a proposed rule change may become effective without the notice and approval procedures required by Section 19(b)(2). Paragraph (A) of Section 19(b)(3) permits certain types of proposed rule changes to take effect in this manner if appropriately designated by the SRO as within the following categories: (1) Constituting a stated

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] Section 3(a)(26) of the Act, 15 U.S.C. § 78c(a)(26), defines the term "self-regulatory organization" to mean any national securities exchange, registered securities association, registered clearing agency, and, for purposes of Section 19(b) and other limited purposes, the Municipal Securities Rulemaking Board ("MSRB").

[4] Section 19(b)(1) of the Act defines the term "proposed rule change" to mean "any proposed rule or rule change in addition to, or deletion from the rules of [a] self-regulatory organization." In turn, Sections 3(a)(27) and 3(a)(28) of the Act provide, essentially, that the term "rules of a self-regulatory organization" means (i) the rules of the MSRB and the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of any other SRO and (ii) such stated policies, practices, and interpretations of an SRO (other than the MSRB) as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules. The Commission has exercised this rulemaking authority in paragraph (b) of Rule 19b–4 under the Act, which defines the term "stated policy, practice, or interpretation." *See* description, *infra*, at note 9

[5] *See generally* Senate Comm. on Banking, Housing & Urb. Affs., *Report to Accompany S. 249 Securities Acts Amendments of 1975*, S. Rep. No. 94–75, 94th Cong., 1st Sess. 22–38 (Comm. Print 1975)("Senate Report"), *reprinted in*, [1975] U.S. Code Cong. & Ad. News 179, 200–15 (excerpt on "Self-Regulation and SEC Oversight"); Note, *Informal Bargaining Process: An Analysis of the SEC's Regulation of the New York Stock Exchange*, 80 Yale L.J. 811 (1971).

[6] 15 U.S.C. 78s(b)(2).

[7] Section 19(b)(2)(B), 15 U.S.C. 78s(b)(2)(B).

[8] 15 U.S.C. 78s(b)(3).

policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO;[9] (2) establishing or changing a due, fee, or other charge imposed by the SRO;[10] or (3) concerned solely with the administration of the SRO. Section 19(b)(3)(A)(iii) also gives the Commission the authority to expand by rule the scope of proposed rule changes that may become effective under Section 19(b)(3)(A) if the Commission determines that the expansion is consistent with the public interest and the purposes of Section 19(b). Rule 19b–4(e) implements the authority of Section 19(b)(3)(A) by detailing further the scope of proposed rule changes that may be filed under Section 19(b)(3)(A). The rule tracks those categories enumerated in Section 19(b)(3)(A) mentioned above and also includes a category adopted in 1980 relating to registered clearing agencies.[11]

*B. The Market 2000 Report*

In its Market 2000 Report ("Report"), the Commission's Division of Market Regulation ("Division") committed to working with the SROs to streamline the review of proposed rule changes.[12] The Division noted in the Report that SROs have argued that the process for the filing, review, and approval of proposed rule changes is too lengthy and hampers the efforts of the SROs to provide prompt, flexible, and innovative order-entry and trading services to their members and the investing public.[13] The Division agreed that the rule review process should be expedited for routine procedural and administrative modifications to existing order-entry and trading systems, but noted that modifications that would restrict access, burden competition, or modify provisions or procedures designed for the protection of investors should continue to be considered after the applicable notice and comment period under Section 19(b)(2).[14] The Report also indicated that the Division would consider other types of proposed rule changes that could be subject to an expedited review process.

**II. Expanding the Scope of Proposed Rule Changes Filed Under Section 19(b)(3)(A)**

*A. Systems Changes*

Pursuant to authority in Section 19(b)(3)(A)(iii) of the Act, and consistent with recommendations made in the Market 2000 Report, the Commission proposes to amend Rule 19b–4 and the instructions to Form 19b–4 by expanding the scope of proposed rule changes that may become effective under Section 19(b)(3)(A). In particular, routine procedural and administrative modifications to existing order-entry and trading systems would become eligible for filing under this provision.

The Commission believes that proposed modifications to existing systems that are operational in nature are not likely to raise the policy concerns that warrant the full notice and comment procedures of Section 19(b)(2).[15] Accordingly, the Commission proposes to expand the category of rule filings that are eligible for filing under Section 19(b)(3)(A) to include systems changes that do not significantly affect the protection of investors or the public interest, do not impose any significant burden on competition, and do not have the effect of limiting access to or availability of the system.

Under the amendment, a proposed rule change that, for example, would increase marginally the maximum number of shares per order that could be executed through an SRO's small order routing and execution system may be eligible to become effective upon filing.[16] Another example would be a proposed rule change expanding the number of series or classes eligible for options routing and execution systems.

In contrast, a proposed rule change involving a systems change that would affect the surveillance or oversight capabilities of the SRO or other appropriate regulatory authority would not be properly filed under Section 19(b)(3)(A). Such a rule change could directly impair the protection of investors and thus should be filed under Section 19(b)(2). Another example of a proposed rule change that would not be eligible for filing under Section 19(b)(3)(A) is one that would make mandatory the use of a particular order-entry or trading system by members. Because such a rule change could impose burdens on competition, it should be filed for consideration under the more comprehensive procedures of Section 19(b)(2). Similarly, it would be inappropriate to permit a proposed rule change to become effective immediately if it could have the effect of limiting the access to or availability of the system to members or investors.

*B. Other Noncontroversial Rule Filings After Prior Notice to the Commission*

The Commission also proposes to amend Rule 19b–4 and the instructions to Form 19b–4, pursuant to authority in Section 19(b)(3)(A)(iii) of the Exchange Act, to expand the scope of proposed rule changes that may become effective under Section 19(b)(3)(A) to include certain noncontroversial filings, if the proposed rule change, by its terms, does not become operative for 30 days after the date of publication of the notice of filing or such shorter time as the Commission may designate.[17] For these

[9] Rule 19b–4(b) defines the term "stated policy, practice or interpretation" to mean generally any material aspect of the operation of the facilities of the SRO or any statement made available to the membership, participants, or specified persons thereof that establishes or changes any standard, limit, or guideline with respect to rights and obligations of specified persons or the meaning, administration, or enforcement of an existing rule. 17 CFR 240.19b–4(b).

[10] The Commission has stated that as a matter of general policy, a proposed rule change of an SRO, other than the MSRB, that establishes or changes a due, fee, or other charge applicable to a non-member or non-participant should be filed under Section 19(b)(2) for full notice and comment. Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906, at 73910.

[11] The 1980 amendment, which is similar to the amendments proposed today, expanded the category of filings that qualify to take effect under Section 19(b)(3)(A) to include those proposed rule changes that relate to mechanical or operational details of existing clearing agency services and thus are similar to "solely administrative" rules. The adopting release stated that the Commission was not expanding the category at that time to include rule changes of SROs other than registered clearing agencies, but that it could become appropriate to do so as other SROs developed more varied and complex services. *Id.* at note 51.

[12] SEC, Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* VI–10 (Jan. 1994).

[13] *See* Letter from Thomas M. O'Donnell, Chairman and Marc E. Lackritz, President, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC (July 1, 1993); Letter from James E. Buck, Senior Vice President and Secretary New York Stock Exchange, to Jonathan G. Katz, Secretary, SEC (November 24, 1992).

[14] Market 2000 Report at VI–10.

[15] The Commission's Automated Review Policy II ("ARP II") sets forth the Commission's views on, among other things, the circumstances under which an SRO is expected to notify the Commission of expected changes to its automated systems. As indicated in greater detail therein, the Commission believes that an SRO should provide notification of certain systems changes not only to inform the Commission for purposes of ARP II, but also to help determine whether the systems change would require a filing under Rule 19b–4. Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490.

[16] In a 1983 letter to the exchanges and the NASD, the staff of the Commission's Division of Market Regulation took the position that rule changes relating to small-order systems should be filed under Section 19(b)(2). *See, e.g.*, Letter from Richard T. Chase, Assistant Director, SEC, to Frank Wilson, Executive Vice President, NASD (February 4, 1983). If adopted, the proposed amendments in the release will supersede the staff's position to the extent of any conflict.

[17] This 30 day provision resembles a 1979 proposal by the Commission that featured a 60 day post-filing operation date which was never adopted. SROs objected primarily because the 60 day provision, when combined with a 30 day pre-filing circulation period among members, did not provide sufficient incentive to forego filing the proposed rule change under Section 19(b)(2). The Commission believes that today's proposal addresses these concerns. *See* Securities Exchange Act Release No. 15838 (May 18, 1979), 44 FR 30924.

filings, SROs also would be required to provide written notice to the Commission five business days prior to the filing.[18] Filing this type of proposed rule change under Section 19(b)(3)(A) should allow SROs to implement these rule changes more quickly than if they were filed under Section 19(b)(2).

This new provision only would apply to those proposed rule changes that are properly designated by the SRO as not significantly affecting the protection of investors and not imposing any significant burden on competition. For purposes of meeting this requirement, the impact or burden of a proposed rule change would be significant if, in the view of the Commission staff or industry participants, the change would require more than a cursory analysis to determine whether the impact or burden was necessary or appropriate under the Exchange Act. Proposed rule changes meeting these criteria generally are less likely to engender adverse comments or require the degree of review attendant with more controversial filings.

For example, a proposed rule change that adds an existing rule to an SRO's minor rule violation plan, that is objective in nature, such as a reporting obligation, and that does not involve a violation of the federal securities laws or the rules thereunder, could be properly filed under this provision. Another example would be a proposed rule change permitting the transmission of data to or from the SRO by computer interface or other electronic means. A proposed rule change, however, that would reduce public representation in the administration of the affairs of an SRO or that would amend the procedures for arbitration or disciplinary proceedings would not be a proper candidate to become effective under Section 19(b)(3)(A). These types of filings implicate basic policy considerations with respect to the protection of investors, and should be filed under Section 19(b)(2) to allow for more careful scrutiny.

Under this new provision, the SRO would have to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the filing date.[19] The Commission expects that such notices will be brief and informal and often will be transmitted by facsimile. This prior notice would give Commission staff an opportunity to discuss with the SRO whether there exists an adequate basis upon which the proposed rule change may properly qualify under this provision. Furthermore, the notice could elicit guidance from Commission staff to help the SRO identify those aspects of a proposed rule change that the Commission deems important. This should help the SRO articulate in its subsequent filing the purpose and effects of the proposed rule change, which in turn should further facilitate and expedite the filing process.[20]

The requirement that a proposed rule change filed in this manner cannot, by its terms, become operative prior to 30 days after the date of publication of the notice of filing would provide a meaningful opportunity for public comment prior to the rule's operation. This would allow the Commission, if necessary, to abrogate the rule change before it became operative in the least disruptive manner possible, if the proposed rule change was determined to be inconsistent with the requirements of the Exchange Act and the rules and regulations thereunder. This 30-day requirement, however, could be shortened or waived by the Commission if consistent with the protection of investors and the public interest.

The Commission notes that it presently has the authority under Section 19(b)(3)(C)[21] of the Act to abrogate summarily within sixty days of filing any proposed rule change that becomes effective under Section 19(b)(3)(A). If the proposals to expand the scope of proposed rule changes that may become effective under Section 19(b)(3)(A) are adopted, however, the Commission intends to revise its rules to delegate this abrogation authority to the Director of the Division. This would be necessary to facilitate an expected increase in the volume of proposed rule changes that would be filed under Section 19(b)(3)(A).

*C. Submission of Form 19b–4 on Paper and on Computer Diskette*

During the past five years, the staff of the Commission has acted on over 2,000 SRO rule filings. In addition to submitting a proposed rule change on Form 19b–4, the SRO is responsible for preparing and attaching an exhibit to the form containing the complete notice of the proposed rule change for publication in the **Federal Register**. Staff of the Commission may amend or supplement this notice in preparing it for publication. If and when the proposed rule change is approved, staff also prepares an approval order for similar publication. Thus significant staff resources are devoted to processing these filings and preparing them for publication.

The Commission therefore is encouraging SROs to submit certain portions of all filings on computer diskette in an appropriate wordprocessing format. This only would apply to Form 19b–4 and the notice for publication (Exhibit 1 to Form 19b–4). The paper version of these documents would continue to be required, but the electronic version would provide a more efficient way for Commission staff to review and prepare the initial notice for publication in the **Federal Register**.

*D. Miscellaneous Amendments to Form 19b–4*

The Commission also is proposing to reduce the number of copies of Form 19b–4 and Exhibit 1 that SROs must submit, from twelve to eight, including the manually signed original. The Commission also is correcting miscellaneous outdated references contained in Form 19b–4 with respect to the Commission's address and appropriate offices within the Division to which filings of proposed rule changes should be directed.

## III. Background on Annual Filing of Amendments to Registration Statements of National Securities Exchanges, Securities Associations, and Reports of the Municipal Securities Rulemaking Board

Section 5 of the Exchange Act[22] generally prohibits securities transactions on a national securities exchange unless the exchange is registered with the Commission pursuant to Section 6 of the Act.[23]

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Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906.

[18] For every clearing agency for which the Commission is not the appropriate regulatory agency, this notice also would be filed with the appropriate regulatory agency for the clearing agency as required by Section 17(c)(1) of the Exchange Act, 15 U.S.C. 78q(c)(1). Consistent with the requirements of that section, the Commission also would expect the MSRB to file such notices with each agency enumerated in Section 3(a)(34)(A) of the Exchange Act, 15 U.S.C. 78c(a)(34)(A).

[19] This notice would be directed to the appropriate Division staff responsible for reviewing that SRO's filings of proposed rule changes. The Commission intends to place this notice in a public file. *See* Exchange Act Section 23(a)(3), 15 U.S.C. 78w(a)(3).

[20] The Commission emphasizes that SROs should take extreme care in assuring that all filings express the information necessary for the Commission's review. Any filings that fail to comply with the requirements of Form 19b–4 may be returned to the SRO and will be deemed not to have been filed with the Commission.

[21] 15 U.S.C. 78s(b)(3)(C).

[22] 15 U.S.C. 78e.

[23] 15 U.S.C. 78f.

Section 6 sets forth the conditions for exchange registration and requires that an exchange file an application for registration under Rule 6a–1 under the Act.[24] That rule requires an applicant for registration, or for exemption from registration, to file an application on Form 1,[25] together with accompanying exhibits containing, among other things, the rules of the exchange, its financial statements, and its various forms, schedules, and membership lists.

Pursuant to Rule 6a–2, a registered or exempted exchange generally must update its registration annually by filing amendments on Form 1–A to reflect any changes in specified information contained in the registration statement of the exchange or its accompanying exhibits that were not previously reported in an amendment.[26] The Commission adopted amendments in 1983 to permit exchanges to update exhibits containing the constitution, by-laws, and rules of the exchange and its affiliates only once every three years.[27] The Commission believes that it can streamline the requirement to file annual amendments for certain exhibits to exchange registration. This information is either publicly available, becomes available to the Commission through other means, or is not useful enough to justify the burden placed on the exchanges in collecting and filing it with the Commission each year. The Commission notes that for certain of these exhibits, Exchange Act rules will continue to require national securities exchanges to provide the Commission with prompt notification after any action that renders those exhibits inaccurate.[28] In addition, Rule 17a–1 will continue to require exchanges to maintain and preserve for prescribed periods all documents and other records made or received by it in the course of its business and in the conduct of its self-regulatory activity, and upon request of any representative of the Commission, to promptly furnish such documents.[29]

For the same reasons, the Commission proposes to amend the analogous rules and forms applicable to national securities associations (namely, the National Association of Securities Dealers, Inc. ("NASD")) [30] and the MSRB. The NASD has similar requirements to update and file certain information annually, although the form used for this purpose differs significantly from that used for exchanges.[31] For example, the registration and amendment forms used by the NASD are organized along the lines of rule categories, whereas the format for exchanges focuses on exhibits and lists. The MSRB also has an annual reporting requirement.[32] The Commission believes that it would be appropriate to streamline the reporting requirements for these SROs as well, and to the extent the reports concern matters analagous to those applicable to exchanges, to conform them with the requirements for exchanges.

## IV. Description of Proposal To Amend Requirements for the Annual Filing of Amendments to Registration Statements of National Securities Exchanges, Securities Associations, and Reports of the Municipal Securities Rulemaking Board

As described above, Rule 6a–2 of the Exchange Act requires an exchange to update and file annually certain amendments to its registration with the Commission. Exchanges submit these filings on Form 1–A by referencing the appropriate exhibit to the exchange registration being amended. Because the Commission believes that this is unnecessary for much of this information, the Commission is proposing amendments to Rule 6a–2 that would eliminate or reduce this annual filing requirement for the following: Exhibit B (forms pertaining to application for membership and approval as a person associated with a member); Exhibit C (forms of financial statements, reports, or questionnaires relating to financial responsibility); Exhibit D (documents comprising listing applications including agreements required in connection therewith, and a schedule of listing fees); Exhibit I (list of all individual members and related information); Exhibit J (certain information related to a list of all member organizations of the exchange); and Exhibit K (schedule of securities listed on the exchange). For all the remaining exhibits, with the exception of Exhibits E and F, which concern financial statements,[33] exchanges would have the option, in lieu of the annual filing, to publish or cooperate in the publication of this information on an annual or more frequent basis, and to certify to the accuracy of the information. Exchanges would have the further option of keeping the information in Exhibits A(1), A(2), A(3), L, and M up to date, and certifying that the information is up to date and available to the Commission and the public upon request.[34] In addition, the Commission is proposing to add the date of election to membership, if available, as an item to be filed by exchanges annually under Exhibit J. This is necessary to enable the Commission to monitor the obligation of broker-dealers to be a member of an SRO.[35] It also will help the Commission to designate an appropriate examining authority for each broker-dealer.[36]

The Commission also is proposing to make corresponding changes, where applicable, to the requirements for the NASD and MSRB. Thus, the requirement to file certain information annually would be streamlined, and the reporting requirements for the NASD and the MSRB would be conformed, where appropriate, to the requirements for the exchanges. In addition, similar to the proposal for exchanges discussed above, for certain information, these SROs would have the option, in lieu of an annual filing, of identifying the publication in which this information is available or keeping such information up to date and making it available to the Commission and the public. The Commission is requesting specific comment on these proposals.

## V. Conclusion and Request for Comments

The Commission believes that the proposals described above, if adopted,

[24] 17 CFR 240.6a–1.

[25] 17 CFR 249.1.

[26] Exchange Act Rule 6a-2, 17 CFR 240.6a–2.

[27] The Commission found the annual submission of these exhibits to be unnecessary, particularly because Section 19(b) of the Exchange Act requires exchanges to submit all proposed rule changes to the Commission. Securities Exchange Act Release No. 19814 (May 26, 1983), 48 FR 24663.

[28] Rule 6a–3 requires each exchange to notify the Commission within 10 days after any action that renders inaccurate its registration statement or any exhibit except exhibits E, F, L and M. 17 CFR 240.6a–3.

[29] 15 U.S.C. 78q(a)(1); 17 CFR 240.17a–1.

[30] Currently, the NASD is the only national securities association registered with the Commission.

[31] *See* Exchange Act Rule 15Aj–1, 17 CFR 240.15Aj–1; Form X–15AJ–2, 17 CFR 249.803.

[32] *See* Exchange Act Rule 17a–21, 17 CFR 240.17a–21.

[33] The annual filing requirement for these exhibits would be retained because they are necessary to enable the Commission to comply with Section 23(b) of the Exchange Act, 15 U.S.C. 78w(b). That section requires the Commission to include in its report to Congress each year a statement and analysis of the expenses and operations of each SRO.

[34] Exhibit A(1) contains the constitution, articles of incorporation, by-laws, and rules of the exchange; Exhibit A(2) contains written rulings, settled practices, and interpretations not contained in A(1); Exhibit A(3) contains the constitution, articles of incorporation, by-laws, and rules of each affiliate or subsidiary of the exchange; Exhibit L contains a schedule of securities admitted to unlisted trading practices; and Exhibit M contains a schedule of unregistered securities admitted to trading on the exchange which are exempt from registration.

[35] Section 15(b)(8) of the Exchange Act, 15 U.S.C. 78o(b)(8).

[36] The Securities Investor Protection Act of 1970 contemplates a designated examining authority for broker-dealers. 15 U.S.C. 78aaa *et seq.*

would expedite and streamline the process through which SROs file proposed rule changes with the Commission.[37] The proposals also would streamline the requirements to file amendments to registration statements of national securities exchanges, securities associations, and reports of the Municipal Securities Rulemaking Board. The Commission requests comment on each of these proposals. The Commission requests specific comment on the amendments to the annual filing requirements for securities exchanges, securities associations, and the MSRB, with a view toward maintaining comparable requirements for all SROs.

### VI. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a) of the Exchange Act[38] requires the Commission, in adopting rules under the Exchange Act, to consider the impact on competition of those rules, if any, and to balance that impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission preliminarily is of the view that adoption of the proposed amendments to Rule 19b–4, Form 19b–4, and Rule 6a–2 would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission requests comment, however, on any competitive burdens that might result from adoption of these amendments.

In addition, Section 3(a) of the Regulatory Flexibility Act ("RFA")[39] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed amendments on small entities unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[40] Rule 19b–4 and Form 19b–4 apply only to SROs. Rule 6a–2 applies only to national securities exchanges. Furthermore, the proposed amendments are intended to streamline a process to which these SROs already are subject. The Chairman has certified that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

### Statutory Basis and Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Paragraph (a)(1) of § 240.6a–2 is amended by removing ", or in Exhibits B, C and D," and "and Exhibits B, C and D".

3. Revise paragraph (a)(3) of § 240.6a–2 to read as follows:

**§ 240.6a–2 Periodic amendments to registration statements or exemption statements of exchanges.**

(a) * * *

(3) Complete Exhibits G, H, J, L and M, except that Exhibit J need only contain the name, principle place of business, and, if available, the date of election to membership for each member organization. The information contained in these exhibits shall be up to date as of the latest practicable date within 3 months of the date on which the annual amendment is filed. If a national securities exchange publishes or cooperates in the publication of the information required in these exhibits on an annual or more frequent basis, in lieu of filing such an exhibit a national securities exchange may:

(i) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(ii) Certify to the accuracy of such information as of its date. If a national securities exchange keeps the information required in Exhibits L and M up to date and makes it available to the Commission and the public on request, in lieu of filing such an exhibit a national securities exchange may certify that the information is kept up to date and is available to the Commission and the public upon request.

* * * * *

4. Section 240.6a–2 is amended by revising paragraph (b) to read as follows:

**§ 240.6a–2 Periodic amendments to registration statements or exemption statements of exchanges.**

* * * * *

(b) Unless exempted pursuant to paragraph (c) of this rule, on or before June 30, 1983, and every three years thereafter each exchange registered as a national securities exchange shall file complete Exhibits A(1), A(2) and A(3) to its registration statement. The information contained in these exhibits shall be up to date as of the latest practicable date within 3 months of the date on which these exhibits are filed. If a national securities exchange publishes or cooperates in the publication of the information required in these exhibits on an annual or more frequent basis, in lieu of filing such an exhibit a national securities exchange may:

(1) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(2) Certify to the accuracy of such information as of its date. If a national securities exchange keeps the information required in these exhibits up to date and makes it available to the Commission and the public on request, in lieu of filing such an exhibit a national securities exchange may certify that the information is kept up to date and is available to the Commission and the public upon request.

* * * * *

5. Paragraph (e) of § 240.19b–4 is revised to read as follows:

**§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.**

* * * * *

(e) A proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act if properly designated by the self-regulatory organization as:

(1) Constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule;

(2) Establishing or changing a due, fee, or other charge;

(3) Concerned solely with the administration of the self-regulatory organization;

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[37] These amendments may affect clearing agencies for which the Commission is not the appropriate regulatory agency as defined in Section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34). Therefore, in accordance with Section 17A(d)(3)(A)(i) of the Exchange Act, 15 U.S.C. 78q–1(d)(3)(A)(i), at least 15 days before this announcement, the Commission consulted and requested the views of the Board of Governors of the Federal Reserve System.

[38] 15 U.S.C. 78w(a)(2).

[39] 5 U.S.C. 603(a).

[40] 5 U.S.C. 605(b).

(4) Effecting a change in an existing service of a registered clearing agency that:

(i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible; and

(ii) Does not significantly affect the respective rights or obligations of the clearing agency or persons using the service;

(5) Effecting a change in an existing order-entry or trading system of a self-regulatory organization that:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) Does not have the effect of limiting the access to or availability of the system; or

(6) Effecting a change that:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) By its terms, does not become operative for 30 days after the date of publication of the notice of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

* * * * *

## PART 249—FORM, SECURITIES EXCHANGE ACT OF 1934

6. The authority citation for part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a, et seq., unless otherwise noted.

* * * * *

7. By revising the first sentence of instruction F of the general instructions of Form 19b–4 (§ 249.819) to read as follows, and by removing the asterisk contained therein along with its accompanying footnote:

**Note:** Form 19b–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form 19b–4

* * * * *

General Instructions

* * * * *

F. Signature and Filing of the Completed Form

Eight copies of Form 19b–4, eight copies of Exhibit 1, four copies of Exhibits 2 and 3, and two copies of Exhibit 4 shall be filed with, in the case of filings by securities exchanges, the Assistant Director for Derivatives and Exchange Oversight, in the case of filings by securities associations or the Municipal Securities Rulemaking Board, the Assistant Director for NMS and OTC, and in the case of filings by clearing agencies, the Assistant Director for Securities Processing, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. * * *

* * * * *

8. Item 7 of the information to be included in the completed form of Form 19b–4 (§ 249.819) is amended by removing the word "or" from the end of paragraph (b)(iii) and adding paragraphs (b)(v) and (b)(vi) to read as follows:

**Note:** Form 19b–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form 19b–4

* * * * *

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

* * * * *

(b) * * *

(v) effects a change in an existing order-entry or trading system of a self-regulatory organization that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) does not have the effect of limiting the access to or availability of the system, or (vi) effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of publication of the notice of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

* * * * *

9. Section IV of Exhibit 1 of Form 19b–4 (§ 249.819) is amended by removing "500 North Capitol Street," and adding in its place "450 Fifth Street, NW.," and removing "1100 L Street NW.," and adding in its place "450 Fifth Street, NW.,".

Dated: June 1, 1994.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–13732 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–P

## 17 CFR Parts 240 and 249

[Release No. 34–34139; File No. S7–16–94]

RIN 3235–AG11

## Exemptive Relief and Simplification of Filing Requirements for Debt Securities To Be Listed on a National Securities Exchange; Solicitation of Comment Concerning Reporting by Issuers of Debt Securities

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Securities and Exchange Commission ("Commission") is proposing a new rule and proposing to amend its rules under the Securities Exchange Act of 1934 to reduce existing regulatory distinctions between debt securities listed on a national securities exchange and those traded in the over-the-counter market. The Commission also is proposing to simplify registration procedures under the Securities Exchange Act of 1934 for listed debt securities. The proposals would: exempt listed debt securities from restrictions on borrowing and the proxy rules; provide for the automatic effectiveness of a Form 8–A registration statement for listed debt securities; and eliminate the filing fee associated with the Form 8–A registration statement for listed debt. Comment also is being requested as to whether it is advisable to extend reporting requirements to issuers of debt securities that are traded in the over-the-counter market under certain circumstances where the issuer is not otherwise subject to periodic reporting requirements.

**DATES:** Comments should be received on or before August 8, 1994.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Comment letters should refer to File No. S7–16–94. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** With regard to the proposed exemption from restrictions on borrowing, Beth A. Stekler, at (202) 942–0190, Branch of Exchange Regulation, Division of Market Regulation; with regard to issues relating to the proxy rules, Form 8–A, or reporting, Joseph P. Babits, at (202) 942–2910, Office of Disclosure Policy, Division of Corporation Finance; Securities and Exchange Commission

(Mail Stops 5–1 and 3–12, respectively), 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** Under the Securities Exchange Act of 1934 ("Exchange Act"),[1] the Commission is publishing for comment proposed new Rule 3a12–11 and revisions to Rules 12b–7,[2] 12d1–2,[3] and Form 8–A.[4] The proposed rule and amendments are intended to provide regulatory relief to issuers listing debt securities on a national securities exchange.

## I. Discussion of Proposals

### *A. Introduction and Summary*

Section 12 of the Exchange Act[5] requires all securities listed on a national securities exchange to be registered under the Exchange Act.[6] Registration subjects the securities, whether debt or equity, to a number of regulatory provisions, including restrictions on borrowing,[7] periodic reporting by the issuer,[8] and proxy regulation.[9] In contrast, debt securities traded in the over-the-counter ("OTC") market are not required to be registered under the Exchange Act,[10] and, therefore, such securities are not subject to the restrictions on borrowing or proxy regulation. These regulatory distinctions may have unnecessarily and unintentionally affected the structure and development of the debt markets.

The New York Stock Exchange ("NYSE") has advised the Commission that the additional regulatory requirements imposed on listed debt securities create significant disincentives for issuers to list their debt on the national securities exchanges and urged that exemptive action be taken to eliminate this disparity. To address this disparate regulatory treatment between listed and OTC-traded debt, the Commission is proposing to exempt listed debt securities from the borrowing restrictions and proxy rules under the Exchange Act. Listed debt securities, however, would remain subject to the registration and reporting requirements. The Commission also is proposing to simplify the registration process by providing for the immediate effectiveness of Form 8–A registration statements pertaining to the listing of debt securities on a national securities exchange and eliminating the filing fee associated with the form.

In addition to these proposals to ease the regulatory obligations resulting from listing debt securities, the Commission also is considering whether additional informational requirements should be imposed on issuers of OTC-traded debt securities. Accordingly, as discussed below, the Commission is requesting comment on the benefits of periodic reporting requirements with respect to issuers of debt securities and on whether it is advisable to extend those requirements to issuers of debt securities that are traded in the OTC market, comparable to the requirements applicable to issuers that list their debt securities on a national securities exchange.

### *B. Exemption From the Borrowing Restrictions of the Exchange Act*

In the aftermath of the 1929 market crash, Congress enacted the Exchange Act to regulate, among other matters, the extension of credit in the securities markets.[11] Along with margin provisions,[12] Congress placed a restriction on the ability of broker-dealers to borrow, in the ordinary course of business, using exchange-traded securities as collateral. Under Section 8(a) of the Exchange Act,[13] a broker-dealer can pledge a listed security, other than an exempted security, only to certain lenders: a member bank of the Federal Reserve System; a non-member bank that has filed with the Federal Reserve Board an agreement to comply with those provisions of the federal securities and banking laws that apply to member banks; or another broker-dealer if such a loan is permissible under the rules and regulations of the Federal Reserve Board.[14] As noted above, Section 8(a) specifically excludes exempted securities from these restrictions on borrowing. Under Section 3(a)(12) of the Exchange Act,[15] the term "exempted securities" includes such securities as the Commission may exempt from the operation of any one or more provisions of the Exchange Act.

In 1968, when Congress extended many of the margin provisions (i.e., Section 7(a)) to securities traded exclusively in the OTC market,[16] Congress placed no comparable restriction on the ability of broker-dealers to borrow against OTC securities.[17] As a result, a broker-dealer can use bonds that are not listed on an exchange to secure financing from any lender, whether or not that lender falls within the statutorily enumerated categories.

Since that time, various market participants have voiced concerns that Section 8(a) is overly restrictive and competitively unfair.[18] According to these participants, broker-dealers' discretion in financing their positions is unduly constrained once a debt security is traded on an exchange. In addition, at least one national securities exchange has been informed by its members that the members may advise an issuer against listing bonds due to the restrictions in Section 8(a).[19]

Given the developments in the OTC market since Congress took action in the 1960s, the current structure of the bond market and the nature of debt financing, the differential treatment of exchange-listed and OTC-traded debt securities does not appear to be warranted. In today's highly competitive market environment, the current regulatory scheme may detract unfairly from broker dealers' ability to finance their positions, and from the national

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[1] 15 U.S.C. 78a et seq.

[2] 17 CFR 240.12b–7.

[3] 17 CFR 240.12d1–2.

[4] 17 CFR 249.208a.

[5] 15 U.S.C. 78*l*.

[6] Section 12(a) of the Exchange Act [15 U.S.C. 78*l*(a)] prevents any member, broker or dealer from effecting any transaction in any security listed on a national securities exchange unless the security is registered pursuant to Section 12(b) of the Exchange Act [15 U.S.C. 78*l*(b)].

[7] Section 8(a) of the Exchange Act [15 U.S.C. 78h(a)].

[8] Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)].

[9] Section 14(a), (b), and (c) of the Exchange Act [15 U.S.C. 78n(a), (b), and (c)].

[10] See Section 12(g) of the Exchange Act [15 U.S.C. 78*l*(g)], which only requires registration of equity securities.

[11] *See, e.g.*, 78 Cong. Rec. 8386–96 (Senate debate rejecting an amendment to prohibit, rather than regulate, margin transactions).

[12] In particular, Section 7(a) of the Exchange Act [15 U.S.C. 78g] authorized the Board of Governors of the Federal Reserve System ("Federal Reserve Board") to prescribe rules and regulations with respect to the amount of credit that may be initially extended and subsequently maintained on any security traded on a national securities exchange.

[13] 15 U.S.C. 78h(a).

[14] For example, Regulation T [17 CFR 220.1 *et seq.*] authorizes a broker-dealer to clear or finance transactions for a specialist's market functions account. *See* 12 CFR 220.12(b).

[15] 15 U.S.C. 78c(a)(12).

[16] 1968 Amendments to the Securities Exchange Act of 1934, Pub. L. No. 90–437, 82 Stat. 452 (1968).

[17] Congress did not amend Section 8(a), as it amended Section 7(a), to extend that provision to securities traded exclusively in the OTC market. Congress, however, did not repeal Section 8(a) for listed securities.

[18] *See, e.g.*, letter from Donald J. Solodar, Executive Vice President, Fixed Income, Options & Administration, New York Stock Exchange ("NYSE"), to Brandon Becker, Director, Division of Market Regulation, SEC, and Linda C. Quinn, Director, Division of Corporation Finance, SEC, dated July 19, 1993 ("NYSE letter"); letter from Marc E. Lackritz, President, Securities Industry Association ("SIA"), to William W. Wiles, Secretary, Federal Reserve Board, dated December 23, 1992 ("SIA letter").

[19] *See* NYSE letter, *supra* note 18.

securities exchanges' ability to obtain debt listings.[20]

The Commission is proposing to exempt [21] exchange-traded debt securities from the borrowing restrictions of Section 8(a).[22] The proposed exemption to the restrictions on borrowing would eliminate one competitive barrier to the exchange trading of debt securities. Specifically, to the extent that the restrictions of Section 8(a) may encourage underwriters and investment bankers to recommend against debt securities being listed, the proposed exemption would eliminate that impediment to the listing of debt securities on a national securities exchange.

Moreover, the exemption from the restrictions on borrowing could provide certain benefits to the financial system. Under this proposal, a broker-dealer borrowing against a listed debt security could choose among prospective lenders based solely upon the terms of the financing that they offer. For instance, the exemption would make it possible for a broker-dealer to enter into a repurchase agreement with a non-bank institutional investor. This flexibility should help broker-dealers obtain financing at the lowest available cost.

For purposes of the proposed rule, the term "debt security" would include any security that is not an "equity security" as defined by the Exchange Act and the rules thereunder.[23] Comment is solicited as to whether, in lieu of the proposed definition, the term "debt security" should be more specifically defined. For example, should the term "debt security" be defined as: "(1) A note, bond, debenture or evidence of indebtedness; (2) a certificate of interest or participation in any such note, bond, debenture or evidence of indebtedness; or (3) a temporary certificate for, or guarantee of, any such note, bond, debenture, evidence of indebtedness or certificate; but shall not include an 'equity security' as defined in Section 3(a)(11) of the Act and Rule 3a11–1 thereunder"? [24] Comment also is solicited as to whether hybrid debt securities should be treated as debt securities for purposes of Rule 3a12–11.

The Commission requests commenters to address the scope of the proposed exemption as well as its merits. Are there any categories of listed debt securities that should remain subject to the borrowing restrictions? Interested persons may also wish to comment on how exempting exchange-traded debt securities from Section 8(a) restrictions would affect investor protection in the debt market, including whether the purposes behind the Exchange Act's credit provisions would be frustrated as a result. Interested persons may also wish to comment on the proposed rule's impact on the transparency and liquidity of the market for debt securities.

### *C. Exemption From Compliance With the Proxy Rules*

A second provision of the proposed rule would exempt debt securities listed on a national securities exchange from proxy regulation.[25] By proposing to exempt debt listed on a national securities exchange from the proxy rules, the Commission seeks to address the disparate application of the proxy rules between listed debt securities and debt securities traded in the OTC market. The proxy rules principally apply to equity securities, since most debt securities are not listed on a national securities exchange and thus not subject to the proxy rules.[26]

In 1963, the Commission submitted a report to Congress that set forth its recommendations as to the scope of regulation needed for the OTC market.[27] These recommendations led to the adoption of Section 12(g) in 1964. The Commission concluded that proxy regulation should not be required with respect to debt securities since Section 14 was designed to protect shareholders and the solicitation of proxies was "rarely [a] problem[ ] related to debt securities and, then, most probably in insolvency cases when other protections were available." [28] Today, solicitations of debtholders subject to the proxy rules continue to be infrequent, with only 18 such solicitations having occurred between 1990 and 1993 with respect to NYSE-listed issuers.[29]

In the context of listed debt, the proxy rules, for the most part, cover solicitations to modify the terms of a trust indenture. Given the strictures already imposed by the indenture contract, as well as the Trust Indenture Act, comment is solicited as to whether the benefits to debtholders from the application of the proxy rules to debt securities listed on a national securities exchange outweigh the costs to the issuers in complying with the proxy rules in connection with proxy or consent solicitations.[30] If the proxy rules provide important protections with respect to publicly-traded debt securities that should be preserved, does the need for these protections derive from the listing of the security on a national securities exchange or rather because it is traded in the public debt markets? If the latter is the case, should

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[20] The Commission notes that, at this time, most secondary trading in debt securities (including listed debt securities) takes place in the OTC market; exchange trading of corporate bonds currently accounts for a relatively small percentage of the daily trading volume in such securities and is often in "odd-lot" size. United States Securities and Exchange Commission, Division of Market Regulation, *The Corporate Bond Markets: Structure, Pricing and Trading* 1, 13 (January 1992). Although these circumstances may change if the relief proposed herein is granted, the Commission recognizes that it places a competitive burden on exchange markets to subject them to more restrictive regulation than the OTC market, which is, in this case, the primary market for the trading of debt securities.

[21] Section 3(a)(12) of the Exchange Act.

[22] Proposed Rule 3a12–11(a) would exempt debt securities that are traded on a national securities exchange from the restrictions on borrowing of Section 8(a) of the Exchange Act. A broker-dealer who extends credit on that collateral would continue to be required to comply with the applicable rules and regulations of the Federal Reserve Board, including Regulation T [17 CFR 220.1 *et seq*].

[23] Proposed Rule 3a12–11(c). The term "equity security" is defined in Section 3(a)(11) [15 U.S.C. 78c(a)(11)] and Rule 3a11–1 [17 CFR 240.3a11–1] thereunder. Equity securities would include, among other items, stock or similar security, certificates of interest or participation in any profit sharing agreement, voting trust certificate or certificate of deposit for any equity security, limited partnership interest, any security that is convertible, with or without consideration, into an equity security or any warrant or right to subscribe or purchase an equity security.

[24] This definition is modeled after Section 304(a)(1) of the Trust Indenture Act of 1939, ("Trust Indenture Act") [15 U.S.C. 77ddd(a)(1)].

[25] Proposed Rule 3a12–11(b) would exempt listed debt securities from the proxy, shareholder communications, and information statement rules under Sections 14(a), 14(b), and 14(c) of the Exchange Act. The term "debt securities" would be defined in the same manner as in the exemption from the restrictions on borrowing. *See* proposed Rule 3a12–11(c).

[26] The OTC market is the principal trading market for debt (*see* n.20). Of the more than 13,000 publicly traded domestic corporate bond issues in 1989, fewer than 20% (2,135 on the NYSE and 280 on the American Stock Exchange ("AMEX") were listed on the NYSE and AMEX. *See* Colloton, "Bondholder Communications—The Missing Link in High Yield Debt," Hill and Knowlton, Inc. at 17 (August 1990). Similarly, less than 20% of the total face amount of corporate debt securities outstanding is listed on the NYSE. *See* New York Stock Exchange, Inc., Fact Book 54 (1993); Board of Governors of the Federal Reserve System, Flow of Funds Account L.213 (March 9, 1994).

[27] *Report of Special Study of Securities Markets*, ("1963 Special Study") U.S. Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. pt. 3, 34 (1963).

[28] *Id.* at 34.

[29] *See* letter from Fred Siesel of NYSE to David Sirignano of the Division of Corporation Finance dated May 12, 1994.

[30] When Congress first began to consider the need for 12(g), an earlier version of Senate Bill 1168 would have subjected issuers with more than $1 million of debt securities outstanding to registration and the proxy rules. The Senate Committee on Banking and Currency, however, "recognized that debt security holders are normally better protected, from a financial standpoint, by the fixed dollar obligation in the debt contract than are holders of equity securities, and hence eliminated the debt security test from the provisions of the bill." S. Rep. No. 700, 85th Cong., 1 Sess. 6 (1957).

the Commission seek to extend the proxy rules to all publicly-traded debt securities, similar to the treatment of equity securities under Section 12(g) of the Exchange Act? Comment also is solicited as to whether an issuer's solicitation of holders of debt securities listed on a national securities exchange should remain subject to the antifraud proscriptions of Rule 14a–9[31] and/or the rules adopted under Section 14 of the Exchange Act to facilitate the transmission of proxy and consent materials to beneficial owners,[32] even if exempted from other proxy regulation. Finally, is the application of the proxy rules currently part of the expectations of the parties negotiating an indenture agreement, or of investors purchasing a listed debt security? If so, should the proposed exemption be prospective in nature and thus inapplicable to classes of debt listed before the effective date of the exemption?

*D. Automatic Effectiveness of Form 8–A and Elimination of Filing Fee*

The Commission proposes to reduce or eliminate some of the procedural costs of listing debt on a national securities exchange, both through rulemaking and through practical modifications to filing procedures.[33] Currently, Form 8–A registration statements must be declared effective by the staff, pursuant to delegated authority, which necessitates coordination among the issuer, its counsel, the Commission staff, and the national securities exchange. A rule change is proposed to provide for the automatic effectiveness of registration statements on Form 8–A, including amendments, that pertain only to the listing of debt securities on a national securities exchange.[34] In the case where debt securities of the class being registered were concurrently being registered under the Securities Act, the Form 8–A would become effective simultaneously with the effectiveness of the related Securities Act registration statement if certification by the national securities exchange had been received by the Commission on or before the effectiveness of the related Securities Act registration statement. If, however, that class of debt securities was not concurrently being registered under the Securities Act, then the Form 8–A would become effective upon filing if certification by the exchange had been received by the Commission on or before the filing of the form.[35]

In addition, the Commission proposes to eliminate the $250 filing fee for registering a class of debt securities on Form 8–A.[36] Form 8–A would be revised to add two new boxes, one of which the issuer would check to signify it is a debt registration requiring no fee and that the Form 8–A: (1) Is to be effective automatically upon filing, as no debt securities of the class being registered on the form are being registered concurrently under the Securities Act; or (2) is to be effective simultaneously with the effectiveness of a related Securities Act registration statement. Comment is solicited as to whether these proposed amendments address the procedural and timing concerns of issuers listing debt securities on a national securities exchange.

*E. Reporting*

Today's proposals do not exempt listed debt securities from registration and reporting under the Exchange Act. Companies that list their debt securities for trading in the public market will still have to provide annual, quarterly, and current reports. This raises the question as to the need for similar requirements for issuers with substantial amounts of debt securities traded in the OTC market.

When Congress amended the Exchange Act in 1964 to add Section 12(g), it extended registration to the OTC market for the first time. However, the 1964 amendments focused exclusively on issuers of equity securities. No comparable provision was provided for debt securities that are traded in the OTC market. This difference in regulatory treatment was not based on a policy decision that current financial information is not important to the market. Rather, the decision appears to have been based, at least in part, on the nature of the debt securities market in 1963. At that time, it was considered unnecessary to extend registration to debt securities trading in the OTC market, as it appeared that a company that had a significant amount of debt securities outstanding would probably meet the Section 12(g) threshold with respect to its equity securities.[37]

Specifically, in its 1963 Special Study, the Commission cited the results of a questionnaire it used in, among other matters, determining whether debtholders independently needed the protections of Section 13, 14, and 16 of the Exchange Act.[38] The questionnaire sought information about outstanding debt securities, face dollar amount, and number of holders. While acknowledging the small number of respondents to the questionnaire, the Commission found that of 218 issuers that responded, only 58 would not have incurred a reporting obligation.[39] Of these issuers, 45% had less than $250,000 face amount of debt securities outstanding, 60% less than $500,000 outstanding, and 76% less than $1,000,000.[40] The Commission concluded that the proposed Section 12(g) equity threshold would make financial reports publicly available to a

[31] 17 CFR 240.14a–9.

[32] Rules 14a–13 [17 CFR 240.14a–13], 14b–1 [17 CFR 240.14b–1], and 14b–2 [17 CFR 240.14b–2].

[33] The Commission will accept the filing of a combined Form 8–A and NYSE Listing Application on behalf of any issuer listing debt securities on the NYSE. The combined Form 8–A/Listing Application will include all the current disclosure requirements of Form 8–A and the listing application requirements of NYSE. The NYSE intends to assist its listed companies by filing the combined Form 8–A/Listing Application with the Commission on behalf of the issuer and as its agent. The issuer, however, may choose to file the Form 8–A itself. Regardless of whether the issuer or the national securities exchange files the Form 8–A/Listing Application, the issuer is solely responsible for the filing and its contents.

National securities exchange representatives wishing to use a similar procedure should contact Joseph P. Babits at (202) 942–2910. National securities exchanges that intend to use a combined Form 8–A/Listing Application that will become effective upon filing must confirm that the combined Form has been in fact filed with the Commission prior to the commencement of trading in the class of securities.

A national securities exchange using such a procedure may wish to make Form 8–A filings with the Commission in paper, whether or not the registrant is subject to mandated electronic filing via the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR). Accordingly, the Division of Corporation Finance will consider requests for a continuing hardship exemption pursuant to Rule 202 of Regulation S–T [17 CFR 232.202] from any national securities exchange filing Forms 8–A on behalf of electronic filers.

[34] Proposed amendments to Rule 12d1–2 and Instruction A of Form 8–A. Forms 8–A that register both debt and equity securities would not be encompassed by the proposed amendments.

[35] If an issuer elects to file the Form 8–A (or Form 8–A/Listing Application) itself, it must ensure that the Commission has received certification from the exchange on or before the date of filing the Form if automatic effectiveness is requested, or, if concurrent effectiveness is requested, on or before the Securities Act registration statement has been declared effective. An issuer may contact the Office of Quality Control at (202) 942–8970 (ext. 4475) to verify that certification has been received by the Commission.

To the extent that multiple debt issues are being registered on a single Form 8–A, then certification for each issue must be received by the Commission prior to effectiveness. Where a Form 8–A relates to debt securities to be listed on multiple national securities exchanges (e.g., the NYSE and the Boston Stock Exchange), then certifications must be received by the Commission from each exchange prior to effectiveness.

[36] Proposed amendment to Rule 12b–7.

[37] 1963 Special Study, *supra* note 27, at n.55.

[38] *Id.*

[39] Publicly available financial information would have been available for 160 issuers that would have met the proposed Section 12(g) threshold requiring registration of their equity securities. *Id.*

[40] *Id.*

large majority of debtholders. Furthermore, the aggregate sums lent by issuers that would not be subject to any reporting obligation tended to be modest. Thus, the 1963 Special Study recommended to Congress that Section 12(g) not apply to debt securities.[41]

In the 1980s, the issuance of debt securities in both private placements and public offerings began to increase dramatically.[42] In addition, the increasing use of leveraged buyouts that concentrated equity ownership below Section 12(g) thresholds resulted in a number of companies with significant outstanding debt securities that are not reporting companies. Concerns have been expressed about the lack of information being available to the market regarding the issuers of some of these securities.[43] In the case of privately placed debt securities traded in the OTC market, no registration or periodic reporting under the Exchange Act is required. Section 15(d) of the Exchange Act[44] requires reporting by issuers that make a registered offering of equity or debt securities, but permits companies to suspend their reporting obligations after one year when a class of securities are held by fewer than 300 record holders.

As applied, most issuances of debt securities are viewed as separate classes of debt. Therefore, it is not uncommon for a company that sells registered debt securities not to have a 15(d) reporting obligation after its first year. While there may be more than 300 holders of record for all the registered debt of a company, it is not uncommon that there are fewer than 300 holders of record for any one issue.

The staff of the Division of Corporation Finance recently examined information on companies that had more than 5 million dollars of debt securities outstanding to determine whether the companies were reporting with the Commission. The staff concluded that there are at least 200 non-reporting issuers, with over $47 billion of debt securities outstanding.[45] It appears appropriate to determine whether the nature and size of the debt market has sufficiently changed since the 1960s such that continuous reporting by issuers with significant amount of debt securities may now be warranted.

Comment is solicited as to whether it is now desirable for the Commission to adopt rules or exercise definitional authority under the Exchange Act or Trust Indenture Act to increase the number of issuers with debt securities traded in the OTC market that would be subject to periodic reporting. For example, are periodic reports needed for companies that have issued debt securities but subsequently suspended their reporting obligations pursuant to Section 15(d) of the Exchange Act? Comment also is solicited as to whether, even in the absence of a registered offering, an issuer of debt securities should be subject to an Exchange Act reporting obligation, similar to the provisions governing the registration of equity under Section 12(g) of the Exchange Act.

If such reporting obligations are needed, should the thresholds be based upon the total dollar amount of debt securities outstanding, the number of record or beneficial holders, and/or other criteria? If the number of holders, comment is solicited as to the appropriate threshold number of holders (i.e., 300, 500, or some greater or lesser number)? Comment is solicited as to how the number of holders should be calculated for these purposes.[46] Comment also is solicited as to whether the total amount of registered debt securities outstanding of an issuer should be viewed as one class in determining whether the threshold is met.

## II. Request for Comment

Any interested persons wishing to submit written comments on the proposed rules and amendments, as well as any other matters that might have an impact on the proposals set forth in the release are requested to do so. Comments are requested on the impact of the proposals on issuers, debtholders, broker-dealers, and others. The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[47]

## III. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposals, commenters are requested to provide views and data relating to any costs and benefits associated with these proposals. The proposals are expected to decrease the net costs to issuers associated with listing debt securities on a national securities exchange, without materially diminishing the benefits to investors. Among other matters, the proposals would exempt the class of debt securities from the restrictions on borrowing and the proxy rules.

The costs to investors associated with these proposed rules and revisions are minimal. Currently, an issuer is not required to register debt securities under the Exchange Act in order for those securities to be traded in the OTC market. By reducing the regulatory costs of listing debt on a national securities exchange, it is expected that more issuers will list such securities and thus register under the Exchange Act.

## IV. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 for the proposed rule and amendments to Rule 12b–7, 12d1–2, and Form 8–A. The analysis notes that the proposals are expected to reduce regulatory costs for small entities.

As discussed more fully in the analysis, the proposed changes would affect persons that are small entities, as defined by the Commission's rules. The exemptions provided by Rule 3a12–11 and revisions to Rules 12b–7, 12d1–2, and Form 8–A are expected to decrease the compliance burdens of small entities.

Commenters are encouraged to comment on any aspect of the analysis. Such comments will be considered in

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[41] *Id.* The Commission also noted that Section 314(a)(1) [15 U.S.C. 77nnn(a)(1)] of "[t]he Trust Indenture Act of 1939 gave the Commission power to require companies which qualify indentures under it, but are not otherwise under a statutory duty to report under the provisions of Sections 13 and 15(d) of the Exchange Act, to comply with such of the reporting requirements of section 13 as the Commission might prescribe." 1963 Special Study, *supra* note 27, at 6.

[42] Federal Reserve Bulletin, Vol. 68.12–79.3 (December 1982–March 1993).

[43] *See generally*, Jereski, "None of Your Business," *Forbes* (April 29, 1991) at 68; Norris, "Market Place—When Companies Conceal the Facts," *The New York Times* (September 14, 1990); Jereski, "Now You See the Junk, Now You Don't," *Business Week* (April 2, 1990) at 40; Colloton, *supra* note 26.

*See also, Harris Trust and Savings Bank et al.* v. *E–II Holdings, Inc.*, (N.D. Ill. No. 89 C 203) *Fed. Sec. L. Rep.* [CCH] par. 94,917 at 95,057 (September 5, 1989). The court held that absent specific provisions in the indenture, Section 314(a) of the Trust Indenture Act would not compel production of financial and other information by the non-reporting company to its trustees.

[44] 15 U.S.C. 78o(d).

[45] The staff believes that these statistics are understated since non-reporting companies often consider their financial and operating information proprietary.

[46] Where securities have been issued in book-entry form and held by the Depository Trust Company ("DTC"), the staff has taken the position that DTC participants should be included in the calculation of the total number of record holders. *See, CFAC Remic Trust 1989–A* (available March 30, 1990).

[47] 15 U.S.C. 78w(a).

the preparation of the Final Regulatory Flexibility Analysis if the proposed rule and amendments are adopted. A copy of the analysis may be obtained by contacting Joseph P. Babits, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**V. Statutory Basis for Rules**

New Rule 3a12–11 and all amendments are being proposed pursuant to Exchange Act Sections 3(a)(12),[48] 9,[49] 10,[50] 12,[51] 14,[52] and 23,[53] as amended.

**List of Subjects in 17 CFR Parts 240 and 249**

Reporting and recordkeeping requirements, Securities.

**Text of Proposals**

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended in part as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By adding § 240.3a12–11 to read as follows:

**§ 240.3a12–11 Exemption from Sections 8(a), 14(a), 14(b), and 14(c) for debt securities listed on a national securities exchange.**

(a) Debt securities that are listed for trading on a national securities exchange shall be exempt from the restrictions on borrowing of Section 8(a) of the Act (15 U.S.C. 78h(a)).

(b) Debt securities registered pursuant to the provisions of Section 12(b) of the Act (15 U.S.C. 78*l*(b)) shall be exempt from Sections 14(a), 14(b), and 14(c) of the Act (15 U.S.C. 78n(a), (b), and (c)).

(c) For purposes of this section, *debt securities* is defined to mean any securities that are not "equity securities" as defined in Section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) and § 240.3a11–1 thereunder.

[48] 15 U.S.C. 78c(a)(12).
[49] 15 U.S.C. 78i.
[50] 15 U.S.C 78j.
[51] 15 U.S.C 78*l*.
[52] 15 U.S.C 78n.
[53] 15 U.S.C. 78w.

3. By adding a sentence to the end of § 240.12b–7 to read as follows:

**§ 240.12b–7 Filing fee.**

* * * No fee, however, shall be paid to the Commission for the registration of debt securities, as defined in § 240.3a12–11(c), on Form 8–A (17 CFR 249.208a) pursuant to Section 12(b) of the Act (15 U.S.C. 78*l*(b)).

4. By revising the section heading, designating the existing text as paragraph (a), and adding paragraph (b) to § 240.12d1–2 to read as follows:

**§ 240.12d1–2 Effectiveness of registration.**

(a) * * *

(b) A registration statement on Form 8–A (17 CFR 249.208a) that only pertains to the listing of a class or classes of debt securities, as defined in § 240.3a12–11(c), on a national securities exchange for which certification has been received by the Commission shall become effective upon filing with the Commission, in the case of a class of debt securities not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"); and otherwise, upon the effectiveness of a concurrent Securities Act registration statement to which the debt securities relate.

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

6. By amending § 249.208a by adding paragraph (c) to read as follows:

**§ 249.208a Form 8–A, for registration of certain classes of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.**

* * * * *

(c) If this form is used *only* for the registration of a class of debt securities as defined in Rule 3a12–11(c) and certification from the national securities exchange has been received by the Commission, it shall become effective either:

(1) Upon filing with the Commission, in the case of a class of debt securities not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"); or

(2) Upon the effectiveness of a concurrent Securities Act registration statement to which the debt securities relate.

7. By amending Form 8–A (§ 249.208a) by adding two check boxes to the cover page immediately before "Securities to be registered pursuant to Section 12(g) of the Act," and by adding paragraph (c) to General Instruction A to read as follows:

**Note:** The text of Form 8–A does not and the amendments will not appear in the Code of Federal Regulations.

**Form 8–A—For Registration of Certain Classes of Securities Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934.**

* * * * *

If this Form relates to the registration of a class of debt securities and is effective upon filing pursuant to General Instruction A.(c)(1), please check the following box. [ ]

If this Form relates to the registration of a class of debt securities and is to become effective simultaneously with the effectiveness of a concurrent registration statement under the Securities Act of 1933 pursuant to General Instruction A.(c)(2), please check the following box. [ ]

* * * * *

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 8–A

* * * * *

(c) If this form is used *only* for the registration of a class of debt securities as defined in Rule 3a12–11(c) (17 CFR 240.3a12–11(c)) and certification from the national securities exchange has been received by the Commission, it shall become effective:

(1) upon filing with the Commission, in the case of a class of debt securities not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 78a *et seq.*) ("Securities Act"); or

(2) simultaneously with the effectiveness of a concurrent Securities Act registration statement to which the debt securities relate. *See* Rule 12d1–2(b) (17 CFR 240.12d1–2(b)).

By the Commission.

Dated: June 1, 1994.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–13731 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–P

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD 05–94–017]**

**RIN 2115–AE46**

## Special Local Regulations for Marine Events; Atlantic Ocean, Ocean City, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish permanent special local regulations for the Ocean City Offshore Grand Prix held annually in the Atlantic

Ocean off Ocean City. The effect of these regulations will be to restrict general navigation in the regulated area for the safety of spectators and participants. These regulations are needed to provide for the safety of life, limb, and property on the navigable waters during the event.

**DATES:** Comments must be received on or before August 8, 1994.

**ADDRESSES:** Comments should be mailed or hand carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments will be available for inspection and copying in room 209 of this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05–94–017) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

**Drafting Information**

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of Proposed Regulations**

The United States Offshore Racing Association annually sponsors the Ocean City Offshore Grand Prix. Each year the United States Offshore Racing Association requests that the Coast Guard provide control of spectator and commercial traffic within the regulated area, as part of their application. Since this is a regular, yearly event, the Coast Guard proposes to develop a special local regulation. Specifically the Coast Guard seeks to regulate the waterways surrounding the race course. The course runs from Ocean City Inlet to Maryland Beach. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area. A temporary spectator anchorage area will be established for what is expected to be a large spectator fleet. Coast Guard patrol vessels will be positioned at Ocean City Inlet to direct vessels around the regulated area, or to the temporary spectator anchorage area. The sponsor usually provides 29 vessels to assist the Coast Guard and local government agencies in patrolling the event. Medical vessels will display flourescent orange placards, and patrol boats will display flourescent green placards.

**Regulatory Evaluation**

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect for several hours, one day a year, and the impact on routine navigation is expected to be minimal.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). It is anticipated that the impact of this proposal on non-participating small entities will actually benefit their business due to the increase in local tourism. The Coast Guard will certify under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism Assessment**

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

**Environment Assessment**

This proposed rulemaking has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with § 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket, and is available for inspection or copying where indicated under **ADDRESSES.**

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

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

**Proposed Regulations**

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

## PART 100—[AMENDED]

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

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

2. A new § 100.517 is added to read as follows:

**§ 100.517 Atlantic Ocean, Ocean City, Maryland**

(a) *Definition.* (1) *Regulated area.* The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ North, longitude 75°05′06″ West; thence east southeast to latitude 38°25′30″ North, longitude 75°02′12″ West; thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ North, longitude 75°03′48″ West; thence west northwest to the shoreline at latitude 38°19′30″ North, longitude 75°05′00″ West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander will

be a commissioned, warrant, or petty officer who will be designated by the Commander, Coast Guard Group Baltimore.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of this section but may not block a navigable channel.

(c) *Effective period.* The Commander, Fifth Coast Guard District will publish a notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates that this section is in effect.

Dated: April 13, 1994.

**W.T. Leland,**

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

[FR Doc. 94-13804 Filed 6-6-94; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 117**

**[CGD07-93-026]**

**RIN 2115-AE47**

## Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to limit the number of openings of the East Sunrise Boulevard Drawbridge, mile 1062.6 at Fort Lauderdale during certain periods. This proposal is being made to relieve highway congestion created by back-to-back bridge openings while still meeting the reasonable needs of navigation.

**DATES:** Comments must be received on or before August 8, 1994.

**ADDRESSES:** Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131-3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is 305-536-4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

**FOR FURTHER INFORMATION CONTACT:** Brodie Rich, Project Manager at (305) 536-4103.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07-93-026] and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Brodie Rich at the address under "**ADDRESSES**". The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

### Drafing Information

The principal persons involved in drafting this document are Brodie Rich, Project Manager and LT J. M. Losego, Project Counsel.

### Background and Purpose

This new drawbridge presently opens on signal. Congressman E. Clay Shaw, Jr. requested that the Coast Guard conduct a study to determine whether scheduled openings would improve traffic conditions in the area. The bridge owner (Florida Department of Transportation) recommended hour and half-hour openings on weekdays and 20-minute openings on weekends during the season to reduce traffic delays. A Coast Guard evaluation of the proposal concluded that the very light highway traffic levels for this six-laned roadway and the frequency of bridge openings did not justify the proposed opening schedules. However, in order to eliminate back-to-back openings during the tourist season which create traffic congestion, a 15-minute opening schedule appears to be warranted.

### Discussion of Proposed Amendments

The Coast Guard tested a 15-minute opening schedule between 10 a.m. and 6 p.m. daily from December 1, 1993 through January 30, 1994, pursuant to a published Notice of Deviation (58 FR 65668; December 16, 1993). No comments were received in response to the Notice of Deviation. The results of the test indicated traffic backups created by back-to-back openings were reduced. The proposed rule would allow for a 15-minute opening schedule to cover the period from 10 a.m. to 6 p.m. daily during the season (November 15th through May 15th).

This schedule should eliminate back-to-back openings and help to reduce traffic delays without unreasonably impacting navigation.

### Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT (44 FR 11040; February 26, 1979) is unnecessary. We conclude this because the rule exempts tugs with tows.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since tugs with tows are exempt from this proposal, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b)

that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism**

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.g(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.261 is amended by adding a new paragraph (gg) to read as follows:

**§ 117.261 Atlantic intracoastal waterway.**

* * * * *

(gg) The draw of the East Sunrise Boulevard drawbridge (SR 838), mile 1062.6, at Fort Lauderdale shall open on signal; except that from November 15 to May 15, from 10 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour.

* * * * *

Dated: May 18, 1994.

**W.P. Leahy,**

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

[FR Doc. 94–13798 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–14–M

**33 CFR Part 117**

**[CGD07–94–051]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** The Coast Guard proposes to change regulations governing the operation of the Hillsboro Boulevard (SR 810) drawbridge, mile 1050.0 at Deerfield Beach, Florida, by permitting the draw to remain closed for a longer period of time during the winter season. This proposal is being made to relieve highway congestion created by bridge openings while still meeting the reasonable needs of navigation.

**DATES:** Comments must be received on or before August 8, 1994.

**ADDRESSES:** Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131–3050, or may be delivered to Room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is 305–536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rule making. Comments will become part of this docket and will be available for inspection or copying at the above address.

**FOR FURTHER INFORMATION CONTACT:** Brodie Rich, Project Manager at (305) 536–4103.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to participate in this rule making by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rule making (CGD07–94–051) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. Comments regarding the potential impact of this proposal on the safety of navigation are particularly solicited.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Brodie Rich at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rule making, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

**Drafting Information**

The principal persons involved in drafting this document are Brodie Rich, Project Manager, and LT. J. M. Losego, Project Counsel.

**Background and Purpose**

This drawbridge presently opens on signal, except that from October 1 through May 31, from 7 a.m. to 6 p.m., the draw opens only on the hour, quarter-hour, half-hour and three-quarter hour. Mayor Sussman requested that the Coast Guard change the operating regulations to provide for hour and half-hour drawbridge openings. The bridge owner (Florida Department of Transportation) recommended a change to a 20-minute opening schedule during the season to reduce traffic delays.

A Coast Guard analysis of highway traffic and bridge opening data provided by the bridge owner and four on-site investigations of the waterway holding conditions and local traffic patterns which were concluded on May 5, 1994, established that the highway traffic levels for this four-laned roadway and the frequency of bridge openings did not justify the proposed hour/half-hour opening schedule. However, in order to reduce drawbridge openings and periodic traffic congestion during the tourist season, a 20-minute opening schedule appears to be warranted.

**Discussion of Proposed Amendments**

The proposed rule would allow for a 20-minute opening schedule to cover the period from 7 a.m. to 6 p.m. daily during the season (October 1st through May 31st).

This schedule would reduce the number of bridge openings and help to reduce highway traffic delays. The Coast Guard has a continuing concern for the safety of navigation while vessels are waiting for a bridge opening. As noted

in the "Coast Pilot", the Hillsboro Drainage Canal immediately north of the bridge creates strong cross currents in the Intracoastal Waterway channel during certain tidal conditions. These currents could cause a vessel to strike the northeast fender system if a mariner is unaware of the local currents or if the vessel is underpowered and had to come about in the stream. Mariners are encouraged to comment on this navigational safety issue.

**Regulatory Evaluation**

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT (44 FR 11040; February 26, 1979) is unnecessary. We conclude this because the rule exempts tugs with tows.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since tugs with tows are exempt from this proposal, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism**

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.g(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.261 is amended by revising paragraph (bb) to read as follows:

**§ 117.261 Atlantic Intracoastal Waterway.**

* * * * *

(bb) The draw of the Hillsboro Boulevard drawbridge (SR 810), mile 1050.0, at Deerfield Beach shall open on signal; except that from October 1 to May 31, from 7 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: May 18, 1994.

**W.P. Leahy,**

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

[FR Doc. 94–13799 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–14–M

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Part 3160

**[WO–610–4111–02–24 1A]**

**RIN 1004–AB22**

## Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 5, Measurement of Gas; Public Meeting and Reopening of Comment Period

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule; reopening of comment period and notice of meeting.

**SUMMARY:** A proposed rule to revise existing Onshore Oil and Gas Order No. 5, Measurement of Gas, was published in the **Federal Register** on January 6, 1994 (59 FR 718), with a 60-day comment period expiring March 7, 1994. The comment period subsequently was reopened for an additional 30 days expiring April 18, 1994 (59 FR 12570). The comment period is being reopened to accommodate responses to statements that may be made at a public meeting requested by some of those who commented on the proposed rule.

**DATES:** A public meeting on the proposed revision of the Order will be held Tuesday, June 28, 1994, from 8:30 a.m. to 4:00 p.m. Comments in response to statements made at the meeting or on the proposed rule should be received no later than July 8, 1994. Comments received after this date may not be considered in the decisionmaking process on the final rule.

**ADDRESSES:** The meeting will be held in the 9th floor conference room at the office of the Rocky Mountain Oil and Gas Association, 1775 Sherman Street, Denver, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Lonny Bagley at (406) 255–2847.

**SUPPLEMENTARY INFORMATION:** The sole purpose of the meeting announced in this notice will be to allow those who commented on the proposed rule an opportunity to explain in greater detail the rationale for their comments and for any other interested parties to express their relevant concerns to members of the Order No. 5 Committee. Thus, the meeting will not be for the purpose of decisionmaking by consensus regarding the final language of any provision of the Order.

Due to space limitations, it is requested that no more than two representatives of each interested party attend the meeting.

Dated: June 1, 1994.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 94–13760 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–84–P

## FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–41, RM–8443]

## Radio Broadcasting Services; Cordova, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of New Century Radio, Inc., licensee of Station WFFN (FM), Cordova, Alabama, seeking the substitution of Channel 237A for Channel 223A at Cordova and modification of its authorization accordingly. Coordinates for this proposal are 33–49–01 and 87–11–55.

As the petitioner's modification proposal seeks an equivalent channel substitution, we will not accept competing expressions of interest.

**DATES:** Comments must be filed on or before July 22, 1994, and reply comments on or before August 1, 1994.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Erwin G. Krasnow, Esq., Verner, Liipfert, Bernhard, McPherson and Hand, 901–15th Street, NW., suite 700, Washington, DC 20005–2301.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–211, adopted April 29, 1994, and released May 31, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 94–13713 Filed 6–6–94; 8:45 am]

BILLING CODE 6712–01–M

# Notices

Federal Register
Vol. 59, No. 108
Tuesday, June 7, 1994

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

### Office of the Secretary

### Science and Education National Research Initiative Advisory Committee

Notice is hereby given that the Secretary of Agriculture will reestablish the Science and Education National Research Initiative Advisory Committee. This Committee will advise the Secretary of Agriculture with respect to areas of agricultural research to be supported, priorities to be adopted, and procedures to be followed in implementing programs of research grants to be awarded competitively through the National Research Initiative Competitive Grants Program.

This Committee will meet annually in Washington, D.C. Duties of this Committee are to advise the Secretary on competitive grant policies for the Agency, examine needs as related to on-going programs, provide an overview of research needs in areas considered for U.S. Department of Agriculture competitive grants, assess program progress and recommend resource shifts, and advise on ways to improve guidelines and evaluation procedures.

It has been determined that the reestablishment of this Advisory Committee is in the public interest in connection with the work of the U.S. Department of Agriculture.

Done at Washington, DC., this 27 day of May 1994.

**Wardell C. Townsend, Jr.,**

*Assistant Secretary for Administration.*

[FR Doc. 94–13790 Filed 6–6–94; 8:45 am]

BILLING CODE 3410–22–M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget: Expedited Review Requested

DOC has submitted to the Office of Management and Budget (OMB) for "expedited" clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* International Trade Administration
*Title:* Commerce Trade Fair Privatization Application
*Agency Form Number:* ITA–4234P
*OMB Approval Number:* None
*Type of Request:* New Collection—EXPEDITED REVIEW
*Burden:* 50 Respondents; 600 burden hours; average hours per response—12 hours
*Needs and Uses:* This collection will be used in evaluating and selecting applicants qualified to assume organization and management of U.S. pavilions in overseas trade fairs previously managed by the Department of Commerce
*Affected Public:* Business and other for profit and non-profit entities in the United States
*Frequency:* On occasion
*Respondent's Obligation:* Required to obtain a benefit
*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

A copy of the Application is published below. Any questions can be directed to Gerald Taché, DOC Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 1, 1994.

**Gerald Taché,**

*Departmental Clearance Officer, Office of Management and Organization.*

**FORM ITA–4134P**

OMB No. 0625– Expires:_____

Public reporting burden for this collection of information is estimated to average 12 hours 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 Reports Clearance Officer, International Trade Administration, Room 4001, U.S. Department of Commerce, Washington, D.C. 20230 *and* to the Office of Information and regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0625– ), Washington DC 20503.

Commerce Trade Fair Privatization Application

[Name of Applicant] hereby applies for Certification to promote, recruit and manage a U.S. Pavilion or exhibitor group at the following overseas trade event. In connection with this application, the following information is submitted:

1. Name of event.
2. Date and location of event.
3. Name, business and mailing address of the Applicant.
4. Contact name, title and telephone and fax numbers.
5. The event's major industry or product themes.
6. Name of overseas event organizer or authority ("overseas fair authority").
7. Name, title, address and telephone and fax numbers of the overseas fair authority's principal contact.
8. A detailed description of the Applicant's experience in trade fair and pavilion management. Please cite specific examples of successful recruitment of a minimum of 20 U.S. exhibitors for domestic and/or international trade shows with the same industry theme(s) as the show for which Certification is sought. (International trade show experience is preferred).
9. A detailed description of the Applicant's ability to provide personnel resources sufficient to plan, implement, and organize a successful U.S. pavilion or exhibitor group and the capability to provide exhibition and sundry trade services to exhibitors.
10. A detailed description of the promotional campaign to be conducted by the Applicant to attract exhibitors of U.S. products. Please cite specific steps organizer will take to target and recruit small, medium-sized and new-to-market firms.

11. A detailed description of the promotional campaign to be conducted by the Applicant to attract importers, distributors, agents, buyers and end-users to the event.

12. Net area for exhibit space for U.S. pavilion or group of U.S. exhibitors. Please include satisfactory documentation, in English, from the overseas fair authority of a lease or an option to lease the necessary exhibition space if selected as the organizer of a U.S. pavilion within one or more of the venue's halls, and a letter indicating the Applicant's acceptance of the terms, if selected. If unable to provide the above documentation, please explain why you are unable to do so. (Note: Certification will be withdrawn and the $1,500 contribution forfeited if this documentation is not received within 30 days of notification of selection.)

13. Which (if any) of the Applicant's services and responsibilities will be contracted out to another party.

14. The Applicant's proposed fee schedule in U.S. dollars; including the amount to be charged for "turnkey" booths and for raw exhibit space, the basic services to be included in these fees, and any fees for additional services to be provided.

15. Specific support services, including expert staff support, to be requested of Commerce.

[Name of Applicant] agrees to abide by the attached Conditions of Participation, which are incorporated into this application by reference and are expressly made a part hereof. We certify that the information contained in this application is true and correct to the best of our knowledge and will inform Commerce promptly of any material changes. We understand that our non-refundable $1,500 contribution is due not more than 14 days after receipt of notice of our selection. We also understand that, if we fail to recruit the minimum number of firms for, or withdraw from, the event, we may be deemed ineligible for future Commerce support for the event in subsequent years.

Applicant Signature

Printed Name/Title

Date

Approved by the Department of Commerce

Signature

Title

Date

[FR Doc. 94–13768 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–25–M

## Bureau of Export Administration

### Electronics Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Electronics Technical Advisory Committee will be held June 30, 1994, 9 a.m., Herbert C. Hoover Building, room 1617–M2, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to electronics equipment or technology.

Agenda

*General Sessions*

1. Opening remarks and introductions.
2. Presentations by the public.
3. Discussion of export control issues.

*Executive Session*

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below:

Ms. Lee Ann Carpenter, TAC Unit/OAS/EA Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: June 1, 1994.

**Betty Ferrell,**

*Director, Technical Advisory Committee Unit.*

[FR Doc. 94–13719 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DT–M

## Foreign-Trade Zones Board

**Docket A(32b1)–2–94**

### Foreign-Trade Zone 50—Long Beach, CA, Request for Export Manufacturing Authority, J.M. William & Company, Inc., (Poly/Cotton Bed Linens)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Long Beach, California, grantee of FTZ 50, requesting authority on behalf of the J.M. William & Company, Inc., to manufacture textile bed linens under zone procedures for export within FTZ 50. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 20, 1994.

The company plans to manufacture bed sheet sets, comforters and pillows. The primary input is woven polyester/cotton fabric (HTSUS 5513(14).41, duty rate: 17%), which is sourced from abroad (primarily from China). Additional foreign materials that may be used in the future include woven fabric of artificial/synthetic fibers, sewing thread, and nonwoven fill. The application indicates that zone procedures would be used only for export manufacturing activity.

The company would export all products made with foreign fabric and other foreign textile mill products admitted to the zone. Zone procedures would exempt it from U.S. quota requirements and Customs duty payments on the foreign items.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address

below. The closing period for their receipt is [30 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 10-day period (to [40 days from date of publication]).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Dated: May 27, 1994.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 94-13720 Filed 6-6-94; 8:45 am]

BILLING CODE 3510-0S-P

## International Trade Administration

## Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Commerce Regulations (19 CFR 353.22/355.22 (1993)), that the Department of Commerce (the Department) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

### Opportunity To Request a Review

Not later than June 30, 1994, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

| Antidumping duty proceedings | Period |
|---|---|
| Belgium: Sugar (A-423-077) | 06/01/93-05/31/94 |
| Canada: Oil country tubular goods (A-122-506) | 06/01/93-05/31/94 |
| Canada: Red raspberries (A-122-401) | 06/01/93-05/31/94 |
| France: Large power transformers (A-427-030) | 06/01/93-05/31/94 |
| France: Sugar (A-427-078) | 06/01/93-05/31/94 |
| Germany: Barium carbonate (A-428-061) | 06/01/93-05/31/94 |
| Germany: High-tenacity rayon filament yarn (A-428-810) | 06/01/93-05/31/94 |
| Germany: Industrial belts and components and parts thereof, whether cured or uncured (A-428-802) | 06/01/93-05/31/94 |
| Germany: Sugar (A-428-082) | 06/01/93-05/31/94 |
| Italy: Large power transformers (A-475-031) | 06/01/93-05/31/94 |
| Italy: Industrial belts and components and parts thereof, whether cured or uncured (A-475-802) | 06/01/93-05/31/94 |
| Japan: Nitrile rubber (A-588-706) | 06/01/93-05/31/94 |
| Japan: Fishnetting of man-made fibers (A-588-029) | 06/01/93-05/31/94 |
| Japan: Forklift trucks (A-588-703) | 06/01/93-05/31/94 |
| Japan: Industrial belts and components and parts thereof, whether cured or uncured (A-588-807) | 06/01/93-05/31/94 |
| Japan: Large power transformers (A-588-032) | 06/01/93-05/31/94 |
| Japan: PET film (A-588-814) | 06/01/93-05/31/94 |
| New Zealand: Fresh kiwifruit (A-614-801) | 06/01/93-05/31/94 |
| Romania: Tapered roller bearings and parts thereof, finished or unfinished (A-485-602) | 06/01/93-05/31/94 |
| Russia: Ferrosilicon (A-821-804) | 09/30/92-05/31/94 |
| Singapore: Industrial belts and components and parts thereof, whether cured or uncured (A-559-803) | 06/01/93-05/31/94 |
| Sweden: Stainless steel plate (A-401-040) | 06/01/93-05/31/94 |
| Taiwan: Carbon steel plate (A-583-080) | 06/01/93-05/31/94 |
| Taiwan: Fireplace mesh panels (A-583-003) | 06/01/93-05/31/94 |
| Taiwan: Oil country tubular goods (A-583-505) | 06/01/93-05/31/94 |
| Taiwan: Stainless steel butt-weld pipe fittings (A-583-816) | 12/23/92-05/31/94 |
| Taiwan: Certain helical spring lock washers (A-583-820) | 11/25/92-05/31/94 |
| The Hungarian People's Republic: Tapered roller bearings and parts thereof, finished or unfinished (A-437-601) | 06/01/93-05/31/94 |
| The People's Republic of China: Sparklers (A-570-804) | 06/01/93-05/31/94 |
| The People's Republic of China: Tapered roller bearings and parts thereof, finished or unfinished (A-570-601) | 06/01/93-05/31/94 |
| The People's Republic of China: Silicon metal (A-570-806) | 06/01/93-05/31/94 |
| The Republic of Korea: PET film (A-580-807) | 06/01/93-05/31/94 |
| Venezuela: Ferrosilicon (A-307-807) | 12/29/92-05/31/94 |
| **Countervailing Duty Proceedings** | |
| None. | |

In accordance with sections 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks

parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: John Kugelman, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by June 30, 1994.

If the Department does not receive, by June 30, 1994, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: June 1, 1994.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 94-13812 Filed 6-6-94; 8:45 am]

BILLING CODE 3510-DS-M

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[A-570-834, A-549-810]

## Initiation of Antidumping Duty Investigations: Disposable Pocket Lighters From the People's Republic of China and Thailand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Vincent Kane (202) 482-2815 for the People's Republic of China (PRC); or David Boyland (202) 482-0588 for Thailand, Office of Countervailing Investigations, Important Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

**INITIATION OF INVESTIGATIONS:**

### The Petition

On May 9, 1994, we received a petition in proper form filed by the BIC Corporation ("petitioner"), the sole U.S. Producer of disposable pocket lighters. Petitioner filed supplements to the petition on May 23 and 24, 1994.

In accordance with 19 CFR 353.12, petitioner alleges that imports of disposable pocket lighters from the PRC and Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

Petitioner states that it has standing to file the petition because the BIC Corporation is an interested party, as defined under section 771(9)(C) of the Act, and it is the sole domestic producer of disposable pocket lighters. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the assistant Secretary for Import Administration.

### Scope of Investigations

The Products covered by these investigations are disposable pocket lighters, whether or not liquefied hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees fahrenheit (24 degrees celsius) exceeds a gage pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written descriptions of the scope of these proceedings are dispositive.

### United States Price and Foreign Market Value—The People's Republic of China

Petitioner based United States Price ("USP") on a 1994 sale made on a packed, c.i.f., duty-paid, delivered basis to a U.S. purchaser of disposable pocket lighters from the PRC. Petitioner deducted ocean freight, marine insurance, commission, harbor maintenance fee, and customs processing fee from this price to arrive at an f.o.b. value for the imports.

Petitioner contends that the foreign market value ("FMV") of disposable pocket lighters subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns non-market economy ("MNE") countries. The Department has determined the PRC to be an NME, within the meaning of section 771(18)(A) of the Act, in previous cases (*see* e.g., Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the PRC, May 31, 1994 (59 FR 28053)). In accordance with 771(18)(C) of the Act, that determination continues to apply for purposes of this initiation.

In the course of this investigation, parties will have the opportunity to address this NME determination and provide relevant information and argument on this issue. In addition, parties will have the opportunity in this investigation to submit comments on whether FMV should be based on prices or costs in the PRC consistent with section 773(c)(1)(B) of the Act (*see* Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China, 57 FR 15052 (April 24, 1992)).

In this case, petitioner provided two alternative approaches for determining FMV. In the first approach, in accordance with section 773(c) of the Act, petitioner attempted to base FMV on the NME producers' factors of production valued in a market economy country at a comparable level of economic development. Petitioner, however, was unable to obtain information on the factors of production in the PRC. Therefore, petitioner used its own factors of production.

In valuing the factors or production, petitioner used India and Pakistan as surrogate countries. For purposes of this invitation, we have accepted India and Pakistan as surrogates because their economies are at a level of development comparable to the PRC's. (*See* Memorandum to David L. Binder, Director-Division II, Office of Antidumping Investigations from David P. Mueller, Director, Office of Policy, dated August 1993, regarding non-market economy status and surrogate country selection, on file in Room B-099 of the Department of Commerce.) Also, there is evidence on the record that India is a producer of comparable merchandise, as required by section 773(c)(4) of the Act. When cost information was not available in either of these countries, petitioner valued the factor using its own costs.

In accordance with section 773(c)(1)(B) of the Act, petitioner's FMV consisted of the sum of values assigned to materials, labor, energy, and overhead. Petitioner adjusted certain factor values for inflation. Pursuant to section 773(e)(1) of the Act petitioner added to the labor and material costs, and general expenses, the statutory minimum of eight percent for profit.

In making its allegation of sales at less than fair value based on the factors of

production methodology, petitioner relied extensively on U.S. costs for valuing the factors. Although the Department has accepted similar allegations in past antidumping investigations against the PRC, we prefer that the NME producers' factors be used and that they be valued in a comparable market economy, which is a significant producer of the merchandise. In response to our concern in this regard, petitioner provided a secondary basis for determining FMV, using prices from a market economy country.

Section 773(c)(2) of the Act provides that FMV may be based on the price at which comparable merchandise produced in a market economy country is sold in other countries, including the United States. In accordance with section 773(c)(2) of the Act, petitioner provided information on the price at which disposable pocket lighters from the Philippines are being sold for export to the United States. For purposes of this initiation, we have accepted the Philippines as a surrogate country, because its economy is at a level of development comparable to the PRC's. (*See* memoradnum to David L. Binder Director-Division II, Office of Antidumping Investigations from David P Mueller, Director, Office of Policy, dated December 4, 1991, regarding non market economy status and surrogate country selection, on file in Room B–099 of the Department of Commerce.) There is also evidence on the record that the Philippines is a producer of comparable merchandise, as required by section 773(c)(4) of the Act. Because the Philippine import price was on an f.o.b. basis, petitioner made no adjustments to this price.

**Fair Value Comparisons**

Based on the data provided by the petitioner, there is reason to believe that disposable pocket lighters from the PRC are being, or are likely to be, sold at less than fair value. The comparison of USP and FMV in the petition indicates a margin of 332.43 percent when FMV is based on factor values and a margin of 197.85 percent when FMV is based on Philippine export prices. It it becomes necessary at a later date to consider the petition as a source of best information available (BIA), we may review these calculation bases.

**Thailand**

Petitioner was unable to obtain actual sales price information on which to base USP. Petitioner, therefore, based USP on the customs value of imports from Thailand, as reported in the Department of Commerce IM–146 import statistics. No adjustments were made to these prices, because they were reported on an f.o.b. basis.

Petitioner also was unable to obtain actual prices for sales in Thailand or for export to third countries. Accordingly, petitioner based FMV on its own costs, adjusted for known differences between the costs of petitioner and Thai producers.

**Fair Value Comparison**

Based on the data provided by the petitioner, there is reason to believe that disposable pocket lighters from Thailand are being, or are likely to be, sold at less than fair value. Furthermore, the comparison of USP and FMV in the petition indicates a margin of 172.78 percent. If it becomes necessary at a later date to consider the petition as a source of BIA, we may review these calculation bases.

**Initiation of Investigations**

We have examined the petition on disposable pocket lighters and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of disposable pocket lighters from the PRC and Thailand are being, or are likely to be, sold in the United States at less than fair value.

**ITC Notification**

Section 732(d) of the Act requires us to notify the ITC of these actions, and we have done so.

**Preliminary Determination by the ITC**

The ITC will determine by June 23 1994, whether there is a reasonable indication that imports of disposable pocket lighters from the PRC and Thailand are causing material injury, or threaten to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigations being terminated, otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: May 31, 1994.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 94–13721 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DS–M

## Revocation of Antidumping Finding

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of revocation of antidumping finding.

**SUMMARY:** The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping finding on tuners from Japan because it is no longer of any interest to domestic interested parties.

**EFFECTIVE DATE:** June 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Kim Moore or Michael Panfeld, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–5253.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 27, 1993, the Department published in the **Federal Register** (58 FR 68393) its notice of intent to revoke the antidumping finding on tuners from Japan (December 12, 1970).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping finding to each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided 30 days to submit their comments.

**Scope of the Finding**

Imports covered by the revocation are shipments of tuners from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 8529.90.10 and 8529.90.50. the HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for four consecutive review periods (19 CFR 353.25(d)(4)(i)) and when no domestic interested party objects to revocation.

In this case, we received no request for review for five consecutive review periods. Furthermore, no domestic interested party has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding on tuners from Japan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of tuners from

Japan entered, or withdrawn from warehouse, for consumption on or after December 1, 1993. Entries made during the period December 1, 1992, through November 30, 1993, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 1993, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: May 27, 1994.

**Roland L. MacDonald,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 94–13810 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DS–M

## Determination Not To Revoke Countervailing Duty Orders

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of determination not to revoke countervailing duty orders.

**SUMMARY:** The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty orders listed below

**EFFECTIVE DATE:** June 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Brian Albright or Mercedes Fitchett, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 1, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 9727) its intent to revoke the countervailing duty orders listed below. Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

We received timely objections from domestic interested parties to our intent to revoke these countervailing duty orders. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the orders.

This determination is in accordance with 19 CFR 355.25(d)(4).

| Countervailing duty orders | Effective date |
|---|---|
| Chile: Standard carnations (C–337–601). | 03/19/87 52 FR 8635 |
| France: Brass sheet and strip (C–427–603). | 03/06/87 52 FR 6996 |
| Iran: Raw in-shell pistachios (C–507–501). | 03/11/86 51 FR 8344 |
| Israel: Oil country tubular goods (C–508–601). | 03/06/87 52 FR 6999 |
| New Zealand: Carbon steel wire rod (C–614–504). | 03/07/86 51 FR 7971 |
| Turkey: Welded carbon steel pipes and tubes (C–489–502). | 03/07/86 51 FR 7984 |
| Turkey: Welded carbon steel line pipe (C–489–502). | 03/07/86 51 FR 7984 |

Dated: May 31, 1994.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 94–13809 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DS–P

**(C–475–812)**

## Countervailing Duty Order: Grain-Oriented Electrical Steel From Italy

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**EFFECTIVE DATE:** June 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Annika L. O'Hara or David R. Boyland, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4198 or 482–0588, respectively.

### Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. section 1671d(a)), on April 11, 1994, the Department of Commerce ("the Department") made its final determination that manufacturers, producers or exporters in Italy of grain-oriented electrical steel receive benefits which constitute subsidies within the meaning of the countervailing duty law (59 FR 18357, April 18, 1994). On May 27, 1994, in accordance with section 705(d) of the Act, the U.S. International Trade Commission ("ITC") notified the Department of its final affirmative determination that imports of grain-oriented electrical steel from Italy are materially injuring a U.S. industry.

Therefore, pursuant to section 706(a)(1) of the Act (19 U.S.C. section 1671e(a)(1)), the Department hereby directs U.S. Customs officers to assess a countervailing duty equal to the amount of the estimated net subsidy on all entries of grain-oriented electrical steel from Italy. This countervailing duty will be assessed on all unliquidated entries of grain-oriented electrical steel from Italy which were entered, or withdrawn from warehouse, for consumption, on or after February 1, 1994, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit duties on this merchandise, a cash deposit of 24.42 percent *ad valorem* for all entries of grain-oriented electrical steel from Italy

This determination constitutes a countervailing duty order with respect to grain-oriented electrical steel from Italy pursuant to section 706 of the Act (19 U.S.C. section 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

### Scope of Order

The product covered by this order is grain-oriented silicon electrical steel, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.56 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States ("HTS") under item numbers 7225.10.0030, 7226.10.1030, 7226.10.5015, and 7226.10.5065. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

### Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. section 1677(9)) and 19 CFR 355.2(i), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative

review of this order. For further information regarding administrative review procedures, contact Barbara E. Tillman, Office of Countervailing Compliance, at (202) 482–2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. section 1671e) and 19 CFR 355.21.

Dated: May 27, 1994.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 94–13722 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DS–P

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[C–549–811]

## Notice of Initiation of Countervailing Duty Investigation: Disposable Pocket Lighters From Thailand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Graham or Kristin M. Heim, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Washington, D.C. 20230; (202) 482–4105 or 482–3798, respectively.

### The Petition

On May 9, 1994, we received a petition in proper form filed by the BIC Corporation on behalf of the United States disposable pocket lighter ("disposable lighters") industry. In accordance with 19 CFR 355.12, petitioner alleges that manufacturers, producers, or exporters of the subject merchandise in Thailand receive benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

### Injury Test

Although Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, the merchandise being investigated is non-dutiable under the Generalized System of Preferences and Thailand is a contracting party to the General Agreement on Tariffs and Trade. Therefore, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Thailand materially injure, or threaten material injury to, a U.S. industry.

### Standing

Petitioner has stated that it is an interested party, as defined in section 771(9)(C) of the Act, and that it has filed the petition on behalf of the U.S. industry producing disposable lighters. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration, in accordance with 19 CFR 355.31.

### Exclusion Requests

Under the Department's regulations, any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

### Scope of Investigation

The products covered by this investigation are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees fahrenheit (24 degrees celsius) exceeds a gage pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written descriptions of the scope of this proceeding is dispositive.

### Initiation of Investigation

The Department has examined the petition on disposable lighters from Thailand and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters of disposable lighters receive countervailable bounties or grants. The following programs are included in our investigation.

1. *Industrial Estates/Export Processing Zones*
2. *Preferential Short-term Loans Under the Export Packing Credit Program*
3. *Tax and Duty Exemptions Under the Investment Promotion Act*
4. *Tax Certificates for Exporters*
5. *Rediscount of Industrial Bills*
6. *International Trade Promotion Fund*

This notice is published pursuant to section 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: May 31, 1994.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 94–13807 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DS–M

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## International Trade Administration, Commerce.

## Export Trade Certificate of Review

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review, Application No. 94–00002.

**SUMMARY:** The Department of Commerce has issued an Export Trade Certificate of Review to Frederick Pogorzelski doing business as the Russian Business Center ("RBC"). This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1993).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

### Description of Certified Conduct

*Export Trade*

1. Products

All Products.

2. Services

All Services.

3. Export Trade Facilitation Services (as They Relate to the Export of Products and Services)

Export Trade Facilitation Services including professional services in the areas of government relations, foreign

trade and business protocol, marketing, marketing research, negotiations, joint ventures, shipping, export management, advertising, documentation, insurance and financing, trade show exhibitions, organizational development, management strategies and transfer of technology.

*Export Markets*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Export Trade Activities and Methods of Operation*

1. To engage in Export Trade in the Export Markets, as an Export Intermediary, RBC may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities;

c. Enter into exclusive export sales agreements with Suppliers for the export of Products and/or Services for sale in the Export Markets; such agreements may prohibit Suppliers from exporting independently of RBC;

d. Enter into exclusive agreements with distributors in the Export Markets;

e. Establish the price of Products and/or Services for sale in the Export Markets;

f. Allocate export orders among its Suppliers; and

g. Enter into contracts for shipping.

2. RBC and individual Suppliers may regularly exchange information on a one-on-one basis regarding inventories and near-term production schedules in order that the availability of supplies for export can be determined and effectively coordinated by RBC with its distributors in the Export Markets.

3. RBC may require any Supplier wishing to terminate its export sales agreement to give RBC six months written notice. RBC may require a former Supplier not to sell through foreign distributors with whom RBC deals for a period of two years following termination.

**Definitions**

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Supplier" means a person who produces, provides, or sells a Product and/or Service.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Dated: June 1, 1994.

**W. Dawn Busby,**

*Director, Office of Export Trading, Company Affairs.*

[FR Doc. 94–13805 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DR–P

## Revocation of Antidumping Duty Orders

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of revocation of antidumping duty orders.

**SUMMARY:** The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping duty orders on staple machines and staples from Sweden because they are no longer of any interest to domestic interested parties.

**EFFECTIVE DATE:** June 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Lisa Raisner or Michael Panfeld, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–5253.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 27, 1993, the Department published in the **Federal Register** (58 FR 68392) its notice of intent to revoke the antidumping duty orders on staple machines and staples from Sweden (December 20, 1983).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke these antidumping duty orders to each domestic interested party on the service list. Domestic interested parties who might object to these revocations were provided 30 days to submit their comments.

**Scope of the Orders**

Imports covered by these revocations are shipments of staple machines and staples from Sweden. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 8305.20.00 and 8422.30.90. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for four consecutive review periods (19 CFR 352.25(d)(4)(i)) and when no domestic interested party objects to revocation.

In this case, we received no request for review for five consecutive review periods. Furthermore, no domestic interested party has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty orders on staple machines and staples from Sweden are no longer of any interest to interested parties. Accordingly, we are revoking these antidumping duty orders in accordance with 19 CFR 353.25(d)(4)(iii).

These revocations apply to all unliquidated entries of staple machines and staples from Sweden entered, or withdrawn from warehouse, for consumption on or after December 1, 1993. Entries made during the period December 1, 1992, through November 30, 1993, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 1993, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: May 27, 1994.

**Roland L. MacDonald,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 94–13811 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DS–M

## Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 94–051. *Applicant:* University of Maryland, Institute for Plasma Research, College Park, MD 20742. *Instrument:* Glass Tubes with Coated Tin Oxide Thin Film Inside. *Manufacturer:* Beijing Vacuum Electronics Institute, China. *Intended Use:* The instrument will be used for studies of a glass tube coated with thin film of resistive material inside. An electron beam passing through such a tube is subject to longitudinal instability. The instrument measures the spacial growth rate of the instability and allows study of the beam quality deterioration. In addition, the instrument will be used in the course "Theory and Design of Charged Particle Beams" to train Ph.D's. *Application Accepted by Commissioner of Customs.* April 19, 1994.

*Docket Number:* 94–052. *Applicant.* The University of Texas Health Science Center, Medical School Building, 6431 Fannin Street, Houston, TX 77030. *Instrument:* Manipulators, Ball Joints, and Magnetic Stands. *Manufacturer:* Narishige, Japan. *Intended Use:* The instrument will be used for studies of the marine mollusc, *Tritonia diomedea.* During these studies: (1) the clamps will be used for positioning of a fiber optic light source and positioning a meta barrier between microelectrodes, (2) the ball joints will be used to hold a suction apparatus and hold a fine thermistor for measurement of the bath temperature and (3) the magnetic bases will be used for securing the clamps. *Application Accepted by Commissioner of Customs.* April 19, 1994.

*Docket Number:* 94–053. *Applicant:* University of Alabama at Birmingham, 1675 University Blvd., Birmingham, AL 35249. *Instrument:* Mass Spectrometer, Model Optima. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to analyze biological samples for deuterium and oxygen-18 enrichment in experiments conducted to understand the role of energy expenditure and physical activity in weight gain using several models of weight gain. The instrument will also be used for educational purposes by training Ph.D students, postdoctoral research fellows, clinical nutrition fellows, and other faculty in the techniques of isotope ratio mass spectrometry and doubly labeled water. *Application Accepted by Commissioner of Customs:* April 19, 1994.

*Docket Number:* 94–058. *Applicant:* US EPA, EMSL Cincinnati, 26 Martin Luther King Dr, Cincinnati, OH 45268. *Instrument:* Electrothermal Vaporization Unit and Interface Upgrade. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to evaluate background or inherent metal concentrations in environmental samples (river, estuarine and open ocean), where it is difficult to access the impact of trace metal pollution because of the dilution. Experiments will focus on collecting data that will determine the appropriate analytical configuration to be used in determining the analyte for environmental monitoring. *Application Accepted by Commissioner of Customs.* April 26, 1994.

*Docket Number:* 94–059. *Applicant:* Louisiana Tech University, Institute for Micromanufacturing, Corner of Arizona & College Street, Ruston, LA 71272. *Instrument:* Deep X-ray Lithography Scanner. *Manufacturer:* Jenotik, GmbH, Germany. *Intended Use:* The instrument will be used to study deep x-ray lithography using PMMA resists in order to develop the necessary processes for fabrication of microstructures using x-ray radiation. *Application Accepted by Commissioner of Customs:* April 29, 1994.

*Docket Number:* 94–060. *Applicant* Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. *Instrument:* Triaxial Deformation Apparatus for testing rocks at high temperature and pressure. *Manufacturer:* Paterson Instruments Pty, Ltd., Australia. *Intended Use:* The instrument will be used for research in earth sciences for measuring a variety of physical properties in rocks 7-15 mm in diameter, up to 40 mm in length, at 1400°C and with confining pressures and pore fluid pressure independently maintained up to 700 MPa. Specific research projects include:

(1) Quantitative Observation of the Micromechanics of the Brittle-Ductile Transition in Rocks,

(2) Brittle-Ductile Transition in Serpentinite and Peridotite Rocks,

(3) Permeability Changes in Silicate Rocks,

(4) Effects of Deformation on Ar Retention in Minerals and

(5) Strength Variations Along Faults with Fluids.

*Application Accepted by Commissioner of Customs:* April 29, 1994.

*Docket Number:* 94–061. *Applicant.* Saint Louis University, Department of Earth & Atmospheric Sciences, 3507 Laclede Avenue, St. Louis, MO 63103 *Instrument:* Two Seismometers, Model STS-2. *Manufacturer:* G. Streckeisen, Switzerland. *Intended Use:* The instruments will be used for continuous monitoring of earthquake activity in the central United States and around the world. Experiments will be conducted to record earthquakes and to deduce from those recordings the source characteristics of those earthquakes and to study the properties of the earth through which seismic waves pass. In addition, the instruments will be used in the course GEO-A472: Seismological Instrumentation in which students will learn about the operation of seismograph systems in order to understand the data they produce. *Application Accepted by Commissioner of Customs:* May 4, 1994.

*Docket Number:* 94–062. *Applicant* Rutgers University, Marine Science Bldg., P.O. Box 231, Cook Campus, New Brunswick, NJ 08903-0231. *Instrument* Fluorometer, Model Aquatracka. *Manufacturer:* Chelsea Instruments, Ltd., United Kingdom. *Intended Use* The instrument will be used for spatial and temporal surveys of microscopic algae in the coastal waters off New Jersey. These surveys will then be related to human impact on these waters resulting from pollution and other lacerations of the ecosystem. *Application Accepted by Commissioner of Customs:* May 4, 1994.

*Docket Number:* 94–063. *Applicant* Regents of the University of California, Berkeley, Center for Environmental Design Research, 390 Wurster Hall, Berkeley, Ca. 94720. *Instrument:* Segmented Thermal Manikin. *Manufacturer:* Thermal Insulation Laboratory, Denmark. *Intended Use:* The instrument will be used in the study of energy, thermal comfort, and environmental control in buildings. There will be immediate use in two ongoing research projects investigating new energy efficient technologies and control strategies for maintaining comfortable and high quality indoor environments. *Application Accepted by Commissioner of Customs:* May 9, 1994.

**Pamela Woods**

*Acting Director, Statutory Import Programs Staff*

[FR Doc. 94–13808 Filed 6–6–94; 8.45 am]

BILLING CODE 3510–DS–F

## Minority Business Development Agency

### Bakersfield, CA: Business Development Center Applications

**AGENCY:** Minority Business Development Agency

**ACTION:** Notice.

**SUMMARY:** In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from November 1, 1994, to October 31, 1995, is estimated at $198,971 The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the Bakersfield, California Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

**DATES:** The closing date for applications is July 18, 1994.

Applications must be postmarked on or before July 18, 1994.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, July 1, 1994 at 10 a.m.

**FOR FURTHER INFORMATION CONTACT:** Melda Cabrera, Regional Director San Francisco Regional Office at 415/744–3001

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

#### Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

#### Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

#### Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity

#### Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law

**False Statements**

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

**Primary Applicant Certifications**

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

**Nonprocurement Debarment and Suspension**

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

**Drug-Free Workplace**

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

**Anti-Lobbying**

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

**Anti-Lobbying Disclosures**

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

**Lower Tier Certifications**

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development Center.

(Catalog of Federal Domestic Assistance)

Dated: June 1, 1994.

**Melda Cabrera,**

*Regional Director, San Francisco Regional Office.*

[FR Doc. 94–13777 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–21–M

## Salinas, CA: Business Development Center Applications

**AGENCY:** Minority Business Development Agency.

**ACTION:** Notice.

**SUMMARY:** In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from November 1, 1994, to October 31, 1995, is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the Salinas, California Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

**DATES:** The closing date for applications is July 18, 1994. Applications must be postmarked on or before July 18, 1994. The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, July 1, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT:

Melda Cabrera, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION:

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

**Pre-Award Costs**

Applicants are hereby notified that if they incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

**Outstanding Account Receivable**

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

**Name Check Policy**

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

**Award Termination**

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflected claims may be deemed illegal and punishable by law.

**False Statements**

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provide in 18 U.S.C. 1001

**Primary Applicant Certifications**

All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

**Nonprocurement Debarment and Suspension**

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

**Drug-Free Workplace**

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

**Anti-Lobbying**

Persons (as defined at 15 part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

**Anti-Lobbying Disclosures**

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

**Lower Tier Certifications**

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development Center.

(Catalog of Federal Domestic Assistance)

Dated: June 1, 1994.

**Melda Cabrera,**

*Regional Director, San Francisco Regional Office.*

[FR Doc. 94–13778 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–21–M

## National Oceanic and Atmospheric Administration

**[I.D. 060194C]**

## South Atlantic Fishery Management Council; Public Meetings and Hearings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings and public hearings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on June 20–24, 1994, at the Hawk's Cay Resort on Marker 61, Marathon, FL; telephone: (305) 743–7000.

A public scoping meeting will be held on June 20, at 1:30 p.m., to solicit comments on possible amendments to the current spiny lobster regulations. Following the scoping meeting, the Council's Spiny Lobster Advisory Panel will meet to discuss whether an amendment should be drafted for public hearings.

The Council will hold a public hearing at 6:30 p.m. regarding proposed fishing regulations for the Florida Keys National Marine Sanctuary. The Council is scheduled to approve the proposed regulations during full Council session on June 23.

On June 21, the Council's Snapper-Grouper Committee will meet from 8:30 a.m. until 3:30 p.m. A public scoping meeting will be held at 1:30 p.m. to solicit input on various issues relating

to the snapper-grouper fishery, such as: Gray triggerfish size limit and bag limits for hogfish and cubera snapper, in Florida only; prohibition of the sale of bag-limit caught greater amberjack in Monroe County, FL; multi-day bag limits; and prohibition of possession of fish traps in South Atlantic Federal waters.

In addition, public scoping meetings will be held at 3:45 p.m. on controlled access options for Atlantic Spanish mackerel and Amendment 8 to the Coastal Migratory Pelagics (Mackerels) FMP. Some items in Amendment 8 include: Commercial trip limits for Atlantic king mackerel; federal dealer permits for coastal pelagics; a fixed boundary between Gulf and South Atlantic stocks of king mackerel; alternative requirements for obtaining a coastal pelagics permit; etc.

The Council's Finance Committee will meet on June 22, from 8:30 a.m. until 10 a.m. A public scoping meeting will be held at 10:00 a.m. regarding live rock aquaculture and changes to the Coral and Coral Reefs FMP. Following the public scoping meeting, the Council's Habitat Committee will meet also to discuss these issues.

On June 23, at 8:30 a.m., the Council will hold a public scoping meeting to decide whether to proceed with developing management measures for the rock shrimp fishery.

The full Council will meet on June 23, at 10:45 a.m. until 5 p.m. A public hearing will be held at 1:30 p.m. on the Gulf of Mexico Fishery Management Council's Amendment 2 to the Coral and Coral Reefs Plan. The full Council will reconvene on June 24, from 8:30 a.m. until 12 p.m.

A detailed agenda of the meeting will be available on June 6.

**FOR FURTHER INFORMATION CONTACT:** Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407–4699; telephone: (803) 571–4366.

**SUPPLEMENTARY INFORMATION:** This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Knight at above address by June 13.

Dated: June 1, 1994.

**Joe P. Clem,**

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

[FR Doc. 94–13727 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–22–P

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Poland

June 1, 1994.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** June 8, 1994.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**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 current limits for Categories 433 and 443 are being increased by application of swing, reducing the limit for Category 410 to account for the increases. Also, the limit for Category 443 is being recredited for carryforward not used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 61680, published on November 22, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

June 1, 1994.

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 November 16, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on June 8, 1994, you are directed to amend the directive dated November 16, 1993 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Poland:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 410 | 2,455,913 square meters. |
| 433 | 19,271 dozen. |
| 443 | 217,215 numbers. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

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. 94–13718 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DR–F

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Application for Renewal of Rural Youth Service Demonstration, Governor's Innovative and Employer-Based Retiree Volunteer Programs

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of funds availability.

**SUMMARY:** The Corporation for National and Community Service announces the availability of up to $1,200,000 for fiscal year 1994 to renew grants for innovative and demonstration programs. Only entities that received a grant from the former Commission on National and Community Service under subtitle E of the National and Community Service Act of 1990 (as in existence prior to amendments made by the National and Community Service Trust Act of 1993) are eligible to apply. The Corporation expects to issue a separate Notice of Funds availability in the fourth quarter of fiscal year 1994 inviting new proposals for innovative and demonstration programs.

**DATES:** Applications must be received no later that 6 p.m., Eastern Daylight

Savings Time, on June 15, 1994, to be eligible.

**ADDRESS:** Application materials may be obtained by contacting: Special Programs, Corporation for National and Community Service, 1100 Vermont Avenue, NW., Washington, DC 20525; (202) 606–5000, extension 155.

**FOR FURTHER INFORMATION CONTACT:** Peg Rosenberry and Michael Robbins at the Corporation for National and Community Service; (202) 606–5000, extensions 124 or 155.

Dated: May 26, 1994.

**Catherine Milton,**

*Vice President and Director of National and Community Service Programs.*

[FR Doc. 94–13797 Filed 6–6–94; 8:45 am]

BILLING CODE 6820–BA–M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Title; Applicable Form; and OMB Control Number:* Air Force Reserve Officer Training Corps (AFROTC) Scholarship Nomination; AFROTC Form 36; OMB Control Number 0701–0103.

*Type of Request:* Reinstatement.

*Number of Respondents:* 2,000.

*Responses per Respondent:* 1.

*Annual Response:* 2,000.

*Average Burden Per Response:* 30 minutes.

*Annual Burden Hours:* 1,000.

*Needs and Uses:* The information collected hereby, is required of applicants for scholarships to the AFROTC program. It is used by the Scholarship Selection Board in evaluating the applicant's competitiveness for an AFROTC Scholarship award.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: June 2, 1994.

**Particia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 94–13781 Filed 6–6–94; 8:45 am]

BILLING CODE 5000–04–M

### Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review.

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Title:* Application for Employment with a Foreign Government.

*Type of Request:* Existing collection in use without an OMB Control Number.

*Number of Respondents:* 141.

*Responses for Respondent* 1.

*Annual Responses:* 141.

*Average Burden Per Response:* 1 hour.

*Annual Burden Hours:* 141.

*Needs and Uses:* The information collected hereby, is required in making approval determinations regarding foreign government employment in compliance with title 37, United States Code, section 908. Air Force retirees and eligible Reserve members are considered members of the Armed Forces when applying for employment with a foreign government, and require approval by the Secretaries of State and Air Force before accepting employment with a foreign government.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: June 2, 1994

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 94–13780 Filed 6–6–94; 8:45 am]

BILLING CODE 5000–04–M

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### Resolution of Potential Conflict of Interest

The Defense Nuclear Facilities Safety Board (Board) has identified and resolved a potential conflict of interest situation related to its contractor, Mr. Duane C. Sewell. This Notice satisfies the requirements of 10 CFR 1706.8(e) with respect to publication in the **Federal Register**. Under the Board's Organizational and Consultant Conflicts of Interests Regulations, 10 CFR part 1706 (OCI Regulations), an organizational or consultant conflict of interest (OCI) means that because of other past, present or future planned activities or relationships, a contractor or consultant is unable, or potentially unable, to render impartial assistance or advice to the Board or the objectivity of such offeror or contractor in performing work for the Board is or might be otherwise impaired, or such offeror or contractor has or would have an unfair competitive advantage. While the OCI Regulations provide that contracts shall generally not be awarded to an organization where the Board has determined that an actual or potential OCI exists and cannot be avoided, the Board may waive this requirement in certain circumstances.

The Board's mission is to provide advice and recommendations to the Department of Energy (DOE) regarding public health and safety matters related to DOE's defense nuclear facilities. This includes the review and evaluation of the content and implementation of health and safety standards including DOE orders, rules, and other safety requirements, relating to the design, construction, operation, and decommissioning of DOE defense nuclear facilities. In late 1991, Congress amended the Board's enabling Act, broadening the Board's jurisdiction over defense nuclear facilities to include the assembly, disassembly, and testing of weapons. With this increase in responsibility, the Board revised its priorities to include reviews of

additional facilities, including principally the Pantex Plant, Nevada Test Site (NTS), the weapons design laboratories, and additional facilities at Oak Ridge Y–12 Plant.

Two matters of immediate concern to the Board were the safety of ongoing weapons disassembly operations and maintenance of the capability to safely conduct nuclear testing operations. While the DOE had been engaged in these activities for decades, significant changes in the national security posture resulted in shifts in emphasis within DOE. Unprecedented numbers of simultaneous nuclear weapon retirements strained DOE's capabilities to develop and implement safe and well-engineered procedures. A Congressionally-mandated and Presidentially-extended nuclear testing moratorium removed the primary mechanism (*i.e.*, an active, on going testing program) by which the capability to execute tests safely was exercised and ensured. At the same time, the weapons programs at the nuclear weapons laboratories were losing skilled and experienced personnel due to retirement, downsizing, and reassignments. This combination of issues required the Board to increase its attention, and with it the number of associated reviews, at both Pantex and the NTS. Further, the Board recognized that it needed individuals with expertise in multiple technical disciplines, not previously required, to effectively meet the challenges and responsibilities of its new authority. These technical disciplines included conventional and nuclear explosive technology and safety, nuclear materials handling and storage, criticality safety, and nuclear weapons assembly, disassembly, storage and testing.

While the Board initiated an employee recruitment effort for individuals with formal training and experience in weapons related disciplines, it also recognized a need for technical assistance from outside experts who have direct relevant experience in this area. The Board identified Mr. Duane C. Sewell as an individual with the requisite knowledge and experience needed to provide the Board with immediate assistance in the weapons area. Specifically, Mr. Sewell can and will provide the Board with expertise in strategic safety issues associated with defense nuclear facilities involved in the assembly, disassembly, and testing of nuclear weapons, as well as assistance in the planning and performance of the Board's oversight functions at such facilities. The scope of work will be limited to those operations associated with production, dismantlement/disposition, safe handling, testing, and storage of nuclear weapons, nuclear explosive devices, and nuclear weapons components, and the nuclear and hazardous materials used in these items. A major portion of Mr. Sewell's effort will be directed toward assisting the Board in understanding the existing and needed involvement of the DOE weapons design laboratories in these activities, and evaluating the sufficiency of current and proposed efforts. He is not expected to become involved, however, in detailed technical reviews of operations at defense nuclear facilities.

During a routine preaward review, Mr. Sewell informed the Board of a potential conflict of interest situation arising from his current and past association with DOE and its weapons program. Mr. Sewell's involvement with this nation's nuclear weapons development activities dates back to 1941, when he joined the Manhattan Project. He has been associated with Lawrence Livermore National Laboratory (LLNL or the Laboratory) since it was established in 1952 and has held positions of increasing authority and responsibility, including Deputy Director. Although he retired from LLNL in July 1993, the Regents of the University of California (the operator of LLNL) awarded Mr. Sewell the title of Deputy Director Emeritus and provided him with an office and secretary at the Laboratory. Since that time, he has been using the office of LLNL approximately twice a week. While the time spent at LLNL is his own, and without pay, he occasionally provides advice to individuals who are currently directly involved in Laboratory activities at Pantex regarding the disassembly of nuclear weapons designed by LLNL. Additionally, for the year prior to his retirement, Mr. Sewell was directly involved with Laboratory activities regarding Pantex, and he attended meetings in May 1993 with the management and operating contractor of that facility to discuss weapons disassembly procedures.

Consequently, the Board had concerns regarding actual or potential conflicts of interest based primarily on two issues. First, would Mr. Sewell's continuing relationship with LLNL as Deputy Director Emeritus affect his ability to provide impartial assistance or advice to the Board. Second, would Mr. Sewell be placed in a situation as a consultant to the Board where he would be reviewing his own work on weapons-related matters conducted within a few years of his retirement.

The Board reviewed this situation and concluded that, even if the circumstances could give rise to a potential conflict of interest situation, it is nonetheless in the best interests of the Government to have Mr. Sewell provide this support for the reasons described below. Mr. Sewell's comprehensive knowledge of weapons development and assembly procedures, gained through approximately fifty years of direct experience, is invaluable to the Board in its health and safety reviews of weapons disassembly and related activities and thus is vital to the Board program. His experience includes the initial organization of the LLNL weapon testing operations in the early 1950's, and serving as Chairman of the Nevada Test Site Planning Board, Deputy Director of LLNL in 1973, and Assistant Secretary for Defense Programs of DOE from 1978 to 1981. In the last position, he was responsible for DOE defense programs, which included: Research, development, testing, production, and maintenance of all nuclear warheads; defense nuclear materials production, safeguard and security of all DOE materials and operations; and international security affairs related to nuclear matters. Furthermore, the Board recognized that it is unlikely that the work to be performed by Mr. Sewell could be satisfactorily performed by anyone whose experience and affiliations would not give rise to a conflict-of-interest question. That is because the individuals who have the requisite expertise in this area could only have obtained such expertise through previous or current employment or consulting relationship with one or more of the weapons designs laboratories. The pertinent experience of other qualified individuals would therefore likely raise similar conflicts questions.

The Board also examined Mr. Sewell's current relationship with LLNL and the University of California. As noted above, LLNL provides him with an office and clerical support, but the value of those services is unlikely to be large enough to affect his objectivity in his work for the Board. Also, although Mr. Sewell does not receive any compensation from LLNL currently, he does participate in the University of California Retirement Plan and a related savings plan and defined-contribution plan maintained by the University of California. However, he has informed the Board that the pension from the University of California is vested, and the amount paid calculated according to fixed formulas, and that his payments from the other plans depend on the

levels of prior contributions and ongoing investment returns rather than on the financial condition of the University of California. The possibility that he could use his work for the Board in the weapons complex to affect the ability of the University of California to make the vested pension payments to him is remote. Accordingly, the Board concluded that Mr. Sewell's financial interest in the University of California and his current LLNL privileges are not so substantial as to be likely to affect the integrity of his services in advising the Board on DNFSB matters, including, without limitation, any matters affecting LLNL, Los Alamos National Laboratory, or NTS.

Finally, as the Board is required under its OCI Regulations, where reasonably possible, to initiate measures which attempt to mitigate an OCI, Mr. Sewell and the Board agreed to the following restrictions during contract performance. The Board will not task Mr. Sewell to review issues which would involve the direct assessment of LLNL program activities at LLNL, Pantex, or elsewhere in the complex. In fact, as noted above, since Mr. Sewell will assist the Board on strategic safety issues, he is not expected to be involved in any assessments of specific program activities. Also, the efforts of Mr. Sewell will be overseen by experienced technical staff of the Board to ensure that all of his resultant work products are impartial and contain full support for any findings and recommendations issued thereunder. Further, Mr. Sewell will not use the clerical support made available to him by LLNL in his work for the Board and he will avoid any discussions with LLNL employees regarding the work of the Board. Mr. Sewell has agreed to all of these restrictions.

Accordingly, on the basis of the determination described above and pursuant to the applicable provisions of 10 CFR part 1706, the Chairman of the Board granted a waiver of any conflicts of interests (and the pertinent provisions of the OCI Regulations) with the Board's contract with Mr. Duane C. Sewell that might arise out of his previous or existing relationship with LLNL.

Dated: May 31, 1994.

**Kenneth M. Pusateri,**

*General Manager.*

[FR Doc. 94–13745 Filed 6–6–94; 8:45 am]

BILLING CODE 6802–KD–M

## DEPARTMENT OF EDUCATION

### Advisory Council on Education Statistics; Meeting

**AGENCY:** Advisory Council on Education Statistics, Education.

**ACTION:** Teleconference.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming teleconference of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this teleconference is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to participate.

**DATE AND TIME:** June 17, 1994 at 2 p.m.

**ADDRESSES:** 555 New Jersey Avenue, NW., room 400F, Washington, DC 20208.

**FOR FURTHER INFORMATION CONTACT:** Barbara Marenus, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, room 400J, Washington, DC 20208–7575, telephone: (202) 219–1839.

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Education Statistics (ACES) is established under Section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The teleconference call with Council members is open to the public.

The proposed agenda includes the following:

- Discussion of suggested areas for future deliberation by ACES: (1) Boundary between research and statistics; (2) NCES statistics to measure the National Education Goals; (3) The future of NCES's data collection activities; and (4) The use of judgementally derived standards in reporting data.
- Discussion of operating practices that the Council can use to facilitate its work.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., room 400A, Washington, DC 20208–7575.

**Sharon P. Robinson,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 94–13723 Filed 6–6–94; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Region VII State Energy Offices; Alternative Fuels/Vehicles and Transportation Initiatives; Solicitation of Grant Applications

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of Availability of Financial Assistance Solicitation.

**SUMMARY:** This document announces the issuance of a Program Solicitation No. PS–KCSO–94001 by the Department of Energy, Kansas City Support Office (KCSO). The solicitation invites grant applications from State Energy Offices located in Federal Region VII (Iowa, Kansas, Missouri & Nebraska) for funding of a project in each state to support Alternative Fuels/Vehicles and transportation initiatives.

**DATES:** Applications must be received no later than June 30, 1994.

**ADDRESSES:** Department of Energy, Kansas City Support Office, 911 Walnut, 14th floor, Kansas City, Missouri 64106.

**DATES:** Applications must be received no later than June 15, 1994.

**FOR FURTHER INFORMATION CONTACT:** Benjamin D. Watson, (816) 426–4770 or John E. Stacy, Technology Marketing Division (816) 426–5182.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The U.S. Department of Energy, Kansas City Support Office (KCSO) is making $60,000 in funding available ($15,000 maximum each state) for use to cover expenses associated with transportation and alternative fuels/vehicles activities and initiatives in each of the four states of Region VII (Iowa, Kansas, Missouri & Nebraska).

#### II. Eligible Grantee

Eligible grantees are the State Energy Office agencies designated by the Governor of each state that operate energy conservation grants and programs serviced by the DOE–KCSO (Iowa, Kansas, Missouri and Nebraska).

#### III. Eligible Activities

The grant issued pursuant to this Notice is limited to coverage of direct or indirect costs associated with the activities associated with transportation

or alternative fuels. Suggested activities are: Peer exchanges of personnel; travel expenses associated with meetings or conferences; CLEAN CITIES marketing and promotions; or alternative fuels marketing and promotions.

**Application Procedures**

The program solicitation and grant applications have been provided to each State Energy Office grantee in the KCSO regional area and must be received no later than June 15, 1994. Application content and any evaluation criteria are set forth in the Program Solicitation.

It is anticipated that the grant awards will be issued by July 30, 1994.

Issued in Golden, Colorado, on May 5, 1994.

**John W. Meeker,**

*Chief, Procurement, GO.*

[FR Doc. 94–13419 Filed 6–6–94; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Project Nos. 2019–017, et al.]**

## Hydroelectric Applications [Pacific Gas & Electric Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* New License (Tendered Notice).

b. *Project No.:* 2019–017.

c. *Date Filed:* May 3, 1994.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Utica.

f. *Location:* On the North Fork Stanislaus River, Silver Creek, Mill Creek, and Angels Creek in Alpine, Calaveras, and Toulumne Counties, California.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:*

Shan Bhattacharya, Manager, Hydro Generation Department, Pacific Gas and Electric Company, 201 Mission Street, room 1012, P.O. Box 770000, Mail P10A, San Francisco, CA 94177, (415) 973–4603.

Annette Faraglia, Attorney, Law Department, Pacific Gas and Electric Company, 77 Beale Street, room 3051, P.O. Box 7442, San Francisco, CA 94120–7442, (415) 973–7145.

Kathryn M. Petersen, License Coordinator, Pacific Gas and Electric Company, 201 Mission Street, room 1012, P.O. Box 770000, Mail P10A, San Francisco, CA 94177, (415) 973–4054.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. *Description of Project:* The existing project consists of: (1) Three storage reservoirs (Lake Alpine, Union Reservoir, and Utica Reservoir) with a combined storage capacity of 9,581 acre-feet; (2) the Mill Creek Tap; (3) the 0.7-mile-long Upper Utica Conduit; (4) Hunters Reservoir with a usable storage capacity of 253 acre-feet; (5) the 13.4-mile-long Lower Utica Conduit; (6) Murphys Forebay; (7) a 4,048-foot-long penstock; (8) Murphys Powerhouse with an installed capacity of 3.6 MW; (9) Murphys Afterbay; and (10) other appurtenances.

k. Under 18 CFR 4.32 (b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

2a. *Type of Application:* Surrender of License.

b. *Project No.:* 9656–017.

c. *Date Filed:* May 6, 1994.

d. *Applicant:* Marble Creek Hydro, Inc.

e. *Name of Project:* Marble Creek.

f. *Location:* Marble Creek, Shoshone County, Idaho, near Wallace.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William F. Davis, Potlatch Corporation, P.O. Box 1016, Lewiston, ID 83501, (208) 799–1706.

i. *FERC Contact:* Mr. Mark R. Hooper, (202) 219–2680.

j. *Comment Date:* July 14, 1994.

k. *Description of Application:* The licensee states that its project is no longer economically feasible.

l. *This Notice Also Consists of the Following Standard Paragraphs:* B, C1, and D2.

3a. *Type of Application:* Surrender of Exemption (5MW or less).

b. *Project No.:* 10556–006.

c. *Date Filed:* April 11, 1994.

d. *Applicant:* Kenneth M. Grover.

e. *Name of Project:* Tuck Tape Hydroelectric Project.

f. *Location:* On Fishkill Creek in Dutchess County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Kenneth M. Grover, GSA International Hydropower, P.O. Box 536, Croton Falls, NY 10519, (914) 277–8000.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date:* July 11, 1994.

k. *Description of the Proposed Action:* The proposed project would have consisted of an existing 135-foot-long, 14-foot-high quarried stone and concrete dam on the Fishkill River in Duchess County, New York. There has been no land-disturbing activity at the site.

l. *This Notice Also Consists of the Following Standard Paragraphs:* B, C, and D2.

4a. *Type of Application:* Major License.

b. *Project No.:* 10855–002.

c. *Date Filed:* May 2, 1994.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Dead River Project.

f. *Location:* on the Dead River in Marquette County, Michigan.

g. *Filed Pursuant To:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Clarence R. Fisher, President, Upper Peninsula Power Company, P.O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130, (906) 487–5000.

i. *FERC Contact:* Robert Bell (202) 219–2806.

j. *Comment Date:* 60 days from the filing date in paragraph C. (July 1, 1994).

k. *Description of Project:* The constructed project consists of the following developments:

**Silver Lake Dam Development**

(1) An existing 1,500-foot-long, 30-foot-high earth embankment Dam; (2) an existing 100-foot-long, 7.7-foot-high concrete ogee crest spillway; (3) an existing 1,491-foot-long, 34-foot-high concrete gravity outlet structure; (4) four existing earthen saddle dikes: (a) 200-foot-long, 5-foot-high dike 1; (b) 370-foot-long, 7-foot-high dike 2; (c) 170-foot-long, 6-foot-high dike 3; (d) 290-foot-long, 5-foot-high dike 4; (4) an existing reservoir having a surface area of 1,464 acres with a storage capacity of 33,513 acre-feet, and a normal water surface elevation of 1,486.25 feet NGVD. There is no generation proposed at this development.

**Hoist Dam Development**

(1) An existing 4,602-foot-long concrete gravity Hoist Dam with sections varying in height from 6 to 63 feet; (2) an existing reservoir having a surface area of 3,202 acres with a storage capacity of 46,998 acre-feet, and normal water surface elevation of 1,347.5 feet NGVD; (3) an existing intake structure; (4) an existing 342-foot-long, 9-foot-wide, 10-foot-high tunnel; (5) an existing 193-foot-long, 7-foot-diameter

riveted steel penstock; (6) an existing powerhouse containing 3 generating units with a total installed capacity of 4.425 MW; (7) an existing tailrace; (8) an existing 33-kV transmission line; and (9) appurtenant facilities. The estimated average annual generation is 15,643 MWh.

**McClure Dam Development**

(1) An existing 1,874-foot-long, earth embankment and concrete gravity McClure Dam varying in height from 22 to 51.4 feet; (2) an existing reservoir having a surface area of 95.9 acres with a storage capacity of 1,870 acre-feet, and normal water surface elevation of 1,196.4 feet NGVD; (3) an existing intake structure; (4) an existing 13,302-foot-long, 7-foot-diameter steel, wood, and concrete pipeline; (5) an existing 40-foot-high, 30-foot-diameter concrete surge tank; (6) an existing powerhouse containing 2 generating units with a total installed capacity of 9.863 MW; (7) an existing tailrace; (8) an existing 33-kV transmission line; and (9) appurtenant facilities. The estimated average annual generation is 48,452 MWh.

l. With this notice, we are initiating consultation with the Michigan State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to 18 CFR 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

5a. *Type of Application:* License (Tendered Notice).

b. *Project No.:* 11477–000.

c. *Date Filed:* May 5, 1994.

d. *Applicant:* Northern California Power Agency.

e. *Name of Project:* Utica.

f. *Location:* On the North Fork Stanislaus River, Silver Creek, Mill Creek, and Angels Creek in Alpine, Calaveras, and Toulumne Counties, California.

g. *Filed Pursuant To:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Competing Application:* Project No. 2019–017, filed May 3, 1994.

i. *Applicant Contact:* Hari Modi, Manager, Hydroelectric Project, Development, Regulatory Compliance and Licensing, Northern California Power Agency, 180 Cirby Way, Roseville, CA 95678, (916) 781–3636.

j. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

k. *Description of Project:* The existing project consists of: (1) Three storage reservoirs (Lake Alpine, Union Reservoir, and Utica Reservoir) with a combined storage capacity of 9,581 acre-feet; (2) the Mill Creek Tap; (3) the 0.7-mile-long Upper Utica Conduit; (4) Hunters Reservoir with a usable storage capacity of 253 acre-feet; (5) the 13.4-mile-long Lower Utica Conduit; (6) Murphys Forebay; (7) a 4,048-foot-long penstock; (8) Murphys Powerhouse with an installed capacity of 3.6 MW; (9) Murphys Afterbay; and (10) other appurtenances.

The applicant proposes to direct a substantial portion of the water now delivered into the Upper Utica Conduit via the Mill Creek Tap into the Collierville Powerhouse, through the Collierville Tunnel. Both the tunnel and the Collierville Powerhouse are licensed under Project No. 2409 to the Calaveras County Water District.

l. Under 18 CFR 4.32 (b)(7) of the Commission's regulations if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

6a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11480–000.

c. *Date Filed:* May 11, 1994.

d. *Applicant:* InterMountain Energy, Inc.

e. *Name of Project: Upper Reynolds Creek Water Power Project.*

f. *Location:* Partially within the Tongas National Forest, on Reynolds Creek, near the village of Hydaburg, in Alaska. T76S, R83E; T76S, R84E; and T77S, R85E.

g. *Filed Pursuant To:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jack Goldwasser, InterMountain Energy, Inc., P.O. Box 421, Cave Junction, OR 97523, (503) 592–2187.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* August 5, 1994.

k. *Description of Project:* The applicant is exploring two alternatives for the proposed project. The first alternative would consist of: (1) Sea Alaska's existing Mellen Lake; (2) a 10-foot-high concrete dam raising the surface elevation of that lake about 8 feet; (3) a 2,600-foot-long, 48-inch-diameter steel penstock; (4) a powerhouse containing an unspecified number of generating units with a total installed capacity of 2,000 kW; and (5) a tailrace returning water to Reynolds Creek.

The second alternative would consist of: (1) the Haida Corporation's existing Summit Lake; (2) a 10-foot-high concrete dam raising the surface elevation of that lake about 8 feet; (3) a 2,600-foot-long, 48-inch-diameter steel penstock; (4) a powerhouse containing an unspecified number of generating units with a total installed capacity of 1,500 kW; and (5) a tailrace returning water to Reynolds Creek.

Both alternatives would also include a 10-mile-long transmission line interconnecting with an existing Alaska Power and Telephone distribution system and other appurtenant facilities.

No new access roads will be needed to conduct the studies.

l. *This Notice Also Consists of the Following Standard Paragraphs:* A5, A7, A9, A10, B, C, and D2.

7a. Type of Application: Major License.

b. *Project No.:* 11162–000.

c. *Date Filed:* April 29, 1994.

d. *Applicant:* Wisconsin Power & Light Company.

e. *Name of Project:* Prairie du Sac Hydroelectric Project.

f. *Location:* On the Wisconsin River, Sauk and Columbia Counties, Wisconsin.

g. *Filed Pursuant To:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Norman E. Boys, Wisconsin Power & Light Company, P.O. Box 192, 222 West Washington Avenue, Madison, WI 53701–0192, (608) 252–3311.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Due Date:* June 28, 1994.

k. *Description of Project:* The project, which is currently operating, consist of the following facilities: (1) An existing 1,775-foot-long earth dike; (2) an existing 1,010- foot-long concrete spillway with 41 gates; (3) an existing navigation lock; (4) an existing powerhouse containing eight turbine-generator units having a total installed capacity of approximately 29 megawatts; (5) an existing short dike; (6) an existing impoundment having an estimated normal surface area of 9,180 acres; and (7) two existing 69-kilovolt transmission lines extending 400 feet; and (8) appurtenant facilities. The owner of the dam is Wisconsin Power & Light Company. The applicant estimates that the average annual

generation would be 151,800 megawatthours, and the estimated cost of the project is $940,314.

l. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to 18 CFR 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must 60 days from the issuance date of this notice file a request for a study with the Commission not later than and serve a copy of the request on the applicant.

**Standard Paragraphs**

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file aa motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

Dated: May 31, 1994.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–13748 Filed 6–6–94; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–4890–5]

### Agency Information Collection Activities Under OMB Review

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before July 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Prevention, Pesticides, and Toxic Substances**

*Title:* Training Verification Program for Implementation of the Revised Federal Work Protection Standards. (ICR No: 0277.09; OMB No: 2070–0060). This is a request for the approval of revised burden hours for requirements under

Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The current approval expires on February 28, 1995.

*Abstract:* On August 21, 1992, EPA issued final regulations revising its Worker Protection Standards (WPS) for agricultural pesticides (40 CFR part 170 and 40 CFR part 156, subpart K). The revised regulations strengthen the requirements for the protection of agricultural workers and pesticide handlers from hazards of pesticides used on farms, on forests, in nurseries and in greenhouses. The regulations require that each agricultural worker and pesticide handler be trained in pesticide safety to reduce the risk of pesticide poisoning and other injuries.

The WPS specified what safety information must be provided to workers and handlers; the WPS also provides for the issuance of EPA-approved WPS training certificates upon completion of training. This certification process allows employers to verify that workers and handlers have received WPS safety training. However, to relieve agricultural employers from the responsibilities of retraining migrant workers and handlers, the EPA offers a Training Verification Program (TVP) that involves the issuance of training verification cards. The TVP is optional for states; a state that wants to participate will submit an agreement form to the EPA and will request the number of verification cards it needs to implement the program. While this does not place any additional burden on the states, the TVP does require trainers to create and maintain records of rosters containing the names of the trainees. The upward revision in burden hours requested in this ICR reflects these trainer requirements under the TVP.

The Agency will use the additional information for verification purposes and to provide a mechanism to standardize the worker pesticide safety training program across the agricultural industry.

*Burden statement:* The public burden for this collection of information is estimated to average 10 minutes per respondent to prepare a roster, and 5 minutes per respondent to file a roster annually. This estimate includes the time to review instructions and review the collection of information.

*Respondents:* Trainers of agricultural workers and pesticide handlers.

*Estimated No. of Respondents:* 10,000.

*Estimated No. of Responses per Respondent:* 10.

*Estimated Total Annual Burden on Respondents:* 24,990 hours.

*Frequency of Collection:* On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 1, 1994.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 94–13785 Filed 6–6–94; 8:45 am]

BILLING CODE 6560–50–M

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[FRL 4893–3]

## Agency Information Collection Activities Under OMB Review

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

### OMB Responses to Agency PRA Clearance Requests

*OMB Approvals*

EPA ICR No. 1671.01; Fishing Sinker—TSCA Section 6; was approved 05/09/94; OMB No. 2070–0135; expires 05/31/97. This collection supports the proposed rule.

EPA ICR No., 1285.04; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; was approved 05/09/94; OMB No. 2060–0132; expires 05/31/97.

EPA ICR No. 1000.05; Polychlorinated Biphenyls (PCB's): Use in Electrical Equipment and Transformers; was approved 04/29/94; OMB No. 2070–0003; expires 04/30/97.

EPA ICR No. 1365.03; Asbestos-Containing Materials in Schools Rule, Revised Model Accreditation Plan; was approved 04/29/94; OMB No. 2070–0091; expires 12/31/94. This collection amends the existing clearance.

EPA ICR No. 1072.04; NSPS for Recordkeeping and Reporting Requirements for Lead-Acid Battery Manufacturing—Subpart KK; was approved 04/21/94; OMB No. 2060–0081; expires 04/30/97.

EPA ICR No. 1093.04. NSPS for the Surface Coating of Plastic Parts for Business Machines—Subpart TTT; was approved 04/21/94; OMB No. 2060–0162; expires 04/30/97.

EPA ICR No. 1060.07; NSPS for Electric ARC Furnaces and Argon-Oxygen Decarburization Vessels, Information Requirements—Subparts AA and AAA; was approved 04/21/94; OMB No. 2060–0038 expires 04/30/97.

EPA ICR No. 1160.04; NSPS for Wool Fiberglass Insulation Manufacturing, Information Requirements—Subpart PPP; was approved 04/21/94; OMB No. 2060–0114 expires 04/30/97.

EPA ICR No. 1157.04; NSPS for Flexible Vinyl and Urethane Coating and Printing, Information Requirements—Subpart FFF; was approved 04/21/94; OMB No. 2060–0073; expires 04/30/97.

EPA ICR No. 1648.01; Equivalent Emission Limitations under the Clean Air Act—Section 112(J); was approved 08/31/93; OMB No. 2060–0266; expires 08/31/96.

EPA ICR No. 1249.04; Requirements for Certified Applicators using 1080 Collars; was approved 05/12/94; OMB No. 2070–0074; expires 05/31/97.

EPA ICR No. 0783.24; Control of Air Pollution from Motor Vehicle Engines Evaporative Emission Regulation; was approved 05/09/94; OMB No. 2060–0104; expires 06/30/95. This collection supports an amendment to existing OMB No. 2060–0104.

*OMB Disapprovals*

EPA ICR No. 1682.01; California Federal Implementation Plans (FIPS) for Sacramento, Ventura, and South Coast under the Clean Air Act Section 110(C, Recordkeeping and Reporting Requirements; was disapproved 04/22/94. This collection supports the proposed rule.

EPA ICR No. 1678.01; NESHAP for Magnetic Tape Manufacturing Operations, Reporting and Recordkeeping Requirements; was disapproved 05/04/94. This collection supports the proposed rule.

Dated: June 1, 1994.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 94–13786 Filed 6–6–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4894–1]

## SAPP Battery Company Site: Proposed Deminimis Settlement Agreements

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed deminimis settlements.

**SUMMARY:** Under section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Sapp Battery Company Site, Jackson County, Florida, with fifteen parties: Alabama Steel Supply, Inc., Tieco Gulf Coast, Inc., Valdosta Wrecking Co., Inc., Big 10 Tires Stores, Inc., Bonnie Plant Farm, City of Auburn, Alabama, City of Opelika, Alabama, Discount Auto Parts Stores, Leon Iron & Metal, Lockheed Aeronautical Systems, Fade Auto Parts, Graham-Noles (G&N) Auto Parts Service, Headland Auto Parts, Inc., Midway Auto Parts, and Megahee-Speight Co. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate the proposed settlements are inappropriate, improper or inadequate. Copies of the proposed settlements are available from: Ms. Carolyn McCall, Cost Recovery Specialist, Cost Recovery Section, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347–5059 X6178.

Written comments may be submitted to the person above by thirty days from the date of publication.

Dated: May 27, 1994.

**Richard D. Green,**

*Acting Director, Waste Management Division.*

[FR Doc. 94–13788 Filed 6–6–94; 8:45 am]

BILLING CODE 6560–50–M

## Office of Research and Development

[FRL–4893–4]

## Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another equivalent method for the determination of lead in suspended particulate matter collected from ambient air. The new designated method is identified as follows:

EQL–0694–096, "Determination of Lead Concentration in Ambient Particulate Matter by Inductively Coupled Argon Plasma Optical Emission spectrometry (State of West Virginia)."

The applicant's request for an equivalent method determination for the above method was received on March 28, 1994.

This method has been tested by the applicant, the State of West Virginia, in accordance with the test procedures prescribed in 40 CFR part 53. After reviewing the results of these tests, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

This method uses the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (43 FR 46258). Lead in the particulate matter is solubilized by extraction with a mixture of nitric acid and hydrochloric acid, facilitated by heat and ultrasonication. The lead content of the sample is analyzed by a Thermo Jarrel Ash AtomScan 16 inductively coupled argon plasma optical emission spectrometer using the 220.3 nm lead emission line and instrument conditions optimized by the user laboratory. Technical questions concerning the method should be directed to the State of West Virginia, Department of Commerce, Labor and Environmental Resources, Division of Environmental Protection, Office of Air Quality, 1558 Washington Street East, Charleston, West Virginia 25311–2599.

As a designated equivalent method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes the method must be used in strict accordance with the procedures and specifications provided in the method description. States or other agencies using inductively coupled argon plasma optical emission spectrometric methods that employ procedures and specifications significantly different from those in this method must seek approval for their particular method under the provisions of § 2.8 of Appendix C to 40 CFR Part 58 (Modification of Methods by Users) or may seek designation of such methods as equivalent methods under the provisions of 40 CFR part 53.

Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2622.

**Carl Gerber,**

*Acting Assistant Administrator for Research and Development.*

[FR Doc. 94–13787 Filed 6–6–94; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

## Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632–6934.

**Federal Communications Commission**

*OMB Control No.:* 3060–0604.

*Title:* Implementation of Section 309(j) of the Communications Act, Competitive Bidding, Third Report and Order—PP Docket No. 93–253.

*Forms:* FCC 401 (as modified), 489, 490, 405, 430, 854.

*Expiration Date:* 05/31/97.

*Estimated Annual Burden:* 40,654 total hours; .50–20 hours per response.

*Description:* On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 added Section 309(j) to the Communications Act of 1934, as amended, 47 U.S.C. Sections 151–713. Section 309(j) gives the Commission express authority to employ competitive bidding procedures to choose among mutually exclusive applications for initial licenses. The Commission's March 8, 1994 Second Report and Order established general rules and procedures and a broad menu of competitive bidding methods to be used for all auctionable services. The Third Report and Order establishes service-specific rules for competitive bidding on licenses to be awarded for Personal Communications Services in the 900 MHz band ("narrowband PCS"). Generally, the Commission followed

the payment and procedural rules adopted in the Second Report and Order in conducting narrowband PCS auctions, but made minor changes to adjust the requirements to the characteristics of the narrowband PCS service. In addition, procedural and processing rules for the narrowband PCS service based on part 22 of the Commission's rules were adopted. Applicants are required to file certain information so that the Commission can determine whether the applicants are legally, technically and financially qualified to be licensed. Affected public are any member of the public who wants to become a licensee.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94–13714 Filed 6–6–94; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Subcommittee on Violence Against Women of the Injury Research Grant Review Committee and the Injury Research Grant Review Committee: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee and committee meetings.

*Name:* Subcommittee on Violence Against Women of the Injury Research Grant Review Committee (IRGRC).

*Times and dates:* 6 p.m.–9 p.m., June 22, 1994; 8 a.m.–5 p.m., June 23, 1994.

*Status:* Closed to the public.

*Purpose:* The subcommittee advises the IRGRC on the technical and scientific merit of injury prevention research grant applications on violence against women.

*Matters to be discussed:* The subcommittee will review applications in response to Program Announcement 409.

*Name:* Injury Research Grant Review Committee.

*Times and dates:* 7 p.m.–9:30 p.m., June 23, 1994; 8 a.m.–3:30 p.m., June 24, 1994.

*Status:* Open: 7 p.m.–8:30 p.m., June 23, 1994. Closed: 8:30 p.m., June 23, 1994, through 3:30 p.m., June 24, 1994.

*Purpose:* This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary of Health, and the Director of CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.

*Matters to be discussed:* Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications.

*Place of both meetings:* Atlanta Marriott Marquis, 265 Peachtree Center Avenue, Atlanta, Georgia 30303.

Beginning at 6 p.m., June 22, through 5 p.m., June 23, the Subcommittee on Violence Against Women of the IRGRC will meet and from 8:30 p.m., June 23, through 3:30 p.m., June 24, the IRGRC will meet to conduct a review of grant applications. These portions of the meetings will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Acting Associate Director for Policy Coordination, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

*Contact person for more information:* Richard W. Sattin, M.D., Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, Mailstop K58, Atlanta, Georgia 30341–3724, telephone 404/488–4580.

Dated: June 1, 1994.

**William H. Gimson,**

*Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 94–13759 Filed 6–6–94; 8:45 am]

BILLING CODE 4163–18–M

### Health Care Financing Administration

### Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

**AGENCY:** Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements concerning Systems Performance Review (SPR); *Form No.:* HCFA–R–86; *Use:* The Systems Performance Review (SPR) is a vehicle used to evaluate State Medicare Management Information Systems (MMIS) to determine whether or not a State system satisfies the functional requirements and statistical levels of output relating to accuracy and timeliness; *Frequency:* Not applicable; *Respondents:* State and Local government; *Estimated Number of Recordkeepers:* 22; *Average Hours Per Recordkeeper:* 2000; *Total Estimated Burden Hours:* 44,000.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: May 18, 1994.

**John A. Streb,**

*Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.*

[FR Doc. 94–13550 Filed 6–6–94; 8:45 am]

BILLING CODE 4120–03–M

### Health Resources and Services Administration

### Healthy Schools, Healthy Communities Pre-Application Technical Assistance Workshop

**AGENCY:** Health Resources and Services Administration, PHS.

**ACTION:** Notice of pre-application technical assistance workshop.

**SUMMARY:** The Health Resources and Services Administration will hold a pre-application technical assistance workshop for prospective applicants for the Healthy Schools, Healthy Communities grant programs. Both the school-based health services and health education/promotion grant program and the staff development grant program will be discussed. The grants will be awarded under section 340(s) of the Public Health Service (PHS) Act, 42 U.S.C. 256 and under section 501(a)(2) of the Social Security Act, 42 U.S.C. 701(a)(2). A notice of availability of funds for the Healthy Schools, Healthy Communities programs was published in the **Federal Register** at 59, FR 24171 on May 10, 1994.

Eligible applicants for the school-based health services and health education/promotion program are community-based primary health care providers. Eligible health care providers are community-based public or nonprofit private entities that have a history of providing primary health services to a substantial number of homeless, at-risk, or medically underserved children and youth in the community, e.g., health care for the homeless centers, community and migrant health centers, local health

departments, public housing primary care centers, and children's hospitals.

Eligible applicants for the staff development program are State health agencies or public and private nonprofit institutions of higher learning.

**PURPOSE:** The purpose of the technical assistance workshop is to disseminate relevant information and review program expectations. Prospective applicants will have an opportunity to review the program guidance and receive technical assistance pertaining to writing and implementing grant applications for the school-based health services and health education/promotion program and the staff development program under the Healthy Schools, Healthy Communities Initiative.

**CONTACT:** Anyone interested in attending the meeting should reserve a place at the meeting by contacting Sarah Baily, Division of Programs for Special Populations, Bureau of Primary Health Care, 4350 East-West Highway, 9th Floor, Bethesda, Maryland, 20814. Telephone: (301) 594–4472, fax: (301) 594–4989. Costs of attending the meeting are to be borne by prospective applicants.

**DATE AND TIME:** June 15, 1994, 9 a.m. to 4 p.m.

**PLACE:** Ramada Hotel O'Hare, 6600 North Manheim Road, Rosemont, Illinois 60018, (708) 827–5131.

Dated: June 2, 1994.

**Ciro V. Sumaya,**

*Administrator.*

[FR Doc. 94–13761 Filed 6–6–94; 8:45 am]

BILLING CODE 4160–15–P

## National Institutes of Health

### National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Psychobiology, Behavior, and Neuroscience Review Committee, National Institute of Mental Health, which was published in the Federal Register on May 12, (59 FR 24708).

This committee was to have convened at 9 a.m. on June 9 at the Crowne Plaza Holiday Inn in Rockville, Maryland. The location has been changed to the Sheraton Washington Hotel, 2660 Woodley Road, Washington, DC 20008.

Dated: June 2, 1994.

**Margery G. Grubb,**

*Senior Committee Management Specialist, NIH.*

[FR Doc. 94–13925 Filed 6–6–94; 8:45 am]

BILLING CODE 4140–01–M

### Division of Research Grants Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Behavioral and Neurosciences.

*Date:* June 9, 1994.

*Time:* 2 p.m.

*Place:* Georgetown Holiday Inn, Washington, D.C..

*Contact Person:* Dr. Anita Sostek, Scientific Review Administrator, 5333 Westbard Avenue, room 319C, Bethesda, MD 20892, (301) 594–7358.

*Purpose/Agenda:* To review individual grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 1, 1994.

**Margery G. Grubb,**

*Senior Committee Management Specialist, NIH.*

[FR Doc. 94–13837 Filed 6–6–94; 8:45 am]

BILLING CODE 4140–01–M

## Social Security Administration

### Privacy Act of 1974; Computer Matching Programs: SSA and the Department of Education

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Notice of Computer Matching Programs to comply with Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988.

**SUMMARY:** This notice announces a computer matching program that SSA will conduct that is subject to the requirements of Pub. L. 100–503. The purpose of this publication is to meet the publication requirements of Pub. L. 100–503.

**DATES:** We will file a report of the subject SSA matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Program and Integrity Reviews at the address above.

**SUPPLEMENTARY INFORMATION:**

**A. General**

Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of Pub. L. 101–508, the Computer Matching and Privacy Protection Amendments of 1990, further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, and local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the match;

(2) Notify applicants and beneficiaries that their records are subject to matching;

(3) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments;

(4) Furnish detailed reports about matching programs to Congress and the Office of Management and Budget; and

(5) Establish a Data Integrity Board that must approve match agreements.

**B. SSA Computer Matches Subject to Pub. L. 100–503**

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended. Below is a brief description followed by a detailed notice of a match that SSA will be conducting as of April 1994 or later.

**SSA Matching With Department of Education (ED)**

*Purpose:* To ensure that the requirements of title IV, section 484(q), of the Higher Education Act of 1965 (HEA) are met. Computerized access to SSA master files of Social Security number (SSN) holders enables ED to ensure that the SSN of an applicant for assistance under title IV of the HEA is valid at the time of the application. Applicant records will be matched against SSA's Numident Index Record File.

Dated: May 26, 1994.

**Shirley S. Chater,**

*Commissioner of Social Security.*

**Notice of Computer Matching Program, Social Security Administration (SSA) Numident Index Record File Matching With the Department of Education (ED)**

*A. Participating Agencies*

SSA and ED.

*B. Purpose of the Matching Program*

Section 484(q) of the Higher Education Act of 1965 (HEA), requires ED to verify the Social Security numbers (SSNs) of applicants for assistance under title IV of that Act.

The purpose of this matching program is to enable ED to verify applicants SSNs.

*C. Authority for Conducting the Matching Program*

Section 484(q) of the HEA; Section 1106(a) of the Social Security Act.

*D. Categories of Records and Individuals Covered by the Match*

ED will submit for validation SSNs and other identifying information for applicants for assistance from its Central Processing Systems files. The SSA Numident contains the SSN and identifying information for all SSN holders.

*E. Inclusive Dates of the Match*

The matching program shall become effective 40 days after a copy of the agreement, as approved by the Data Integrity Boards, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

*F. Address for Receipt of Public Comments or Inquiries*

Individuals wishing to comment on this matching program should submit comments to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

[FR Doc. 94–13814 Filed 6–6–94; 8:45 am]

BILLING CODE 4190–29–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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

**[Docket No. N–94–3755; FR–3622–N–02]**

### NOFA for Fair Housing Initiatives Program; FY 1994 Competitive Solicitation Technical Correction

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

**ACTION:** Notice of funding availability (NOFA)—Technical correction.

**SUMMARY:** This notice makes technical corrections to the FY 1994 FHIP NOFA published on May 16, 1994 (59 FR 25532).

**DATES:** The application due date is specified in the application kit. However, applicants will be given at least 60 days from the original NOFA publication date, until July 15, 1994, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

**ADDRESSES:** To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850 or call the toll free number 1–800–343–3442. Please also contact this number if information concerning this NOFA is needed in an accessible format.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn J. Shelton, Director, Office of Fair Housing Assistance and Voluntary Programs, room 5234, 451 Seventh Street SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–0455. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The Fiscal Year (FY) 1994 Fair Housing Initiatives Program (FHIP) Notice of Funding Availability (NOFA) published on May 16, 1994 (59 FR 25532) contained two errors that are being corrected in this notice. The first correction concerns the amount of funding available. The total amount listed as available, $14,881,000, is corrected to read $18,481,000. The additional $3.6 million reflects the determination that $2 million to be used for the second year of two-year FY 1993 Private Enforcement Initiative awards, and $1.6 million to be used for the second year of two-year FY 1993 Fair Housing Organizations Initiative awards, will be funded out of FY 1995 funds. This is because the second year of funding is subject to not only the availability of funds, but to an annual performance review. The amounts of funding under these two Initiatives are corrected accordingly.

In addition, the sequence of eligible activities under the Private Enforcement Initiative is also corrected.

Accordingly, the following corrections are made in FR Doc. 94–11762 to the NOFA titled, "NOFA for Fair Housing Initiatives Program; FY 1994 Competitive Solicitation", published on May 16, 1994 (59 FR 25532):

1. On page 25532, the **SUMMARY** paragraph, which appears in the first column, is revised to read as follows:

**SUMMARY:** This NOFA announces the availability of up to $18,481,000 of 1994 Fiscal Year (FY) funding for the Fair Housing Initiatives Program (FHIP). This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, selection criteria, how to apply for funding, and how selections will be made.

2. On page 25533, paragraph I.(b), which appears in the first and second columns, is revised to read as follows:

**(b) Allocation Amounts**

For FY 1994, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $20,481,000 for the FHIP program. Of this amount, $2,000,000 of Private Enforcement Initiative funds will be made available for special projects to be announced in a separate NOFA. The remaining $18,481,000 is being made available on a competitive basis to eligible organizations that submit timely

applications and are selected in response to this NOFA. The funding selections will be made on the basis of criteria for eligibility, factors for award, and completeness of budget information. The Department retains the right to shift funds between FHIP Initiatives, listed below, within statutorily prescribed limitations. The amounts included in this NOFA are subject to change based on fund availability. The total amount available under this NOFA will be divided among the four FHIP Initiatives as follows:

(1) *Administrative Enforcement Initiative.* The amount of $1.5 million in FY 1994 funds is available under this NOFA for the Administrative Enforcement Initiative.

(2) *Education and Outreach Initiative.* The amount of $3 million in FY 1994 funds is available under this NOFA for the Education and Outreach Initiative. Of this amount, $1.5 million is available for national programs, of which $200,000 is designated for Fair Housing Month activities. Of the remaining $1.5 million, $1 million is available for regional and local programs, and $500,000 is for community-based programs.

(3) *Private Enforcement Initiative.* The amount of $6,981,000 in FY 1994 funds is available under this NOFA for the Private Enforcement Initiative. Of this amount, $3,981,000 will be available for two-year projects, with the commitment of second year funding, in an amount not to exceed the first year's funding, subject to annual appropriations and annual performance reviews. The remaining $3 million is for one-year projects.

(4) *Fair Housing Organizations Initiative.* This NOFA makes $7 million in FY 1994 funds available for activities under the Fair Housing Organizations Initiative. Of this amount, $3.3 million in FY 1994 funds is available for the purpose of the continued development of existing organizations under the Fair Housing Organizations Initiative. The remaining $3.7 million will be available for two-year projects for the purpose of establishing new organizations, with the commitment of second year funding subject to annual appropriations and annual performance reviews.

3. On page 25535, paragraph I.(c)(3)(ii), which appears in the first and second columns, is revised to read as follows:

(ii) *Eligible activities.* Applications are solicited for one- and two-year project proposals as described in 24 CFR 125.403 and in this NOFA. Applications may designate up to 10% of requested funds to promote awareness of the services provided by the project, but such promotion must be necessary for the successful implementation of the project. Project applications may involve:

(A) Discovering and providing remedies for discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans, the provision of other financial assistance for sales or rentals of housing, including insurance redlining and appraisal practices, and housing advertising;

(B) Conducting investigations of systemic housing discrimination for further enforcement processing by State or local agencies, or for referral to private attorneys or to HUD and the Department of Justice;

(C) Professionally conducting testing of other investigative support for administrative and judicial enforcement;

(D) Linking fair housing organizations regionally in enforcement activities designed to combat broader housing market discriminatory practices;

(E) Establishing effective means of meeting legal expenses in support of litigation of fair housing cases;

(F) Testing and other investigative activities, including building the capacity for housing investigative activities in unserved or underserved areas;

(G) Building the capacity to investigative, through testing and other investigative methods, housing discrimination complaints covering all protected classes, including persons with mental and physical disabilities;

(H) Carrying out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under title VIII, such as in the areas of independent living and architectural barriers;

(I) Providing funds for the costs and expenses of litigation, including expert witness fees.

Dated: May 31, 1994.

**Paul Williams,**

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

[FR Doc. 94–13730 Filed 6–6–94; 8:45 am]

BILLING CODE 4210–28–M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Nomination for National Indian Gaming Commission

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice.

**SUMMARY:** The Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) provides for appointment by the Secretary of the Interior of two associate members of the National Indian Gaming Commission after public notice and an opportunity for comment. Notice is hereby given of the proposed appointment of Lacy H. Thornburg as an associate member of the Commission.

**DATES:** Comments must be received by July 7, 1994.

**ADDRESSES:** Comments should be addressed to: Sharon D. Eller, Director of Personnel, Department of the Interior, 1849 C Street, NW., suite 5459, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Sharon D. Eller, (202) 208–6702 (not a toll free number).

**SUPPLEMENTARY INFORMATION:** Section 5(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2704(a)) establishes a three-member National Indian Gaming Commission within the Department of the Interior. The Act provides that the Chairman of the Commission is to be appointed by the President with the advice and consent of the Senate. The two associate members of the Commission are to be appointed by the Secretary of the Interior (24 U.S.C. 2704(b)(1)). The Act provides that the Secretary shall publish notice of nominations for the associate member positions in the **Federal Register** and provide an opportunity for public comment (24 U.S.C. 2704(b)(2)(B)).

Notice is hereby given of the proposed appointment of the following individual to be an associate member of the Commission for a term of three years:

Lacy H. Thornburg. Mr. Thornburg served as Attorney General of the State of North Carolina from 1985–1993. Prior to his election, Mr. Thornburg was a Superior Court Judge on North Carolina's Trial Court of General Jurisdiction from 1967–1983. He served three terms as a Member of the North Carolina House of Representatives from 1961–1966. Prior to his election to the House, he served as a Staff Member for Congressman David Hall from 1959—1960 and practiced law in Sylva, North Carolina from 1954–1967. His professional activities have included a term as Chairman of the North Carolina 4-H Ambassador Steering Committee, terms as a Member of the Boards of Visitors of Peace College, Davidson College and the North Carolina Central School of Law, Co-Chair of the Law Enforcement Coordinating Committee, membership on the North Carolina Council of State, membership on the Indian Affairs Committee of the National Association of Attorneys

General and service on the Governor's Crime Commission. Mr. Thornburg holds a Bachelor of Arts from the University of North Carolina, Chapel Hill (1951) and a Juris Doctor from the University of North Carolina School of Law (1954).

Persons wishing to comment on this proposed appointment may submit written comments to the address identified above. Comments must be received by the date indicated above which is 30 days from the date of the publication of this notice.

Dated: May 31, 1994.

**Bruce Babbitt,**

*Secretary of the Interior.*

[FR Doc. 94–13728 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–RK–M

## Bureau of Land Management

**[WO–260–4210–01]**

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under 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, Interior Department Desk Officer, Washington, DC 20503, telephone number 202–395–7340.

*Title:* Right-of-Way Cost Recovery Procedures, 43 CFR part 2808.

*Abstract:* Respondents supply identifying information and data on monetary value of the rights and privileges sought by the applicant, costs incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant, and public services provided which are necessary to determine who may be entitled to a set-off against reimbursement of costs to the government.

*Bureau Form Number:* None Required.

*Frequency:* Once.

*Description of Respondents:* Right-of-way applicants for which the authorized officer determines that the Bureau's application processing activities will require gathering of original data to comply with the National Environmental Policy Act and other statutes, and three or more field examinations.

*Annual Responses:* 17.

*Annual Burden Hours:* 850.

*Bureau Clearance Officer (Alternate):* Marsha Harley, 202–452–5014.

Dated: April 13, 1994.

**J. David Almand,**

*Acting Deputy Assistant Director.*

[FR Doc. 94–13717 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–84–M

**[OR–93–6332–5: GP4–186]**

### Establishment of Supplementary Rules; Lane County, OR

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of establishment of supplementary rules.

**SUMMARY:** The Eugene District, Bureau of Land Management, hereby establishes supplementary rules for use of those public lands included in the Row River Trail and adjoining facilities in the South Valley Resource Area, Eugene District, Lane County, Oregon. These supplementary rules are intended to protect public land facilities and provide for public safety for the Row River Trail, a rails-to-trails conversion project near the city of Cottage Grove, Oregon. The BLM is accepting the donation of the former railroad as a non-motorized trail from Willamette Industries, Inc., as partial settlement of a debt owed to the United States. Upon acceptance of the trail and associated properties by the United States, the donated land will be available for public use. These rules are designed to reduce the potential for damage to the trail by unauthorized motor vehicle traffic and to enhance the safety of trail visitors and neighboring residents. A "Notice of proposed establishment of supplementary rules" was published in the **Federal Register** on April 22, 1994 (59 FR 19204) and provided for a thirty day comment period that ended May 23, 1994. Four letters were received, containing two substantive comments. One comment objected to the prohibition against the possession of firearms on the trail. The writer felt that a prohibition against discharge of firearms would be sufficient and that visitors should be allowed to carry firearms for self-defense. It was decided to retain the restriction against weapons, including firearms, to reduce the potential for misunderstanding of rules by trail users and to help protect people both on and off the trail from accidental injury. Another comment objected to the prohibition against motorized vehicles on the grounds that this would exclude disabled visitors from using all-terrain vehicles or motorized wheelchairs on the trail. The rule does allow use of motorized vehicles authorized by BLM, which could include disabled visitor's motorized wheelchairs or specialty all-terrain vehicles on a case-by-case basis. Each situation would need to be evaluated with regard to the potential for such use to damage the trail or the surrounding environment.

**ADDRESSES:** Comments should be sent to Terry Hueth, South Valley Area Manager, Eugene District Office, P.O. Box 10226, Eugene, Oregon 97440–2226.

**FOR FURTHER INFORMATION CONTACT:** Joe Williams, 503–683–6600.

**SUPPLEMENTARY INFORMATION:** Authority for the establishment of these supplemental rules is contained in 43 CFR 8365.1–6. A map showing the location of the lands subject to the supplementary rules is available in the Eugene District Office. Upon acceptance of title to the subject lands, the Eugene District will prepare a Recreation Area Management Plan for the Row River Trail with opportunity for public involvement. After completion of the plan, the supplementary rules will be reviewed and revised, if appropriate, to conform to the provisions of the final plan.

**DATES:** These supplementary rules will become effective upon publication in the **Federal Register**, unless title to the former Oregon Pacific & Eastern Railroad lands and other lands on or adjoining the Row River Trail has not yet been accepted by the United States, in which case the supplementary rules will become effective upon the date of acceptance of title by the United States.

For the reasons set forth in the preamble, the Eugene District, Bureau of Land Management, establishes supplementary rules for the Row River Trail and adjoining facilities as follows:

1. Use or operation of motor vehicles is prohibited on the trail and on adjoining public lands except on those roads and parking areas specifically constructed for motor vehicle use. Motor vehicles being used by duly authorized emergency response personnel, including police, ambulance and fire suppression, as well as BLM vehicles engaged in official duties and other vehicles authorized by BLM, are excepted.

2. Possession, use and/or discharge of any weapons, including firearms, air guns, slingshots, or other projectile

launching devices, on or across the trail and associated facilities is prohibited.

3. Use and/or occupancy (including leaving personal property unattended) of the trail and trailhead facilities between one half hour after sunset to one-half hour before sunrise is prohibited without a special permission of the authorized officer.

4. Glass containers and alcoholic beverages are prohibited on the trail and adjoining facilities.

5. Campfires or other open flame fires are prohibited throughout the trail and associated facilities. Charcoal cooking fires will be allowed in fire receptacles if and when they are provided in picnic areas.

6. No person shall, unless otherwise authorized, bring any animal onto the trail or adjoining public lands unless such animal is on a leash not longer than six feet and secured to a fixed object or under control of a person, or is otherwise physically restricted at all times.

Date of Issue: June 1, 1994.

**Judy Ellen Nelson,**

*District Manager.*

[FR Doc. 94-13756 Filed 6-6-94; 8:45 am]

BILLING CODE 4310-33-M

## Fish and Wildlife Service

### Availability of an Environmental Assessment and Receipt of a Joint Application for an Incidental Take Permit Involving San Joaquin Kit Fox, Blunt-Nosed Leopard Lizard, Tipton Kangaroo Rat, and Giant Kangaroo Rat by the City of Bakersfield and the County of Kern, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The City of Bakersfield and the County of Kern (co-applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The permit application and accompanying Metropolitan Bakersfield Habitat Conservation Plan (HCP) cover a 408-square mile area of Metropolitan Bakersfield. The HCP would result in incidental take of several federally listed endangered or threatened animal species presently occupying the conservation plan area. The Service announces the availability of an Environmental Assessment (EA), HCP, application for incidental take, and Implementing Agreement (IA). This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on these documents should be received on or before July 7, 1994.

**ADDRESSES:** Persons wishing to review these documents may obtain a copy by writing to the Service's Sacramento Field Office (SFO). Documents will be available by written request for public inspection, by appointment, during normal business hours at the SFO. Written data or comments concerning the documents should be submitted to the SFO. Please reference permit number PRT-786634 in your comments. Address comments or questions to: Field Supervisor, Sacramento Field Office, U.S. Department of the Interior, Fish and Wildlife Service, 2800 Cottage Way, room E-1823 Sacramento, California 95825-1846 (Telephone: 916-978-4866).

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Cross at the Service's Sacramento Field Office.

**SUPPLEMENTARY INFORMATION:** The Service must determine that the criteria identified in section 10(a)(2)(B) of the Act have been met in order to issue an incidental take permit under section 10(a)(2)(B). The criteria are: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of taking; (3) the applicant will ensure that adequate funding for the plan will be provided and procedures are available to deal with unforeseen circumstances; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) other measures which may be necessary, if any, are met. The public is invited to comment on the applicability of those criteria to this permit application.

### Background

Existing conflicts among federally protected species and urban development have prompted City of Bakersfield (City) and County of Kern (County) to pursue an HCP and incidental take permit pursuant to section 10(a)(1)(B) of the Act. The HCP is designed to offset impacts resulting from loss of habitat incurred through land use development activities in the Metropolitan Bakersfield area. The goal of the HCP is to acquire, preserve, and enhance native habitats which support endangered and threatened species and other species of concern, while allowing urban development to proceed within the Metropolitan Bakersfield area. The area covered by the HCP contains land within the jurisdiction of the City and County. The HCP is the product of a 7-year planning process involving the city, county, representatives of the environmental community and the building industry, and the California Department of Fish and Game (CDFG).

The HCP will result in incidental take of several endangered and threatened species within the 408-square mile area of Metropolitan Bakersfield. The Federal permit would make this take lawful so long as it is in accordance with the conditions of the permit as described in the HCP and its IA. The permit issued would cover the species formally listed by the Service at the time of issuance. Other species of concern could be added by amendment in the event that they are subsequently listed as an endangered species or threatened species. The section 10(a)(1)(B) permit would permit the incidental take of the following listed species: San Joaquin kit fox, blunt-nosed leopard lizard, Tipton kangaroo rat, and giant kangaroo rat.

The HCP addresses the following species of concern and listed plants, in addition to the federally protected species which will be covered by the plan: Short-nosed kangaroo rat, San Joaquin antelope squirrel, San Joaquin pocket mouse, Bakersfield saltbush, Slough thistle, recurved larkspur, Tulare pseudobahia, striped adobe lily, Bakersfield cactus, California jewel flower, San Joaquin wooly-threads, Hoover's wooly-star and Kern mallow.

The federally listed species are scattered generally throughout the open, non-urbanized lands of the Metropolitan Bakersfield area. According to biological surveys conducted for the HCP and surveys conducted by others since 1980, several of the species of concern may no longer occur in the area. the San Joaquin kit fox is the most widespread of the species of concern and is most frequently affected by urbanization in the HCP area. High potential for impact and the need for large preserves make the kit for a natural focus for the HCP.

Much of the area is in intensive agriculture, but retains value for kit fox in prey and even for dens in berms, near water impoundments, and on fallow land. Urbanization of agricultural land will result in a take of species, loss of habitat, and intensification of population related take (*e.g.*, road kills). The natural lands of the area have greater species value and represent more viable long-term habitat.

The HCP describes a method of collecting funds for the acquisition and/or enhancement of natural lands and restorable lands for purpsoes of preserves. Areas targeted for acquisition have been identified for conservation by the Service and CDFG as part of the

*Biological Framework for Natural Lands and Endangered Species* in the southern San Joaquin Valley. The HCP also provided for the minimization of take within the developed area.

The HCP addresses two categories of land: (1) Natural land, meaning land generally in grazing and with original soil and topography intact, and (2) open land, which includes natural land as well as agriculture and all other non-urban land in the area. Urbanization of either category would pay the same mitigation fee, but the two are distinguished for the purposes of environmental assessment and permit monitoring.

The HCP provides for: 1. Acquisition and management of a minimum of 3 acres of significant value endangered species habitat for every 1 acre of "natural" land developed within the HCP area, or acquisition and management of 1 acre of significant value endangered species habitat for every 1 acre of "open" land developed within the HCP area, whichever is greater.

2. Land acquisition outside of the HCP area with consideration to pre-approved acquisition areas identified by CDFG.

3. Acquisition and management of between 500 and 1,000 acres of land in the northeast portion of the study area for the primary purpose of preserving the Bakersfield cactus.

4. Acquisition and management of land, as feasible, adjacent to the Kern Water Bank project on the west side of I–5, south of Panama Lane.

5. Pursuit of cooperative agreements for restoring and enhancing land, as feasible, within the Kern Water Bank project area and provide funding as appropriate.

6. Limited relocation or displacement of individuals in areas affected by development as a means of reducing direct take of endangered species.

The HCP will be implemented under the terms of the section 10(a)(1)(B) permit issued by the Service and the IA. The permit is requested for a period of 20 years, or until urban development permits are issued for 15,200 acres of natural lands or 43,000 acres of open lands. The HCP has three categories of participation.

1. The Service as a permitter and advisor to the Implementation Trust (Trust);

2. City and County as permittees and trustees; and

3. Other implementing entities such as The Nature Conservancy and CDFG as preserve development coordinators.

The City and County will be the primary entities responsible for administering the institutional elements of the HCP in their respective jurisdictions.

Administration of the HCP involves the following categories: (1) Local mitigation fee collection and fund management, (2) management of State and Federal funding, if applicable, (3) preserve selection and acquisition, (4) preserve management, (5) land restoration and enhancement and species monitoring, (6) annual report and preparation, and (7) enforcement.

The HCP program relies on the formation of a Trust which would be in charge of making major preserve acquisition decisions and for administering the plan. The Trust will comprise representatives from the City and County as trustees, the Service, CDFG, and a member of the public as mandatory advisors. Specific preserve management plans would be developed later and carried out by each individual preserve management entity. The mitigation funds collected by the City and County will be deposited into a trust fund and would be administered by the Trust. The Trust will meet as necessary to carry out the HCP. The Trust will be responsible for reporting to the Service as to the status of enhancement.

The HCP program will be funded through the collection of a one time mitigation fee paid on all new construction taking place within the conservation plan area. The fee is $1,240 per gross acre for all new construction on previously undeveloped land, payable at the time building permits are issued. The fee is set in 1993 dollars and will be adjusted annually for inflation. Upon payment of this fee and receipt of City or County project approval, a development permit applicant would become a sub-permittee and would be allowed the incidental take of species in accordance with Federal endangered species laws.

The fee is based on per acre estimated costs of, (1) $600 for land, (2) $100 for fencing and improvement, (3) $300 for management and enhancement, and (4) $250 for program administration. The amount of mitigation fees collected will depend on the rate of growth in the HCP area. At current growth rates, fees will generate funding for acquisition and management or roughly 700 acres per year. State and Federal conservation funds will be sought to augment local funds for land acquisition.

The HCP applies to the entire conservation plan area (2010 General Plan), but the requested section 10(a)(1)(B) permit would only allow take in the area outside of the primary flood plain of the Kern River and lands within the Kern Water Bank. The Kern River is excluded to assure that an open corridor can be maintained between the foothills to the northeast and the San Joaquin Hills Valley floor to the west. Kern Water Bank lands are under the jurisdiction of the State of California.

The HCP addresses lands converted primarily to urban uses as permitted by the City or County. Activities which may result in a take, but which are not subject to approval by the City or County, will not be authorized by the proposed permit. Thus, impact on natural lands from oil extraction or agriculture are not subject to the permit, although some types of ancillary oil and agricultural facilities that are subject to City or County permits would be covered. Activities not covered by the permit would have to comply separately with Federal requirements.

Although the permit covers a large area, the take of threatened or endangered species will only occur where actual urban growth occurs. The area designated for urban uses (including all low density residential categories) in the 2010 General Plan covers roughly 74.5 square miles (47,600 acres) of undeveloped or open land. Of this, 22.25 square miles (14,200) acres is natural land, which currently supports populations of the species of concern, and 52.25 square miles (33,400 acres) of other open lands, primarily intensive agriculture. Full build-out of the 2010 General Plan would double the size of Bakersfield, but full build-out is not expected to occur within the proposed 20-year life of the permit. Realistic projections indicate a loss of open lands at a rate of roughly 1 square miles per year, which is assumed to be divided proportionately between natural and other open lands. At that rate, a loss of some 20 square miles of open land, including some 7 square miles of natural land, will take place over the life of the permit. Even though actual growth and impact may vary, the mitigation program is designed to be self-regulating, even a major increase in growth could be accommodated by the proposed HCP program.

The actual extent and location of Metropolitan Bakersfield growth cannot be exactly predicted, and the HCP must therefore rely on the ongoing preservation actions of the Trust. Permit compliance will be met by maintaining adequate enhancement levels. There are two tests that the Trust must meet: (1) 1 acre of enhancement for each acre of open land urbanized, or (2) 3 acres enhanced for each acre of natural land urbanized, whichever is greater. The accounting will be done quarterly and

annually, but will reflect cumulative urbanization commencing at the beginning of the permit period. Management plans for habitat areas will require approval from the Service.

The EA examines a range of alternatives pertaining to preserve strategy. The no-action alternative, meaning that the City and County would not obtain a section 10(a)(1)(B) permit, would leave much of the Metropolitan Bakersfield area in conflict with the Act and potentially subject to civil and criminal penalties. The Service could only enforce the Act on a case-by-case basis and significant impact on endangered species could still occur through piece meal reduction of habitat, cumulative indirect impact of growth, and lack of enhancement to offset past impacts. No action would lead to significant impairment of growth in Metropolitan Bakersfield, along with gradual, significant deterioration in the status of endangered species. Other alternatives examined include five other preserve strategies and mandatory relocation as additional mitigation.

Dated: May 31, 1994.

**Marvin L. Plenert,**

*Regional Director, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 94-13757 Filed 6-6-94; 8:45 am]

BILLING CODE 4310-55-M

## Notice of Availability of a Draft Recovery Plan for the Endangered and Threatened Fishes of the Rio Yaqui for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for endangered and threatened fishes of the Rio Yaqui. Four species are included in the recovery plan: Yaqui catfish (*Ictalurus pricei*), and beautiful shiner (*Cyprinella formosa*), both listed by the Service as threatened species on August 31, 1984 (49 FR 34494); Yaqui chub (*Gila purpurea*), listed by the Service as endangered on August 31, 1984 (49 FR 34494); and Yaqui topminnow (*Poeciliopsis occidentalis sonoriensis*), listed by the Service as endangered on March 11, 1967 (32 FR 4001). Historically, the headwaters of the Rio Yaqui that occur in the United States may not have provided sufficient habitat for large populations of the Yaqui catfish, however the other three species were widely distributed throughout the upper reaches of the Rio Yaqui system. Loss of habitat, plus competition and predation from nonnative fish threaten the continued survival of these fish within the United States. The Service solicits review and comments from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before August 8, 1994, to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Refuge Manager, San Bernardino National Wildlife, 1408 10th Street, Douglas, Arizona 85607. Comments and materials regarding the plan should be addressed to the Refuge Manager. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Cobble, Refuge Manager, (602) 364-2104 or at the above address.

**SUPPLEMENTARY INFORMATION:**

### Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site-specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires development of recovery plans for listed species unless such a plan would not promote conservation of a particular species. Section 4(f) of the Act, as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan preparation. The Service considers all information during a public comment prior to approval of each new or revised recovery plan. The Service and other Federal agencies also take these comments into account in the course of implementing approved recovery plans.

Loss of habitat and competition with, and or predations from, nonnative fish are threats to the continued survival of the listed fish of the Rio Yaqui. In addition, the Yaqui catfish hybridizes with channel catfish (*Ictalurus punctatus*) thereby encountering an additional threat. The recovery plan addresses protection of existing populations, restoration of depleted populations, and protection and restoration of habitat as elements that must be achieved if the species is to survive in the wild. The recovery plan also recognizes the need to work with Mexican Government and Mexican biologists to conserve habitat and fish populations that occur in Mexico. Expansion of these species into historic habitat in Mexico will need to be accomplished before delisting of these species can occur.

The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

### Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

### Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 27, 1994.

**John G. Rogers,**

*Regional Director.*

[FR Doc. 94-13758 Filed 6-6-94; 8:45 am]

BILLING CODE 4310-55-M

## National Park Service

## Indiana Dunes National Lakeshore, IN

**AGENCY:** National Park Service, Interior.

**ACTION:** Indiana Dunes National Lakeshore Revision of Lakeshore Boundary.

The Act of October 18, 1976, 90 Stat. 2532, 2533, 16 U.S.C. 460 u-19, following notice to Congress as provided therein, which has been satisfied, authorizes the United States to accept title to any lands, or interests in lands, located outside the boundaries of the Lakeshore which any private person, organization, or public or private corporation may offer to donate to the United States, if the Secretary finds that such lands would make a significant contribution to the purposes for which the Lakeshore was established; and he shall administer such lands as part of the Lakeshore following this publication. Landsource, Inc. on behalf of Midwest Division of National Steel

Corporation, has offered to donate 51.47 acres of land for incorporation into the Lakeshore. The tract of land being donated is in Porter County, Indiana. The lands are principally composed of oak savannah of a similar composition to the Inland Marsh unit of the Lakeshore which it adjoins. It includes significant habitat for the federally listed endangered Karner Blue Butterfly. The tract also affords recreational opportunities for the visiting public. It is considered that the recreational opportunities offered by this property, along with the biological resources on this 51.47 acres, will make a significant contribution to the Lakeshore. The specific lands proposed for addition are described as follows:

A tract of land situate in Section 3, Township 36 North, Range 7 West, Second Principal Meridian, Porter County, Indiana, described as follows:

*Parcel 1*

That part of the Northwest Quarter of the fractional Northeast Quarter of Section 3, Township 36 North, Range 7 West, of the Second Principal Meridian, Porter County, Indiana, lying South of lands conveyed to the United States of America by deed dated August 7, 1978, and recorded in Deed Record 312, Page 455, in the office of the Recorder of Porter County, Indiana, containing 25.06 acres, more or less.

*Parcel 2*

That part of the Southwest Quarter of the Northeast Quarter of Section 3, Township 36 North, Range 7 West, of the Second Principal Meridian in Porter County, Indiana, lying North of the Northern Indiana Public Service Company power line right-of-way as shown in Deed Record 89, Page 256, and as amended in Deed Record 293, Page 82, which records are in the Office of the Recorder of Porter County, Indiana, containing 26.41 acres, more or less. The above described tract contains 51.47 acres, more or less.

Therefore, notice is hereby given that in accordance with the Act of October 18, 1976, the boundary of the Indiana Dunes National Lakeshore is revised as described above, and as shown on Indiana Dunes National Lakeshore Segment Map 09. The map is on file and available for inspection in the Office of the National Park Service, Department of the Interior; the Office of the Midwest Region, National Park Service; and the Office of the Superintendent, Indiana Dunes National Lakeshore.

Dated: March 21, 1994.

**David N. Given,**

*Acting Regional Director, Midwest Region.*

[FR Doc. 94–13750 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–70–M

## Public Comment on Sample Prospectus and Related Guidelines

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice and Public Comment on Sample Prospectus and Related Guidelines.

**SUMMARY:** In the **Federal Register** of March 17, 1994 [59 FR 12622], the National Park Service proposed a sample prospectus and related guidelines for public comment. The sample prospectus language will replace the existing prospectus language and certain chapters of the Concession Guideline previously used by the National Park Service.

As originally announced, public comments were to be accepted through May 16, 1994. This notice extends the comment period by approximately thirty days, until June 17, 1994.

**DATES:** Written comments on the proposed prospectus language will be accepted through June 17, 1994.

**ADDRESSES:** Comments should be addressed to: Director, National Park Service, Washington, D.C. 20013–7127.

**FOR FURTHER INFORMATION CONTACT:** Wendy Mann of the National Park Service Concessions Division at the address given above; telephone (202) 343–1561.

Dated: May 18, 1994.

**Michael Finley,**

*Acting Associate Director, Operations, National Park Service.*

[FR Doc. 94–13751 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–70–M

## National Preservation Technology and Training Board: Meeting

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of meeting of the National Preservation Technology and Training Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board will meet on June 22 and 23, 1994, in Atlanta, Georgia. The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training, as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board will meet on June 22, 1994, in the Swan House at the Atlanta History Center, 3101 Andrews Drive NW, Atlanta. On June 23, the Board will meet in the President's Suite A at the Student Success Center, Georgia Institute of Technology, 119 Uncle Heine Way, Atlanta. Matters to be discussed will include, priorities for research and training, and filling the position of executive director of the National Center for Preservation Technology and Training.

Wednesday, June 22, the meeting will start at 12:30 pm ending at 5:00 pm, and on Thursday it will be held from 10:00 am until 12:00 noon. Meetings will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Elizabeth A. Lyon, Chair, National Preservation Technology and Training Board, Office of Historic Preservation, Department of Natural Resources, 1252 Floyd Towers East, 205 Butler Street, SE, Atlanta, Georgia 30334.

Persons wishing more information concerning this meeting, or who wish to submit written statements, may do so by contacting Mr. E. Blaine Cliver, Acting Executive Director, National Center for Preservation Technology and Training, Preservation Assistance Division, P.O. Box 37127, Washington, DC 20013–7127, telephone: (202) 343–9573. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Preservation Assistance Division, Suite 200, 800 North Capitol Street, Washington, DC.

Dated: June 25, 1994.

**E. Blaine Cliver,**

*Acting Executive Director, National Center for Preservation, Technology and Training.*

[FR Doc. 94–13753 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–70–P

## 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 28, 1994. Pursuant to § 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 22, 1994.

**Beth M. Boland,**

*Acting Chief of Registration, National Register.*

FLORIDA

**Lake County**

*Ferran Park and the Alice McClelland Memorial Bandshell*, Jct. of Ferran Park Rd. and Orange Ave., Eustis, 94000625

**Monroe County**

*Thompson Fish House, Turtle Cannery and Kraals*, 200 Margaret St., Key West, 94000633

**Santa Rosa County**

*Florida State Road No. 1*, Roughly, three sections E of Milton, parallel to US 90, between Marquis Bayou and Harold; Milton vicinity, 94000626

IDAHO

**Benewah County**

*Heyburn State Park CCC District*, Roughly, along ID 5 and W along Chatcolet Lake, Chatcolet vicinity, 94000632

**Boundary County**

*Spokane & International Railroad Construction Camp*, E of US 95 along the Spokane & International RR tracks, 2 mi. S of the US—Canadian border, Eastport vicinity, 94000630

**Canyon County**

*Houlder, Ellen, Farm*, Arena Valley Rd. (Rt. 2) W of Wilder, Wilder vicinity, 94000631

**Latah County**

*Hotel Bovill*, 602 Park St. (ID 3), Bovill, 94000629

MAINE

**Cumberland County**

*Union Church*, US 302 S side, 0.1 mi. W of jct. with ME 11/114, Naples, 94000638

**Knox County**

*Finnish Congregational Church and Parsonage*, ME 131 E side, 0.9 mi. S of jct. with US 1, South Thomaston vicinity, 94000639

**Oxford County**

*Long, Zadoc, Free Library (Maine Public Libraries)*, ME 117 S side, at jct. with ME 140, Buckfield, 94000636

*Oxford Congregational Church and Cemetery*, King St. E side, 0.2 mi. N of jct. with ME 121, Oxford, 94000637

MISSISSIPPI

**Adams County**

*Patterson, Charles, House*, 506 S. Union St., Natchez, 94000645

**Attala County**

*Thompson School*, Ethel—McCool Rd. E of Ethel, Ethel vicinity, 94000647

**Clarke County**

*Shubuta Baptist Church (Clarke County MPS)*, Eucutta St. at jct. with US 45, Shubuta, 94000641

**Coahoma County**

*Alcazar Hotel, New*, 127 Third St., Clarksdale, 94000646

**Kemper County**

*Perkins House*, Murphy Hardy Rd. NW of jct. with MS 493, DeKalb vicinity, 94000643

**Lee County**

*Stewart—Anderson House (Tupelo MPS)*, 433 N. Church St., Tupelo, 94000644

**Lowndes County**

*Rosedale*, 1523 Ninth St. S., Columbus, 94000642

OHIO

**Cuyahoga County**

*Lower Prospect—Huron Historic District (Lower Prospect—Huron District MPS)*, Seven blocks in downtown centered around jct. of Prospect Ave., Huron Rd. and E 9th St., Cleveland, 94000640

TEXAS

**Bexar County**

*Blue Star Street Industrial Historic District*, 1432 S. Alamo St., San Antonio, 94000627

**Harris County**

*Isabella Court*, 3909—3917 S. Main St., Houston, 94000628

VERMONT

**Orange County**

*Tunbridge Village Historic District*, Roughly, along VT 110 and adjacent rds. including Town Rd. 45 and Spring and Stafford Rds., Tunbridge, 94000635

WISCONSIN

**Chippewa County**

*Bridge Street Commercial Historic District*, Roughly, Bridge St. from Columbia to Spring Sts., Chippewa Falls, 94000648

**Racine County**

*Wilmanor Apartments*, 1419—1429 W. Sixth St. and 253—255 N. Memorial Dr., Racine, 94000649

**Vilas County**

*Eagle River Stadium*, 4149 WI 70, Eagle River, 94000650

[FR Doc. 94–13752 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–70–M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 32322]**

### Vaughan Railroad Company—Construction Exemption—Nicholas and Fayette Counties, WV

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of availability of environmental assessment.

**SUMMARY:** By decision served November 4, 1993 in this proceeding, the Commission granted, subject to environmental review, Vaughan Railroad Company's petition for exemption from the requirements of 49 U.S.C. 10901 for the construction and operation over two railroad segments—a 8.8 mile railroad extension and a 0.4 mile connecting track in Nicholas and Fayette Counties, West Virginia. The effective date of the decision was postponed until completion of the Commission's environmental review and further decision. The Commission has prepared its environmental assessment which concludes that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources. The Commission will consider any comments to the conclusions reached in the environmental assessment before rendering a final decision in this proceeding.

**DATES:** Written comments must be filed by July 1, 1994.

**ADDRESSES:** Send an original and 10 copies of comments referring to Finance Docket No. 31680 to: (1) Section of Environmental Review, Room 3219, Interstate Commerce Commission, Washington, DC 20423, and one copy of the comments to: (2) Petitioner's representative: Thomas W. Wilcox; 1275 K Street NW.; suite 850; Washington, DC 20005–4078.

**FOR FURTHER INFORMATION CONTACT:** John J. O'Connell (202) 927–6215 or Elaine K. Kaiser, Section Chief (202) 927–6248. (TDD for hearing impaired: (202) 927–5721).

**SUPPLEMENTARY INFORMATION:** Copies of the Environmental Assessment may be obtained from the Section of Environmental Analysis, room 3219, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 927–6245. Assistance for the hearing impaired is available through TDD Services at (202) 927–5721.

By the Commission, Milan P. Yager, Director, Office of Economic and Environmental Analysis.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 94–13769 Filed 6–6–94; 8:45 am]

BILLING CODE 7035–01–P

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

[INS No. 1662–94; AG Order No. 1885–94]

RIN 1115–AC30

### Designation of Rwanda Under Temporary Protected Status Program

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** Under section 244A of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a) ("the Act"), the Attorney General is authorized to grant Temporary Protected Status (TPS) in the United States to eligible nationals of designated foreign states, or to eligible aliens who have no nationality and who last habitually resided in a designated state, upon a finding that such states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. This notice by the Attorney General designates Rwanda pursuant to section 244A(b) of the Act.

**EFFECTIVE DATES:** This designation is effective on June 7, 1994 and will remain in effect until June 6, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ronald Chirlin, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., room 3214, Washington, DC 20536, telephone (202) 514–5014.

### Notice of Designation of Rwanda Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, as amended, (8 U.S.C. 1254a), I find, after consultation with the appropriate agencies of the Government, that: (a) There exists an ongoing armed conflict in Rwanda and that a return of aliens who are nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, would pose a serious threat to their personal safety as a result of the armed conflict in that nation; (b) there exist extraordinary and temporary conditions in Rwanda that prevent aliens who are nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, from returning to Rwanda in safety; and (c) permitting nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, to remain temporarily in the United States is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) Rwanda is designated under section 244A(b) of the Act. Nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, and who have been "continuously physically present" and have "continuously resided in the United States" since June 7, 1994 may apply for Temporary Protected Status within the registration period which begins on June 7, 1994 and ends on June 6, 1995.

(2) I estimate that there are no more than 500 nationals of Rwanda and aliens having no nationality who last habitually resided in Rwanda, who are currently in nonimmigrant or unlawful status, eligible for Temporary Protected Status.

(3) Except as specifically provided in this notice, applications for Temporary Protected Status by nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, must be filed pursuant to the provisions of 8 CFR part 240. Aliens who wish to apply for TPS must file an Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, during the registration period, which begins on June 7, 1994 and will remain in effect until June 6, 1995.

(4) A fee of fifty dollars ($50) will be charged for each Application for Temporary Protected Status, Form I–821, filed during the registration period.

(5) The fee prescribed in 8 CFR 103.7(b)(1), now set at sixty dollars ($60), will be charged for each Application for Employment Authorization, Form I–765, filed by an alien requesting employment authorization. An alien who does not seek employment authorization must nevertheless file Form I–765, together with Form I–821, for informational purposes, but in such cases Form I–765 will be without fee.

(6) Pursuant to section 244A(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before June 6, 1995 the designation of Rwanda under the Temporary Protected Status program to determine whether the conditions for designation continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. If there is an extension of designation, late initial registration for Temporary Protected Status shall only be allowed pursuant to the requirements of 8 CFR 240.2(f)(2) which was published as an interim rule in the **Federal Register** on November 5, 1993, at 58 FR 58935–58938.

(7) Information concerning the Temporary Protected Status program for nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: June 1, 1994.

**Janet Reno,**

*Attorney General.*

[FR Doc. 94–13796 Filed 6–6–94; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[V–93–1]

### Envirosafe Services, Inc.; Variance Applications, etc.

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Grant of Variance.

**SUMMARY:** This notice announces the grant of a permanent variance to Envirosafe Services, Inc. from the standard that prescribes procedures to be used in draining and flushing combustible/flammable liquids (29 CFR 1910.106[b][2][viii][*f*]).

**DATES:** The effective date of the variance is June 7, 1994.

**FOR FURTHER INFORMATION CONTACT:**

Hank Woodcock, Acting Director, Office of Variance Determination, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 219–7065

or the following OSHA Regional and Area Offices:

U.S. Department of Labor—OSHA, 1111 Third Avenue, suite 715, Seattle, Washington, 98101–3212

U.S. Department of Labor—OSHA, 3050 N. Lakeharbor Lane, suite 134, Boise, Idaho 83703.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Envirosafe Services, Inc. (*i.e.*, "Envirosafe" or "applicant"), 200 Welsh Road, Horsham, Pennsylvania 19044, has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970. The address of the place of employment affected by this application is:

Envirosafe Services of Idaho, Inc., Highway #78, Missile Base Road, Grand View, Idaho 83624.

Envirosafe states that its employees are being provided with employment and a place of employment as safe and healthful as required by 29 CFR 1910.106(b)(2)(viii)(*f*) (*i.e.*, "the

standard"), which specifies the procedures to be used in draining and flushing combustible and flammable liquids; Envirosafe, therefore, requests a permanent variance from this standard under 29 U.S.C. 655 and 29 CFR 1905.11.

The **Federal Register** notice of September 28, 1993 (58 FR 50568) informed the public that OSHA has received the applicant's variance application. This notice invited interested persons, including affected employers and employees, to submit written comments, data, views and arguments regarding the variance requested. In addition, affected employers and employees were notified of their right to request a hearing on the variance application. No comments or requests for a hearing were received in response to this notification.

**II. Facts**

The applicant operates a commercial storage and chemical-waste landfill facility for disposal of polychlorinated biphenyls (PCBs). Transformers and other articles containing PCBs received at the facility must be drained and flushed, and the flushed liquid placed into storage tanks. According to the applicant, two of its employees drain transformers containing PCB-contaminated oil into one of the two 10,000-gallon outside tanks. The transformers then are filled with diesel fuel and allowed to sit approximately 18 hours. The diesel fuel subsequently is drained into one of the two outside tanks previously mentioned. It is during this draining and flushing operation that the filling and emptying connections controlled under the subject standard are made and broken. These draining and flushing operations occur within the processing and storage building, as opposed to outside the building as required by the standard. As a result of these draining and flushing operations, a conflict exists between OSHA's requirement 29 CFR 1910.106(b)(viii)(*f*) and Environmental Protection Agency (EPA) requirements specified under 40 CFR 761.65(b)(1) concerning the draining and flushing of combustible/flammable liquids. Specifically, the EPA requires that processing and storage facilities for PCBs be located inside enclosed structures to avoid exposure to weather, with specially-designed steel floors to properly drain spills, while OSHA requires that transfer of combustible/flammable liquids—diesel fuel in this case—be accomplished outside enclosed structures.

Outside storage tanks used to store the flushed liquid are provided with a continuously-welded steel secondary containment unit that is 30 feet in diameter and 3 feet, 6 inches high. The tanks also are placed on 2-inch x 1/14-inch heavy-duty welded steel grating to allow immediate identification of any leaks from the tank bottom. The secondary containment structure has the capacity to hold 100 percent of the volume of the largest tank within its perimeter plus the volume of water that would be added from a 24-hour rainfall totalling 1.75 inches.

Auxiliary equipment (*e.g.*, pumps and pipelines systems serving the tanks) also is above ground and subject to daily visual inspections. All pumps and disconnect units are within the processing/storage building (the "processing building"), which has a welded steel floor for containment.

For security purposes, the facility is located within a fenced, controlled area. The main entry gate to the facility is open during operating hours; during these hours, a security officer is posted at this gate to preclude unauthorized entry. During nonoperating hours, the main entry gate is locked and a security officer is posted at this gate; this security officer also makes periodic patrols of the facility during nonoperating hours. The remaining six gates to the facility are normally locked with a key lock during both operating and nonoperating hours; keys to these locks are contained in a sealed (*i.e.*, "break") box next to each of these gates. During emergency events (*e.g.*, fire or explosion), evacuees will break the seals to these boxes, remove the keys, and unlock the gates to effect emergency egress from the facility. Access to the tank area is controlled, and only authorized personnel are permitted to enter the area. The tanks (including tank valves and connections), associated equipment building, and surrounding area are inspected by designated inspector/supervisors for spills, structural integrity/damage, proper grounding, the presence of sparks and open flames/other ignition sources, accessibility and proper space segregation between tanks, and notation of liquids in the tanks; these inspection procedures are required as part of the facility's Operating Permit issued by the EPA. These inspections are conducted daily during regular operating periods.

Instead of complying with the standard, the applicant contends that specific safety procedures and engineering provisions used during the draining and flushing operations will provide protection equal to, or better than, the standard. These procedures and provisions are discussed below.

1. Operators are supervised during the transfer of PCBs or ignitable materials.

2. Waste-handling (*i.e.*, draining and flushing) areas are clearly marked with warning signs and routinely inspected (at least once daily during regular operating periods) by designated inspectors/supervisors to assure that hazardous concentrations of vapors generated by combustible/flammable liquids are not permitted to accumulate in a waste-handling area when ignition sources are present. No meters are used to monitor diesel fuel vapors in waste-handling areas because the vapor pressure of diesel fuel (*i.e.*, 0.4 mm Hg @ 68°F) is too low to register on commercially-available gas meters or the photometric meters (*i.e.*, HNu units) used normally to monitor volatile vapors.

3. Smoking is prohibited inside the processing building.

4. Hot work permits are required prior to any activity that may generate a source of ignition. Draining and flushing operations do not take place when a work permit is issued for repairs in the processing area.

5. During loading/unloading operations, transportation vehicles containing ignitable substances are secured to prevent movement, and grounded to reduce the potential for static discharge.

6. No ignitable wastes are processed in uncontrolled areas.

7. All pumps, hoses, and connections are checked by system operators for leaks and ruptures prior to operation, and at least once daily during regular operating hours by designated inspectors/supervisors.

8. Direct ventilation is provided during these draining and flushing operations by a wall-mounted exhaust fan located adjacent to the processing area. This fan circulates air at 12,000 cubic feet per minute (*i.e.*, 18 air changes per hour), thereby preventing accumulation of diesel fuel vapors inside the building.

9. The processing building is ventilated by roof-mounted turbine vents.

10. All tanks containing ignitable wastes meet American Society for Testing and Materials specifications for ignitables, and are grounded to prevent sparking and potential ignition. For these tanks, discharge valves are fitted with fusible links that close in case of a fire emergency.

11. Procedures have been established to minimize, contain, and expeditiously remove any liquid spills (containing PCBs, ignitable liquids, or combinations thereof) that may occur within the facility. In addition, daily inspections for spills are conducted during regular operating periods by designated

inspectors/supervisors (including monitoring tank volumes for undocumented reductions); all hoses, connections, and valves are inspected by systems operators prior to initiating an operation. Leaking drums are placed in overpack drums. The processing system is provided with a series of interlocks to prevent liquid spills.

Spill-removal procedures vary according to the size of the spill. If the spill is small, the hazardous liquid should be removed using designated sorbents and containers available in the processing area. During removal, the following safety precautions must be observed: Contact with the spilled material is to be avoided; unnecessary personnel must leave the area; protective equipment (descibed below in paragraph 14) must be worn; the area must be ventilated; personnel and equipment must be decontaminated thoroughly following exposure (eyewashes and bodywashes are available in the processing area for this purpose); and technical advice should be sought if necessary. Large spills should be contained using diking materials available in the processing areas. Safety precautions prescribed for controlling small spills should be used in large-spill situations as well. Where there is a high potential for spills, work is performed within diked or curbed areas. If the spilled material escapes, downstream authorities must be notified. A detailed Contingency Plan for managing spills may be obtained from Envirosafe at the address listed above in the first paragraph under I. Background.

12. The storage tank volume is checked prior to pumping ignitable liquids into the tank to assure that there is adequate volume to receive these liquids.

13. Tanks are checked to assure that the proper tanks are being filled with flushed liquid.

14. Personnel involved in draining and flushing operations receive specific, documented training for conducting these operations as prescribed by appendix 3 ("Training Plan/section 17, PCB Personnel Training Program"), volume I of the EPA's "Final Approval for Disposal and Commercial Storage of Polychlorinated Biphenyls" (hereafter, the "EPA approval document"). This training includes emergency procedures for the general workforce (*e.g.*, recognizing alarms, notifying designated authorities of the emergency, egressing from the facility), and specialized training for members of the fire bridgade in controlling and suppressing explosions/fires. (Members of the fire brigade are volunteers from among Envirosafe's local employees; these employees leave their regular jobs to respond to emergencies.) The EPA issued this approval document under Permit Number IDD073114654, September 20, 1991. Copies of training plans, including training plans for emergency procedures used by the general workforce and the fire brigade, may be obtained from Envirosafe at the address listed above in the first paragraph under I. Background.

During emergency events involving PCB contamination, emergency personnel are required to wear chemical-protective clothing (*i.e.*, polyethylene-coated coveralls, pvc or composite-rubber gloves, and full-face, fitted respirators).

Every employee at the facility has access to either the internal telephone system or a two-way radio that can be used to communicate the occurrence of a fire or explosion to the Emergency Coordinator located in the supervisor's trailer at the north end of the facility site. The Emergency Coordinator determines the correct emergency response, and initiates this emergency response by manually activating the appropriate combination of falcon horns, sirens, and/or alarm horn/strobe-light sets. Using predetermined routes, all nonessential employees are evacuated from the immediate fire/explosion area to designated assembly areas outside the facility gates. Only authorized (and predesignated) employees are allowed to remain in the fire/explosion area. During regular operating hours, the fire brigade is available onsite to control the emergency event. During nonoperating hours, the employee who discovers the emergency, usually the security officer, notifies the Emergency Coordinator; after determining the appropriate response, the Emergency Coordinator telephones members of the fire brigade at their homes and directs them to report to the Envirosafe facility. After the emergency event has been controlled, the decision to reenter the facility can be made only by the Emergency Coordinator; prior to reentry, a tally is made of employees, contract personnel, and visitors.

All employees receive emergency training drills semi-annually, during which they practice emergency evacuations. If a power outage occurs during an emergency event, emergency equipment requiring electricity can be operated either through batteries (*e.g.*, two-way radios) or auxiliary power. Copies of the Emergency Evacuation Plan covering these activities may be obtained from Envirosafe at the address listed above in the first paragraph under "I. Background."

15. To respond to serious emergency events (*i.e.*, fires and explosions), a fire brigade consisting of specially-trained Envirosafe employees is available during operating hours. Pursuant to the Training Plan mentioned in the preceding section, members of the fire brigade are trained not only in fire brigade procedures and safety, but in first aid and CPR.

Every employee at the facility receives the following onsite emergency training: Procedures for locating, using, inspecting, repairing, and replacing facility emergency and monitoring equipment; emergency communication procedures and alarm system operation; proper responses to fires, explosions, and spill incidents (*i.e.*, procedures for containing, controlling, and mitigating spills); and evacuation procedures. At least two employees on duty during regular operating hours are trained in first-aid and CPR.

As described in Table G–4 of Appendix 5 to the EPA approval document, the fire brigade is trained to use dry chemicals or carbon dioxide on small fires, and standard firefighting agents (*i.e.*, foam and high-pressure water) on large fires. The fire brigade is available at the facility during normal operating hours (and on standby status at home during nonoperating hours), and is equipped with a fire truck carrying a foam unit, high-pressure water applicator, and water supply. A storage tank has been installed at the facility to supply a maximum of 16,000 gallons of water during fire emergencies. Employees in the processing building are trained to operate Class ABC 20-pound fire extinguishers, while members of the fire brigade also are trained in the use of 125-pound Class BC fire extinguishers located outside this building.

The applicant states that it is providing its employees with employment and a place of employment at least as safe and healthful as required by 29 CFR 1910.106(b)(2)(viii)(*f*) by using engineering techniques and operational procedures to prevent the accumulation of vapors generated from the transfer of combustible/flammable liquids used in its processing operations and by controlling ignition sources at these transfer sites.

## III. Decision

The applicant has requested from OSHA a variance from the provisions of 29 CFR 1910.106(b)(2)(viii)(*f*). This standard requires that filling and emptying connections that are made and broken during the transfer of

combustible/flammable liquids shall be located outside the buildings at a location free from any source of ignition and not less than 5 feet away from any building opening. Such connection shall be closed and liquid-tight when not in use. The connection shall be properly identified. This standard assures worker safety by preventing fires and explosions that may occur during transfer operations involving combustible/flammable liquids. This purpose is accomplished by: Providing sufficient ventilation at combustible/flammable liquid transfer sites to prevent concentrations of vapor-air mixtures (resulting from spilled liquids) from exceeding one-fourth of the lower flammable limit defined under 29 CFR 1910.106(a)(31); and prohibiting sources at the transfer sites that could ignite these vapor-air mixtures. Due to a conflict between the OSHA and EPA standards, as discussed above under section II, the applicant's filling and emptying connections are made and broken inside the building compared to outside the building as required under the OSHA standard.

To assure maximum employee protection during flushing and draining operations, the applicant has implemented specific procedures to assure that the above OSHA standard will be met or exceeded. These procedures include: Providing supervision of employees during the transfer of PCBs or ignitable materials; inspecting draining and flushing areas daily to assure that ignition sources are not present; forbidding waste-handling operations that may generate sources of ignitions from occurring when hot work permits are issued for repairs; prohibiting smoking in the process building; providing a large-capacity fan and several roof-mounted turbine vents to prevent the accumulation of diesel fuel vapors inside the building; securing and grounding transportation vehicles to prevent movement and potential static discharge; minimizing, containing, and expeditiously removing any PCB ignitable liquids spills; continuously inspecting drums, hoses, and connections; wearing appropriate protective clothing and respirators when controlling liquid spills; and training general employees and inhouse fire brigade personnel in pertinent emergency procedures.

OSHA has determined that the applicant, by using the above-mentioned operational procedures and engineering techniques, will provide employment and a place of employment as safe and healthful as required under 29 CFR 1910.106(b)(2)(viii)(*f*) in preventing the accumulation of hazardous vapors generated from combustible/flammable liquids used in its processing operations, and controlling ignition sources at the transfer sites.

Moreover, in the event of a fire or an explosion, every employee at the facility can notify the Emergency Coordinator by either the internal telephone system or a two-way radio. Upon notification of a fire or explosion, the Emergency Coordinator manually activates the appropriate alarms. All employees, except trained fire brigade members, are evacuated. This emergency training program conforms with OSHA's policy to allow fire brigades under conditions in which training, organization, and planning are adequate to assure employee safety and health.

On the basis of the variance application and supporting data, OSHA has determined that the specific safety procedures used by the applicant during the draining and flushing operations will provide employee protection equal to, or better than, the level of protection required under 29 CFR 1910.106(b)(2)(viii)(*f*). Therefore, based on the record discussed above, OSHA finds that compliance with the terms of the Order set out below will provide employment, and a place of employment, that are as safe and healthful as would be provided if the applicant complied with 29 CFR 1910.106(b)(2)(viii)(*f*).

## IV. Order

Pursuant to section 6(d) of the Occupational Safety and Health Act of 1970, the Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR part 1905, it is ordered that Envirosafe Services, Inc., is authorized to implement the following conditions in lieu of complying with the provisions in 29 CFR 19(b)(2)(viii)(*f*).

1. All employees involved in the draining and flushing operations shall receive specific, onsite, and documented training as discussed in Envirosafe's Emergency Evacuation Plan at least once annually. The general workforce shall be trained in emergency procedures, including recognition and operation of emergency alarms, procedures for notifying designated authorities of an emergency, operation of emergency communication equipment, evacuation procedures, containing and controlling spills, fire drills, and fire suppression techniques and procedures (*i.e.*, procedures for locating, using, inspecting, repairing and replacing facility emergency and monitoring equipment, including Class ABC 20-pound fire extinguishers).

2. Members of the fire brigade shall receive specialized training in controlling and suppressing explosions/fires, including using dry chemicals and carbon dioxide on small fires, and standard firefighting agents (*i.e.*, foam and high-pressure water) on large fires; they shall demonstrate proficiency in operating Class ABC 20-pound fire extinguishers and Class BC 125-pound fire extinguishers. The fire brigade shall be equipped with a fire truck carrying a foam unit, high-pressure water applicator, and water supply. A 16,000-gallon storage tank shall be installed and maintained at the facility to supply water during fire emergencies. Additionally, all fire brigade members shall be trained in first aid and CPR.

3. A continuing education program shall be conducted at least annually for members of the fire brigade by a person or persons qualified by experience or special training in current fire-fighting techniques.

4. All employees in the processing building shall receive emergency training drills semi-annually, including practice in emergency evacuations.

5. All employees shall be instructed in the procedures of the Emergency Evacuation Plan immediately upon being hired.

6 . At least two employees on duty during regular operating hours, and who are not members of the fire brigade, must be trained in first aid and CPR.

7. Every employee shall have access to either the internal telephone system or a two-way radio to report fires/explosions to the Emergency Coordinator.

8. All emergency equipment requiring electricity shall be capable of operating via batteries or auxiliary power should regular electrical service be disrupted during an emergency involving fire/explosion.

9. During emergencies involving PCB contamination, emergency personnel shall be provided with the appropriate personal protective clothing and equipment (*i.e.*, chemical-protective clothing such as polyethylene-coated coveralls, pvc or composite-rubber gloves, and full-face fitted respirators).

10. All operators shall be supervised during the transfer of PCBs or ignitable materials.

11. All waste-handling (*i.e.*, draining and flushing) areas shall be properly marked by readily visible warning signs stating that "Only authorized employees are allowed in the tank areas, and in the draining and flushing areas."

12. The draining and flushing area shall be inspected for flammable/combustible fuel spills and leaks at least once daily during regular operating

periods by designated inspectors/supervisors to prevent the accumulation of hazardous concentrations of vapors generated by combustible/flammable liquids.

13. Smoking shall be prohibited inside the processing building. "No smoking" signs shall be displayed conspicuously throughout the processing building.

14. All emergency exits shall be properly marked by readily visible signs.

15. Hot-work permits shall be issued to prohibit draining and flushing operations in the processing building during operations that may generate a source of ignition.

16. Draining and flushing operations shall not take place in the processing building when a hot work permit is issued for repairs in that building.

17. No ignitable waste shall be processed in uncontrolled areas and, during loading and unloading operations, transportation vehicles containing ignitable substances shall be secured to prevent movement and grounded to reduce the potential for static discharge.

18. All pumps, hoses, valves, and connections shall be checked by system operators for leaks and ruptures prior to initiating each draining and flushing operation, and at least once daily by designated inspectors/supervisors during regular operating hours.

19. Leaking drums shall be placed in overpack drums.

20. Direct ventilation of the processing building shall be provided during the draining and flushing operations by a wall-mounted exhaust fan located adjacent to the processing area. This fan shall circulate air at 12,000 cubic feet per minute (*i.e.*, 18 air changes per hour), and shall be capable of operating under auxiliary electric power.

21. The processing building shall be vented by roof-mounted turbine vents.

22. The processing system shall be provided with a series of interlocks to prevent liquid spills.

23. Inspectors/supervisors shall inspect the processing building and tank areas for spills on a daily basis.

24. A detailed Contingency Plan for managing spills shall be available at the facility. This Plan shall consist of written procedures established to minimize, contain, mitigate, and expeditiously remove liquid spills (containing PCBs, ignitable liquids, and combinations thereof) that may occur in the facility. These written procedures shall be posted near areas where spills are likely to occur, and all employees are to receive documented training annually on these procedures.

25. All spills shall be cleaned immediately. Small spills shall be removed by using designated sorbents and containers. Large spills shall be contained using diking materials if necessary. Work shall be performed in diked/curbed areas where the potential for spills is high.

26. During spill removal, the following safety procedures shall be observed.

a. Contact with the spilled material shall be avoided;

b. Unnecessary personnel shall leave the area;

c. Appropriate protective equipment (described under Condition 9 above) shall be worn;

d. The area shall be ventilated;

e. Personnel exposed in any manner to the spilled material shall be decontaminated thoroughly using eyewashes and bodywashes available in the processing area; this decontamination shall occur immediately following spill removal; and

f. Technical advice shall be obtained as necessary.

27. Authorities shall be notified if the spilled material escapes downstream.

28. All tanks containing ignitable waste shall meet American Society for Testing and Materials specifications for ignitables, and shall be grounded to prevent sparking and potential ignition. These tanks shall be fitted with discharge valves with fusible links that close in case of a fire emergency.

29. Storage tanks shall be adequately maintained; these tanks shall be checked prior to pumping ignitable liquids into the tanks to assure that there is ample space to accommodate the liquid, and that the proper tanks are being filled with flushed liquids.

Upon receipt of this order, Envirosafe Services, Inc. shall give affected employees notice of the terms contained herein using the same means required to inform them of the variance application.

This order shall become effective on June 7, 1994, and shall remain in effect until modified or revoked in accordance with section 6(d) of the Occupational Safety and Health Act of 1970.

Signed at Washington, DC, this 23d day of May 1994.

**Joseph A. Dear,**

*Assistant Secretary of Labor.*

[FR Doc. 94–13716 Filed 6–6–94; 8:45 am]

BILLING CODE 4510–26–M

## Office of Federal Contract Compliance Programs

### Commonwealth Aluminum Corporation Reinstatement

**AGENCY:** Office of Federal Contract Compliance Programs, Labor.

**ACTION:** Notice of Court Order Staying the Debarment Commonwealth Aluminum Corporation.

**SUMMARY:** A previous notice in the **Federal Register**, appearing on May 27, 1994, at Vol. 59 No. 102, 59 FR 27581, advised of the court-ordered stay of debarment of Commonwealth Aluminum Corporation (hereafter "Commonwealth Aluminum"), as an eligible bidder on Government contracts and subcontracts or other modifications of any existing Government contracts or subcontracts, and further advised that a copy of the Order would be published as soon as possible.

**FOR FURTHER INFORMATION CONTACT:** Annie Blackwell, Director Program Policy, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Ave., NW., room C–3325, Washington, DC 20210 (202–219–9430).

**SUPPLEMENTARY INFORMATION:** A copy of the Order dated May 19, 1994, issued by Judge Jennifer Coffman of the U.S. District Court for the Western District of Kentucky, in *Commonwealth Aluminum Corp.* v. *Reich*, Case No. 94–0071–O(C), is attached hereto.

Signed the 31st day of May 1994, Washington, DC.

**Shirley J. Wilcher,**

*Deputy Assistant Secretary for Federal Contract Compliance Programs.*

### United States District Court, Western District of Kentucky, Owensboro, Division

*Commonwealth Aluminum Corporation*, Plaintiff v. *United States of America; United States Department of Labor; Employment Standards Administration; Office of Federal Contract Compliance Programs; Robert B. Reich, Secretary, United States Department of Labor; Bernard E. Anderson, Assistant Secretary, Employment Standards Administration; Shirley J. Wilcher, Deputy Assistant Secretary, Office of Federal Contract Compliance Programs*, Defendants. Case No. 94–0071–O(C); filed: May 23, 1994.

### Findings of Fact, Conclusions of Law Preliminary Injunction and Stay

Pursuant to 5 U.S.C. 705 of the Administrative Procedure Act and F.R.C.P. 65, plaintiff, Commonwealth Aluminum Corporation ("Commonwealth") moves the Court to stay the effectiveness of the Final Order and Decision issued by John R. Fraser,

Acting Assistant Secretary for Employment Standards in the matter styled *Office of Federal Contract Compliance Programs, United States Department of Labor, Plaintiff,* v. *Commonwealth Aluminum, formerly Martin-Marietta Aluminum of Kentucky, Inc., Defendant,* Case No. 82–OFC–6 pending judicial review of that decision by this Court. The Court has considered the entire record herein including the affidavits submitted by plaintiff in support of its application. Now, therefore, the Court makes the following findings of fact, conclusions of law, and enters the following Preliminary Injunction and Stay of Agency Action:

**Findings of Fact and Conclusions of Law**

Commonwealth is the corporate successor to Martin-Marietta Aluminum of Kentucky, Inc. On or about September 3, 1982, defendant, Office of Federal Contract Compliance Programs, United States Department of Labor ("OFCCP") filed an administrative complaint against Commonwealth alleging that Commonwealth had violated provisions of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793, et seq., and the regulations promulgated thereunder, in connection with its hiring practices at its aluminum plant in Lewisport, Hancock County, Kentucky.

After the close of pleadings and discovery, the issues raised by the Administrative Complaint were tried before Administrative Law Judge Daniel J. Roketenetz on June 24, 1985 through June 27, 1985. Judge Roketenetz issued a Recommended Decision and Order on June 26, 1986. In his Recommended Decision and Order, Administrative Law Judge Roketenetz recommended dismissal of OFCCP's Administrative Complaint in its entirety. OFCCP took exception to the Recommended Decision and Order of Administrative Law Judge Roketenetz. The parties briefed the exceptions to the Assistant Secretary for Employment Standards.

The Acting Assistant Secretary for Employment Standards, United States Department of Labor, issued a Final Decision and Order in Case No. 82–OFC–6 on or about February 10, 1994. The Acting Assistant Secretary for Employment Standards has ruled that Commonwealth violated § 503 of the Rehabilitation Act of 1973. Concomitantly, the Acting Assistant Secretary has ordered that Commonwealth give five of the complainants in the proceedings offers of employment within sixty days of Commonwealth's receipt of the Order, and has ordered retroactive seniority and other benefits. In addition, the Acting Assistant Secretary has ordered that Commonwealth will be ineligible for the award of any government contracts or subcontracts and will be ineligible for extensions or other modifications of any existing government contracts or subcontracts if it does not comply with the other components of his Order.

Commonwealth owns and operates and aluminum plant located near Lewisport in Hancock County, Kentucky. The plaintiff produces aluminum in sheet form which it sells and distributes to various customers. Employees who work in production and maintenance are members of the Local 7325, United Steel Workers of America and are hourly personnel. All complainants involved herein sought jobs in the production or maintenance area within the plant. Between 1980 and today, Commonwealth has had government contracts with a total value of $4,500,622.48. Commonwealth has had no direct government contracts since 1990. Commonwealth has one government subcontract which, when fulfilled, will have a total value of $4,805,129.40.

OFCCP debarred Commonwealth as a government contractor and on April 29, 1994, OFCCP published a notice of Commonwealth's debarment in the Federal Register. Such debarment notice appears at 59 Federal Register 22178.

The parties have advised the Court of the balancing factors under the *Celebrezze* case and several other Sixth Circuit cases with respect to temporary injunctions. The factors are: Likelihood of success, irreparable harm, public interest and looking at the harm to everyone. The Court will address each of those, albeit fairly briefly.

With regard to the likelihood of success, the Court does not believe that there can be an automatic knee jerk reaction in every case where the Department of Labor reverses the ALJ. The Court understand that, at this stage, its responsibility is to facially address the merits. However, the mere reversal of an Administrative Law Judge alone is not necessarily enough. Nonetheless, the Administrative Law judge has had the opportunity to see the witnesses, review documents, and measure credibility. In this particular case, Commonwealth has shown a likelihood of success because it has already won once in front of an Administrative Law Judge and in light of the other factors which the Court will address. The Court does not credit the concern of the plaintiffs that there has not been any allegation that the individual complainants would have been employed to do government contract work.

The issue of irreparable harm is the most intriguing for the Court. The Court has done its own research in addition to the research furnished by the parties. There are no controlling cases. Several are persuasive, including *Firestone Tire & Rubber Co.* v. *Marshall,* 23 FEP Cases 527 (E.D. Tex 1980), that debarment constitutes irreparable harm. The Court disagrees with that conclusion. In the Court's opinion, the proper analysis is to examine the harm of compliance and not the harm of non-compliance. There are several reasons for the Court's conclusion. One reason is that there are cases that are persuasive and while not exactly on point, indicate that the courts in various factual settings were looking to the cost of compliance rather than the cost of non-compliance. Those cases are *Ledbetter* v. *Baldwin,* 479 U.S. 1309 (1986); *Ruiz* v. *Estelle,* 650 F.2d 555, at 573 (5th Cir. 1981); and *Petroleum Exploration, Inc.* v. *Public Service Commission,* 304 U.S. 209 (1938). In *Petroleum Exploration,* the petroleum company argued that it was being forced to choose between complying with an agency order on the one hand, which would require a high expenditure of money, or on the other hand non-compliance, which would subject it to harsh penalties. In that particular situation, the Supreme Court states "the necessity to expend for the investigation or to take the risk for non-compliance does not justify the injunction. It is not the sort of irreparable injury against which equity protects." *Id.* at 221. *Petroleum Exploration* does not instruct courts to look at the cost of compliance, but it does begin to hint at that concept. Another case the Court found persuasive was *Southern Ohio Coal Co.* v. *Office of Surface Mining Reclamation and Enforcement, Dept. of the Interior,* 831 F.Supp. 1324 (S.D. Oh. 1993), *rev'd on other grounds,* 1994. U.S. App., Lexis 6813, April 8, 1994. In that particular case, the district court assessed the threat of irreparable injury based on compliance rather than on non-compliance.

The Court also finds persuasive the case that was cited on the day of the temporary restraining order hearing, *Uniroyal, Inc.* v. *Marshall,* 20 FEP cases 446 (D.C. Cir. 1979). While *Uniroyal* does not explicitly state the standard, the Court of Appeals clearly considered the cost of avoiding debarment and not the cost that would be due to the debarment itself. In this Court's opinion, explicit in the balancing test is the rule that you consider the cost of compliance.

All of the foregoing cases are persuasive and are one reason the Court believes that the proper measure is the cost of compliance with the Department of Labor's ruling. The principal reason the Court is considering cost of compliance as the measure of harm is that this Court should not encourage non-compliance with the Department of Labor order. There cannot be an automatic reaction in every case where an order of debarment has issued or is about to issue. If debarment constituted irreparable harm, every debarment could be enjoined and the Court does not believe that is a good rationale.

The Court notes that the meaning of the order is less than clear and this is reinforced by the footnotes addressing the meaning of the order which appear in the defendants' response and plaintiff's reply filed herein. In that connection, the Court found persuasive *Wisconsin Gas Co.* v. *F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985), cited by both parties, which held that the proper focus is upon *recoverable* monetary loss. In this case, plaintiffs cannot sue the government or the individuals so in the Court's opinion, there would be no recoverable monetary loss.

The Court noted to the parties that if OFCCP agreed that Commonwealth must only offer the next available job and if the Department of Labor or if OFCCP agreed that Commonwealth could withdraw those offers, or if they had already become full blown employment situations, if the OFCCP would agree that those employees could be let go if Commonwealth won here, then there would not be an irreparable harm because you would have the Uniroyal situation. In *Uniroyal* the D.C. Circuit ruled that once the documents requested were produced, if Uniroyal won on the appeal, the documents would be returned and stricken from the record. In that connection, the Court is attempting to create a Uniroyal situation here, if it exists, so that in this particular situation there would not be any irreparable harm.

In response to the Court's request that the parties confer, OFCCP placed on the record herein the statement that such are precisely the terms presented to Commonwealth. In contrast, Commonwealth asserts that even such an arrangement does not protect it from liability to the individual employees. This exchange, which occurred after the Court announced its decision, persuades the Court that Commonwealth is irreparably harmed, since OFCCP lacks the requisite ability to shield Commonwealth from all liability in the event Commonwealth extends offers of employment and later succeeds here. These facts, therefore, are not parallel to those which existed in *Uniroyal.*

Going on to the third element, public interest, and the fourth, harm to others. The Court has heard testimony concerning Commonwealth being a new company with a different approach. The Court has also heard testimony concerning administrative delay. There is a legitimate public interest in wanting employers to offer employment opportunities to everyone regardless of disability, regardless of age, gender, race, all of those factors. If this heightens the public interest, then it also heightens the government's responsibility. If there is a high government responsibility, then waiting seven or eight years to render an opinion frustrates the purposes of the Rehabilitation Act. In the Court's opinion, the government has acted, if not unconscionably, perhaps unfairly. Therefore, in the Court's opinion, the public interest—if it does swing over to the side of the government at the outset—swings back because of the administrative delay that has occurred here. Whether this case is considered on an expedited basis or not, there is no further harm to the government. There is some value in the employer being able to rely on its understanding that at some point a proceeding is ended. It is not reasonable to wait seven years and come in and do something and then expect immediate compliance.

As far as harm to any third parties, the employees who are still in the work force are working now. To the extent that Commonwealth should lose this case on its merits, those employees can gain monetary relief, and that will be satisfactory. The Court will not hear a claim about the public agency's harm to it because of the delay that has been involved here.

**Preliminary Injunction and Order**

Based upon the foregoing Findings and Conclusions, it is *Ordered and Adjudged* as follows:

1. Defendants, their officers, agents, employees, attorneys, and representatives, are immediately enjoined and restrained, directly and indirectly, whether alone or in concert with others, until further orders of this Court, from doing any of the following:

a. Seeking, attempting to seek, or taking any affirmative steps to enforce that portion of the February 10, 1994 Order of the Acting Assistant Secretary for Employment Standards which requires Commonwealth to make offers of employment to Gregory Gray, Wilda Matthis, Kenneth Sherrard, William Zellers, and Thomas Marshall, or from seeking to enforce that portion of the Order which grants relief in favor of Robert Etnire.

b. Seeking, attempting to seek, or taking any affirmative steps to enforce or place into effect that portion of the February 10, 1994 Order of the Acting Assistant Secretary for Employment Standards which, under certain conditions, makes Commonwealth ineligible for the award of any government contracts or subcontracts and makes Commonwealth ineligible for extensions or other modifications of any existing government contracts or subcontracts.

2. The Final Decision and Order of the Acting Assistant Secretary for Employment Standards, United States Department of Labor, dated February 10, 1994, in the matter of *Office of Federal Contract Compliance Programs, United States Department of Labor, Plaintiff* v. *Commonwealth Aluminum formerly Martin-Marietta Aluminum of Kentucky, Inc., Defendant,* Case No. 82–OFC–6, shall be, and it is hereby, stayed and such stay shall remain in full force and effect until such time as this Court specifically orders otherwise.

3. Within three business days of the date hereof, defendants shall furnish the Court and Commonwealth with a full and complete written listing of all agencies, contractors, or others, to whom notice of Commonwealth's debarment was sent by defendants.

4. Within five business days of the date hereof, defendants shall send written notification to all agencies, contractors, any third parties identified pursuant to paragraph 3 hereof, and the **Federal Register**, that the effect of Commonwealth's debarment has been stayed by the United States District Court for the Western District of Kentucky, Owensboro Division, pending the appeal by Commonwealth of the Decision which resulted in the debarment order which notification shall include a complete copy of this Temporary Injunction.

5. No security shall be required in connection with this Order.

*So Ordered* effective as of May 19, 1994, at 6:20 p.m.

Jennifer B. Coffman,

*Judge, United States District Court, Western District of Kentucky.*

[FR Doc. 94–13715 Filed 6–6–94; 8:45 am]

BILLING CODE 4510–27–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–031]

### NASA Advisory Council, NASA/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, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, NASA/NIH Advisory Committee on Biomedical and Behavioral Research.

**DATES:** June 16, 1994, 9 a.m. to 5 p.m.; and June 17, 1994, 9 a.m. to 12:30 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Program Review Center, 9th Floor, room 9H40, 300 E Street SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnauld E. Nicogossian, Code U, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0215.

**SUPPLEMENTARY INFORMATION:** The meeting will be closed to the public on Friday, June 17, 1994, from 11:30 a.m. to 12:30 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Update of NASA Programs

—Report on NASA/NIH Activities

—Update on Telemedicine Program

—Update on International Space Station Alpha and Russian Program

—Committee Recommendations/Future Planning

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, 1994.

**Timothy M. Sullivan,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 94–13767 Filed 6–6–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice 94–030]

### NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Life and Biomedical Sciences and Applications Advisory Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 94–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Life and Biomedical Sciences and Applications Advisory Subcommittee.

**DATES:** June 14, 1994, 8:30 a.m. to 5 p.m.; and June 15, 1994, 8:30 a.m. to 4 p.m.

**ADDRESSES:** Bionetics Conference Room, suite 340, 250 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 closed to the public on Wednesday, June 15, 1994, from 1:30 p.m. to 2:30 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Subcommittee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Introductions

—Overview of Office of Life & Microgravity Sciences and Applications

—Programs and Activities of the Life and Biomedical Sciences and Applications Division

—Related Activities of the Aerospace Medicine & Occupational Health Division and Microgravity Sciences & Applications Divisions

—Space Station Centrifuge Facility Background & Issues

—Subcommittee Activities and Strategy Discussion

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, 1994.

**Timothy M. Sullivan,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 94–13766 Filed 6–6–94; 8:45 am]

BILLING CODE 7510–01–M

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, (new, revision, or extension): Revision.

2. The title of the information collection:

NRC Form 171, "Paper to Paper Duplication Request"

NRC Form 171A, "Multi-Media Duplication Request"

NRC Form 171B, "Microform to Paper Request"

3. The form number if applicable: NRC Forms 171, 171A and 171B.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Individuals or companies requesting copies to be made by reproduction.

6. An estimate of the number of annual responses: 18,300.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 1,208 hours (18,300 forms × .066 hr/form) or about 4 minutes per individual.

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: These forms are utilized by individual members of the public to request reproduction of publicly available documents in NRC's Headquarters Public Document Room (PDR). Copies of the form are utilized by the reproduction contractor to accompany order and then discard.

Copies of the submittal may be inspected or obtained for a fee from the

NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0066), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–5865.

Dated at Rockville, Maryland, this 1st day of June 1994.

For the Nuclear Regulatory Commission

**Gerald F. Cranford,**

*Designated Senior Official for Information Resources Management.*

[FR Doc. 94–13762 Filed 6–6–94; 8:45 am]

BILLING CODE 7590–01–M

## Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified as DG–6002, "Establishing Quality Assurance Programs for the Manufacture and Distribution of Sealed Sources and Devices Containing Byproduct Material," and is intended for Division 6, "Products." DG–6002 is being developed to provide guidance acceptable to the NRC staff on the essential elements needed to develop, establish, and maintain a quality assurance program for the manufacture and distribution of sealed sources and devices.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by August 12, 1994.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 20th day of May 1994.

For the Nuclear Regulatory Commission.

**Lloyd J. Donnelly,**

*Director, Financial Management, Procurement, and Administration Staff, Office of Nuclear Regulatory Research.*

[FR Doc. 94–13764 Filed 6–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8724–MLA; ASLBP No. 94–695–03–MLA]

## Chemetron Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials License Amendment proceeding.

Chemetron Corporation (Bert Avenue, Harvard Avenue and McGean-Rohco Sites, Newburgh Heights and Cuyahoga Heights, Ohio), Source Material License No. SUB–1357

The Presiding Officer is being designated pursuant to 10 CFR 2.1207 of the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register**, 54 FR 8269 (1989). This action is in response to a request for a hearing submitted by Chris Trepal on behalf of Earth Day Coalition. The petitioner requests a hearing on a notice published by the Office of Nuclear Material Safety and Safeguards, dated April 4, 1994, entitled "Consideration of Amendment to Chemetron Corporation License and Opportunity for Hearing (59 FR 17124, April 11, 1994).

The presiding officer in this proceeding is Administrative Judge James P. Gleason.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Jerry R. Kline to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Gleason and Judge Kline in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge James P. Gleason, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge Jerry R. Kline, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 31st day of May 1994.

**B. Paul Cotter, Jr.,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 94–13773 Filed 6–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

## Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–21 issued to Northeast Nuclear Energy Company (NNECO) for operation of Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

The proposed amendment adds a new section to Technical Specification Section 6.17 and would require that

procedures be in place to provide for monitoring and sampling of emergency service water (ESW) discharge flow during accident conditions when a positive differential pressure cannot be maintained between ESW and low pressure coolant injection (LPCI) in the LPCI heat exchangers.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed change in accordance with 10CFR50.92 and concluded that the change does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed change does not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change does not affect the probability of any previously evaluated accidents because the proposed change only affects postaccident operation. The consequences of an accident are possibly affected by the change since LPCI/torus fluid could enter the ESW system, and ultimately Long Island Sound, if a positive differential pressure is not maintained in the LPCI heat exchangers. There is not a significant increase in the probability of adverse consequences however, since a passive failure of the LPCI heat exchangers tubes would be required.

Additionally, at Millstone Unit No. 1, the heat exchangers are only used for occasional torus cooling during the warmer months of the year. As such, they experience very little use. In addition, eddy current testing and shall side pressurization demonstrate tube integrity each refueling outage. During operation, quarterly surveillance testing of the LPCI system will identify if any leakage occurs.

Monitoring of the ESW discharge will allow timely detection of any radiological leakage. If a release is detected, the appropriate actions will be taken as the situation requires. Actions could include the isolation of one heat exchanger, the throttling of ESW to restore the positive differential pressure with LPCI, or continued operation with the leakage monitored.

Therefore, the proposed change does not involve a significant increase in the probability or consequence of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

This change only affects the use of the ESW system under postaccident conditions. The LPCI system will continue to function as credited in the accident analyses. No other systems or components are affected by this proposed Technical Specification change. Therefore, this change cannot create a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

This proposed Technical Specification does not affect normal LPCI operation for torus cooling. This Specification establishes controls which ensure that an unmonitored release does not occur, even if the positive differential pressure does not exist in the LPCI heat exchanger due to the throttling of LPCI.

Removal of the differential pressure by itself does not promote failure of the LPCI heat exchanger. For a release to occur, the heat exchanger has to fail by an independent method. Both heat exchangers will be eddy current tested each refueling outage to ensure integrity. Also, routine surveillance of the torus water would detect any leakage in the heat exchangers during the operating cycle. These measures provide confidence that the integrity of the heat exchangers will exist at the time of the postulated accident.

The period of time when ESW pressure may be lower than LPCI pressure is limited to several days. Considering the integrity of the heat exchangers, it is very unlikely that they would develop a leak during this period.

Although unlikely, if a leak were to develop, it will be detected by the monitoring and sampling. Survey monitoring would be initiated prior to loss of positive differential pressure. Sampling ensures that any release lower than the sensitivity of the survey meter would also be detected and quantified. The quantity of the release can be estimated by assuming that any measured release existed continuously from the time that the positive differential pressure was lost.

Although not relied upon for maintaining system integrity, the positive differential pressure does provide an additional layer of defense in depth. In some accident scenarios, it may be replaced by a monitoring and sampling program. If a release is detected, appropriate action will be taken as the situation requires. Considering the small likelihood of a release, the small consequences of such a release, and the compensatory measures available, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 7, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for

Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 27, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 1st day of June 1994.

For the Nuclear Regulatory Commission

**James W. Andersen,**

*Acting Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–13763 Filed 6–6–94; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 55–30662–EA; IA–94–007; ASLBP No. 94–694–05–EA]**

## In the Matter of Kenneth G. Pierce, Shorewood, IL; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

In the Matter of Kenneth G. Pierce, Shorewood, IL, License No. OP–30277–02, Enforcement Action IA–94–007.

This Board is being established pursuant to the request of Kenneth G. Pierce (Licensee), Nuclear Station Operator (NSO) who held Reactor Operator's License No. OP–30277–02. Mr. Pierce was employed by the Commonwealth Edison Company

(CECo) from April 30, 1979 until CECo terminated his employment on December 2, 1993, which terminated his license. Mr. Phillips requests a hearing regarding an Order issued by the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, dated April 21, 1994, entitled "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)" (59 FR 22693, May 2, 1994). The Order prohibits Mr. Pierce from participation in any respect in any NRC-licensed activities for three years.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 31st day of May 1994.

**B. Paul Cotter, Jr.,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 94–13772 Filed 6–6–94; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 40–08681–MLA–3; ASLBP No. 94–693–02–MLA–3]**

## UMETCO Minerals Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials Licensing proceeding.

In the matter of UMETCO Minerals Corporation, P.O. Box 1029, Grand Junction, Colorado 81502, Source Materials License No. SUA–1358.

The Presiding Officer is being designated pursuant to 10 CFR 2.1207 of the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register**, 54 FR 8269 (1989).

This action is in response to a request for a hearing submitted by Norman Begay, P.O. Box 1138, Blanding, UT 84511. Mr. Begay requests a hearing on the amendment of UMETCO Minerals Corporation's source material license to allow receipt and disposal of materials from the Department of Energy's Monticello Tailings Project. Notice of the amendment request was published in the **Federal Register** at 59 FR 18426 (April 18, 1994).

The presiding officer in this proceeding is Administrative Judge James P. Gleason.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Thomas D. Murphy to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Gleason and Judge Murphy in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge James P. Gleason, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 31st day of May 1994.

**B. Paul Cotter, Jr.,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 94–13771 Filed 6–6–94; 8:45 am]

BILLING CODE 7590–01–M

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## OFFICE OF PERSONNEL MANAGEMENT

### Notice of Request for Reclearance of Standard Form 2808

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Standard Form 2808, Designation of Beneficiary (CSRS), is used by persons covered under the Civil Service Retirement System to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement and Disability Fund in the event of their death.

Approximately 2,000 SF 2808 forms are completed annually. It takes approximately 15 minutes to complete the form. The total annual burden is 500 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415;

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT:** Mary Beth Smith-Toomey, Chief, Forms Analysis & Design Section, (202) 606–0623.

U.S. Office of Personnel Management.

**Lorraine A. Green,**

*Deputy Director.*

[FR Doc. 94–13747 Filed 6–6–94; 8:45 am]

BILLING CODE 6325–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–34142; File No. SR–CHX–93–31]**

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Inc. To Define Members' Rights and Obligations More Precisely

June 1, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 19, 1993, as subsequently amended on December 29, 1993,[1] and May 5, 1994,[2]

[1] See Amendment No. 1 to SR–CHX–93–31. Amendment No. 1 added a subsection (c) to proposed Rule 18 of Article I of the Exchange's Rules relating to suits against the Exchange.

[2] See letter from George T. Simon, Foley & Lardner, to Sharon Lawson, Assistant Director,

Continued

the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CHX submits the following proposed rule change which would amend (i) Article IX to add a new short sale rule; (ii) Article VII, Rules 2, 3, 4, and 5, to add a new summary suspension rule and procedure; (iii) Article XVII, Rule 4, Article VII, Rule 5(d), Article VI, Rule 8, and Article XII, Rules 3 and 6, to add a standard of review; (iv) Article I, Rules 17 and 18, to add provisions relating to suits against the Exchange and its employees; and (v) Article VIII, Rule 12 to make conduct inconsistent with the maintenance of fair and orderly markets or the protection of investors a violation of Exchange Rules.

**II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change**

In its filling 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 IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule filing is to amend various Exchange Rules which, collectively, define members' rights and obligations more precisely and give the Exchange more flexibility and protection in dealing with violations of Exchange Rules.

First, with respect to short sales, currently if a member enters into a contract to sell stock, as a general matter he must believe at that time that he will be able to perform. If he has no intention of performing (*i.e.*, delivering stock on settlement date), then entering into the contract is both fraudulent and a violation of just and equitable principles of trade. In furtherance of this, the Exchange's proposed rule requires that prior to effecting a short sale, members make arrangements to borrow the security or obtain other assurances that delivery can be made on settlement date. Consistent with other exchanges' short sale rules, the new rule provides an exception for bona fide market making activities.[3] However, in order to use the exception, the burden is on the specialist, market maker or odd-lot dealer to show that the sale was indeed part of bona fide market making activities. In addition, as a monitoring tool, the new short sale rule requires a specialist, market maker or odd-lot dealer to notify the Exchange whenever he accumulates a position (long or short) in a security that is greater than or equal to 5% of the outstanding public float of the security.

The Exchange also proposes to add new rules under Article VII to give the President of the Exchange greater flexibility and a greater ability to take summary action against a member if the President has reasonable grounds to believe that the member is in violation of, and will continue to violate Exchange Rules. This expands the President's ability to take summary action, which currently applies primarily to situations where the member has financial or operational difficulties. Under the proposed rules, the summary action could include a suspension, or a limitation on the member's activities or a limitation on the member's access to Exchange services. Because of the summary nature of the action that will be permitted by the proposed rules, the Exchange's proposed rules also contain provisions for an expedited appeal, requiring, among other things, that the appeal be heard within ten (10) days.[4]

The proposed rules also adopt a formal standard of review for the hearing of appeals. Currently, there is no articulated standard of review contained in the Exchange's rules. The standard in the proposed rules prohibits an appeal panel from overturning the fact finder's decision if the factual conclusions in that decision are supported by substantial evidence and if the decision itself is not arbitrary, capricious or an abuse of discretion.

The proposed rules also add provisions relating to Exchange liability and suits filed against the Exchange and its employees. Current Exchange rules limit liability against the Exchange as a result of a member's use or enjoyment of the Exchange facilities.[5] The rules of MBS Clearing Corporation limit its liability to members to a broader extent.[6] The proposed rules limit the liability of the Exchange to its members to situations where the Exchange has acted willfully or with gross negligence.[7]

The possibility of this type of suit against individual staff members of the Exchange when they are acting on Exchange business makes it impossible for such persons to perform their duties. The proposed rule also prohibits a member form suing any officer, director, employee or agent of the Exchange or any of its subsidiaries or any other Exchange official, if such person is acting on Exchange business or business of any of its subsidiaries. This proposed rule does not, however, prohibit a member from suing the Exchange as a result of the actions of these individuals; rather, it merely prohibits suits against the persons in his or her individual capacity.[8]

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Division, dated April 27, 1994. Amendment No. 2 made several substantive changes to the proposed rule change and added a proposed rule change to Article VIII, Rule 12 to make conduct inconsistent with the maintenance of fair and orderly markets or the protection of investors a violation of Exchange Rules.

[3] See, e.g., New York Stock Exchange Rule 440C.10, Interpretation 01 (Short Sales).

[4] The proposed rule provides that the President, within two business days of taking summary action, furnish the member with a written statement setting forth the reasons and specific grounds that constitute the basis for the action. The proposed rule also provides that the member affected may make a request for an appeal by filing a written notice of appeal with the Secretary of the Exchange within five days after notification of the President's action. Appeals filed under the proposed rule must be considered and decided by a panel appointed by the Board, composed of three members of the Board, within ten days. After consideration of the appeal, the panel, by majority vote, affirms, reverses, or modifies the action upon which the appeal was made. All decisions of the panel are final.

[5] See Article X, section 2 of the CHX's Constitution.

[6] See Article V, Rule 6, section 1 of the MSB Clearing Corporation's By-Laws limits the Corporation's liability to situations where it has acted willfully or with gross negligence.

[7] The Commission notes that the proposed rule purports to limit the liability of the Exchange to third parties, as well as to Exchange members. The following is the text of the proposed rule:

The Exchange shall use its best efforts to perform its duties and responsibilities in the manner specified in the Rules but shall have no liability to any member or any third party for any loss, cost, expense, damage or liability for nonperformance or misperformance of such duties and responsibilities, except to the extent that it is attributable to the willful misconduct, gross negligence, bad faith, or fraudulent or criminal acts of the Exchange or its officers, employees or agents.

[8] The following is the text of the proposed rule:

No member or member organization shall institute a lawsuit or any other type of legal proceeding against any officer, director, employee

In addition, the proposed rule adds a provision that requires a member who fails to prevail in a legal proceeding instituted by that member against CHX or other specified parties[9] to pay all reasonable expenses, including attorneys' fees, incurred by CHX in defense of such proceeding. This requirement to pay CHX's expenses, however, is only triggered if CHX's expenses exceed twenty thousand dollars ($20,000). This will minimize the impact of this new rule for small members that pursue claims against CHX but do not prevail at an early stage. When in place, the rule will serve to discourage frivolous and harassment-type suits against CHX.

Finally, the Exchange proposes to amend Article VIII to make conduct inconsistent with the maintenance of a fair and orderly market or the protection of investors a violation of Exchange Rules.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No comments were received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written date, 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 at 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 CHX. All submissions should refer to File No. SR–CHX–93–31 and should be submitted by June 28, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–13776 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–M

[9] The proposed rule would apply to legal proceeding instituted by members against the Exchange or any of its officers, directors, committee members, employees or agents, and specifically would not apply to internal disciplinary actions or administrative appeals.

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**[Release No. 34–34138; File No. SR–CBOE–93–44]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating To Issuance of Regulatory Circular Relating to Floor Brokerage Practices

June 1, 1994.

On October 20, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposal to issue to its membership a Regulatory Circular ("1993 Circular") relating to certain floor brokerage practices.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33155 (November 4, 1993), 58 FR 59763. No comments were received on the proposed rule change.

The CBOE states that the 1993 Circular is designed to assist floor brokers in understanding their responsibilities under the CBOE's Rules, the Act, and the Commission's regulations. On June 19, 1986, the CBOE issued a Regulatory Circular ("1986 Circular") which describes, among other things, the steps that should be taken when a floor broker proposes to "leg in" a multi-part order or to cross customer orders pursuant to CBOE Rule 6.74, "'Crossing' Orders." In addition, the 1986 Circular sets forth procedures to be followed when there has been a "print-through"[3] on a limit order or an order is not otherwise executed due to a floor broker's error.

The 1993 Circular restates and expands upon the subjects discussed in the 1986 Circular. For example, the 1993 Circular provides a more detailed discussion of recordkeeping requirements, restates the procedures applicable to a print-through on a limit order, and makes clear that, except as otherwise specified, a floor broker is not permitted to fill the customer order from his error account if doing so would reduce or liquidate a position in the broker's error account.

Similarly, the 1986 Circular explains that the CBOE's Rules do not prohibit the "legging" of multi-part orders as long as the executing floor broker remains in compliance with the CBOE's rules concerning the use of due diligence in the execution of customer orders and the separation of market

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] A "print through" occurs when a trade is effected in the crowd at a price that is better than the price at which a customer order should have been represented by a floor broker in the trading crowd. The 1993 Circular states that if a broker discovers a print-through during trading hours and a better price is available at the time, the customer order should be filled at the better price. If the better price is no longer available, then the floor broker is responsible at the original limit price and may either execute the order at the available market and give the customer a "different check" or fill the order out of his error account, provided it does not reduce or liquidate a position in the error account. If the print-through is discovered outside trading hours and the customer requires a fill as of that trade date, the floor broker may fill the customer's order at the limit price from his error account. If the print-through occurs on the opening, the customer is generally entitled to the number of contracts which print through at the opening price. If a better price than the opening price is available when the error is discovered, the customer order should be filled at the better price.

maker and floor broker functions. The 1993 Circular expands upon the treatment of this subject by setting forth specific procedures that are to be followed when a floor broker discovers that he is unable to complete the execution of a multi-part order.[4]

The 1993 Circular also provides guidance to floor brokers with respect to subjects that were not covered in the 1986 Circular. These subjects include the priority of customer orders in a floor broker's "deck," the "stopping" of customer orders, and trading in securities underlying options traded by a floor broker. Specifically, with regard to a floor broker's "deck," the 1993 Circular states that under Exchange Rule 6.73, a floor broker's agency business takes priority over trades for his error account and that a floor broker must determine the priority of agency orders entered simultaneously with him. The 1993 Circular also states that a floor broker must use due diligence to execute those orders at the best available price or prices. With regard to the "stopping" of customer orders, the 1993 Circular states that it is improper for a floor broker to "stop" or guarantee an execution to a customer order he is holding from his error account or deck because by doing so he is acting as a market maker and is in violation of CBOE Rule 8.8. The 1993 Circular notes that it is not a violation of CBOE Rule 8.8 for a floor broker to cross a public customer order with a facilitation order in accordance with the provisions of CBOE Rule 6.74(b), "'Crossing' Orders."

Finally, with regard to the trading of underlying securities, the 1993 Circular states that the CBOE's rules do not prohibit a floor broker from entering into transactions on other exchanges for his personal account in financial instruments underlying or related to the classes at the station where he acts as a floor broker. Because trading in the underlying financial instrument could be perceived as a conflict of interest, the Equity and Index Floor Procedure Committees strongly advise against it. The 1993 Circular states that it would be a violation of the CBOE's rules for a floor broker to enter into transactions in an underlying or related financial instrument based on information concerning a customer option order which he holds.

The CBOE states that the 1993 Circular is designed to provide guidance to floor brokers regarding the Exchange's interpretation of applicable CBOE Rules, the Act, and Commission regulations. The CBOE states that the 1993 Circular is not intended to be a comprehensive discussion of the named subjects, but is designed to supplement existing Exchange rules and Interpretations and Policies relating thereto for the purpose of providing CBOE members with authoritative guidance regarding the Exchange's interpretation of its rules, the Act, and Commission regulations in certain specific contexts.

The CBOE believes that the proposed 1993 Circular is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it will provide guidance to CBOE members regarding the obligations of floor brokers under CBOE rules, the Act, and Commission regulations, and is thereby designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

The Commission finds that the proposed 1993 Circular is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) in that the 1993 Circular is designed to promote just and equitable principles of trade and to protect investors and the public interest.[5] Specifically, the Commission believes that the 1993 Circular should help to provide floor brokers with a clear explanation of certain of their obligations under the Act, the Commission's regulations, and the CBOE's rules, thereby helping to ensure the maintenance of fair and orderly markets. The Commission believes that the 1993 Circular should facilitate the execution of customer orders at the best available prices by providing guidance with regard to print-throughs and orders executed erroneously, and by stating that floor brokers representing customer orders have a fiduciary obligation to their clients to execute their orders on the CBOE floor at the best available prices. The 1993 Circular also notes that a floor broker's due diligence in handling an order includes the floor broker's insuring that all market or marketable limit orders are constantly represented in the crowd either by himself or by another floor broker for as long as the order is active.

In addition, the Commission believes that the 1993 Circular should help to ensure the integrity and fairness of the CBOE's markets by advising members of restrictions on floor brokers' activities. Specifically, the 1993 Circular notes that the CBOE's rules prohibit a member from trading as a market maker with respect to option contracts traded at a particular station on the same day that the member is acting as a floor broker at that station. The 1993 Circular also contains provisions designed to ensure that floor brokers do not engage in abusive or illegal trading. In this regard, the 1993 Circular makes clear that it is a violation of the CBOE's rules for a floor broker to enter into transactions in an underlying or related financial instrument based on information concerning a customer option order which he holds.[6]

Finally, the Commission believes that it is beneficial for the CBOE to codify in a circular existing Exchange policies and procedures regarding floor broker activity. The Commission believes that the 1993 Circular will make it easier for floor brokers to understand and have access to relevant policies and procedures with respect to their obligations as floor brokers.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act[7] that the proposed rule change (SR–CBOE–93–44) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

[FR Doc. 94–13733 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–M

[4] Specifically, the 1993 Circular states that if a floor broker determines that he is unable to complete an order he has legged he must either: (1) Offer the executed leg to the customer; (2) liquidate the leg in open outcry and then offer the trade, regardless of whether it is a profit or loss, to the customer; or (3) execute the remaining leg(s) of the order at the available market in open outcry and give the customer a difference check. In addition, the 1993 Circular notes that a floor broker may not provide an execution on the unexecuted portion of the order from his error account; by doing so he is acting as a market maker.

[5] 15 U.S.C. 78f(b)(5) (1984).

[6] Such transactions would also be inconsistent with the Act.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1993).

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[Release No. 34–34141; File No. SR–MSE–93–9]

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Proposed Amendments to Its Arbitration Rules

June 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 26, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") (on the date that the proposal was filed, the CHX was named the "Midwest Stock Exchange" or "MSE") filed with the Securities and Exchange Commission ("Commission"

or "SEC") the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. On March 31, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[1] On June 1, 1994, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.[2] 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 CHX proposes to amend its arbitration rules as set out in Rule 24 of Article VIII in order to have them conform more closely with the Uniform Code of Arbitration developed by the Securities Industry Conference on Arbitration ("SICA").[3]

In addition to the conforming changes to Rule 24, the Exchange also proposes to make other changes to Rule 24 as well as changes to Rule 23, Article VIII (Arbitration of Member Disputes), as set forth in the purpose section of this rule filing.[4]

**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 IV below The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The purpose of the proposed rule change is to bring the Exchange's arbitration rules more closely in line with SICA's Uniform Code of Arbitration (the "Uniform Code" or "Code"). To that end, the Exchange is proposing several conforming changes to its arbitration rules and is also proposing other changes which will facilitate the administration of the CHX arbitration forum in general.

The Exchange is also redesignating most of the section references to Rule 24 in order to conform its rule reference to SICA's Uniform Code.

The CHX is proposing to add a provision (CHX Rule 24, Section 1(c)) to its arbitration rules providing that class actions will not be eligible for submission to arbitration. However, an individual may pursue a claim in arbitration if class certification is denied; the case is decertified; the customer is excluded from the class; or the customer elects not to participate in the putative or certified class action or has complied with other court prescribed conditions for withdrawal. The Exchange is amending Section 33 of Rule 24 (redesignated as Section 31) requiring the addition of a provision to pre-dispute arbitration agreements regarding the ineligibility of class actions for arbitration.[5]

Rule 24, Section 1 adds Interpretation and Policy .01 which addresses an existing Exchange policy regarding the determination whether to accept a claim for arbitration at the Exchange. The Exchange's policy is to accept a claim for arbitration if the Exchange is the Designated Examining Authority ("DEA") of the Respondent member or if the enforcement of the applicable rules has not been ceded to another self-regulatory organization ("SRO") pursuant to its Rule 17d–2 Agreement.[6] In other cases, the Exchange may decline the use of its arbitration facilities if the nexus between the dispute and the Exchange is minimal.

The Exchange considers claims submitted to the arbitration department on a case-by-case basis and examines the policy described above in determining whether a claim will be accepted. Under the Exchange's policy, the only discretion on whether the Exchange will accept a claim for arbitration occurs when the Exchange is not the DEA for the Respondent member and the enforcement of a particular rule has not been ceded to another SRO pursuant to Rule 17d–2. In this event, as stated above, the Exchange may reject the claim for arbitration if the nexus between the dispute and the Exchange is minimal. This can be demonstrated by the following example. Suppose a Respondent member firm was a member of the New York Stock Exchange, Inc. ("NYSE"), National Association of Securities Dealers, Inc. ("NASD"), and the CHX, and the NYSE was the firm's DEA. Suppose that the dispute involved alleged NASD sales practice violations covering 150 transactions. Suppose further that out of those 150 transactions, only two were executed on the CHX. In that event, the Exchange would most likely decline the use of its arbitration facilities based on minimal contacts that the dispute had with the Exchange.

The Exchange believes that the policy places fair limitations upon the responsibility of the Exchange to make its arbitration facilities available by requiring that the underlying dispute have some minimal nexus (or contacts) to the Exchange.

Rule 24, Section 1 also adds interpretation and policy .02 which extends jurisdiction over former members and member organizations for controversies which had their genesis during the period in which the former member was an Exchange member.[7]

Rule 24, Section 2(c) (Simplified Arbitration) amends the fee

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[1] See letter from David T. Rusoff, Attorney, Foley & Lardner, to Sandra Sciole, Special Counsel, SEC, dated March 30, 1994.

[2] See letter from David T. Rusoff, Attorney, Foley & Lardner, to Sandra Sciole, Special Counsel, SEC, dated May 31, 1994. Amendment No. 2 made certain changes to Interpretation and Policy .01 and .02 to Rule 24.

[3] SICA is comprised of a representative from each self-regulatory organization ("SRO") that administers an arbitration program, a representative of the securities industry, and four representatives of the public. The SROs that administer an arbitration program are the New York Stock Exchange, American Stock Exchange, Boston Stock Exchange, Cincinnati Stock Exchange, CHX, Pacific Stock Exchange, Philadelphia Stock Exchange, the Chicago Board Options Exchange, the National Association of Securities Dealers, and the Municipal Securities Rulemaking Board.

[4] The text of the proposed rule change was attached to the filing as Exhibit A. Copies of the proposal are available at the Commission as well as at the CHX.

[5] Rule 24, Section 31, Paragraph 5 is proposed to state that all agreements shall include a statement that "no person shall bring a punitive or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

[6] Pursuant to Rule 17d–2 under the Act, any two or more SROs may file with the Commission a plan for allocating among the SROs the responsibility to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Act, the rules and regulations thereunder, and the rules of such SROs, or to carry out other specified regulatory functions with respect to such persons. See 17 CFR 240.17d–2 (1994).

[7] Proposed Interpretation and Policy .02 to Rule 24, Section 1 states that for purposes of this Rule and Rule 23 under Article VIII, the terms "member," "member organization," "associated person" and an "employee of a member," shall be deemed to encompass those persons and entities who were Exchange members or persons associated with a member at the time the circumstances occurred which gave rise to the controversy

requirements for simplified arbitrations (cases not exceeding a dollar amount of $10,000).[8] The proposed fee schedule for simplified arbitrations and regular arbitrations is set out in Section 32 (redesignated as Section 30).

Rule 24, Section 2(h) provides a mechanism, for resolving pre-hearing matters in a simplified proceeding. This change codifies the applicability of the discovery procedures set forth in Section 14 (redesignated as Section 20) to simplified arbitrations.

Rule 24, Section 8(a)(2)(v) will classify individuals who are registered under the Commodities Exchange Act or are members of a registered futures association or any commodities exchange as being from these securities industry for purposes of classification of arbitrators.

Rule 24, Section 10 is amended to clarify the time limitations applicable to a party wishing to utilize a peremptory challenge.

Rule 24, Section 13(c)(5) is proposed to be amended to state that the Director of Arbitration may extend any time period in this section (whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply, or Third-Party pleading).

Rule 24, Section 13(d) is proposed to be amended to clarify the rule with respect to joinder and consolidation. It also authorizes the Director of Arbitration to make preliminary determinations in cases where issues concerning joinder and consolidation are in dispute. However, all further determinations with respect to joinder and consolidation will remain with the arbitration panel.[9]

Rule 24, Section 19 (redesignated as Section 18) requires a party requesting an adjournment to deposit a fee, not to exceed $1,000, upon making the request. If granted, the arbitrators may waive the deposit or, in their award, return the deposit.[10]

Rule 24, Section 24 (redesignated as Section 22) clarifies that arbitrators are empowered to take appropriate action, which can include the assessment of fees or costs, preclusion of documents or witnesses, and making disciplinary referrals in order to obtain compliance with all rulings by the arbitrators.[11]

Rule 24, Section 28 (redesignated as Section 26) requires parties filing amended pleadings to serve such different pleading on all other parties. This change relieves the Director of Arbitration from the requirement to serve such pleading.[12]

Rule 24, Section 30 (redesignated as Section 28) sets forth the requirement that all monetary awards be paid within 30 days of receipt unless a motion to vacate has been filed with the court. Additionally, the section mandates that interest accrue from the date of the award, until paid, if the award is not paid within 30 days, or the motion to vacate is unsuccessful, or as specified by the arbitrators. Interest shall be assessed at the prevailing legal rate in the state where the award is rendered or at a rate set by the arbitrator(s). This change will encourage the prompt payment of awards.[13]

Rule 24, Section 32 (redesignated as Section 30) amends the current fee schedule in place at the CHX and conforms its fee schedule to those at the other SROs. The CHX proposes to adopt the following Schedule of Fees:[14]

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[8] Rule 24, Section 2(c) is proposed to state that the Claimant shall pay a filing fee and remit a hearing deposit as specified in Section 30 of this Rule upon filing the Submission Agreement. The final disposition of the sum shall be determined by the arbitrator. The proposal would also amend Section 2(d) to state that the costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Section 30 of this Rule.

[9] In addition, the Exchange proposes to amend Section 13(d) to state that in arbitrations where there are multiple Claimants, Respondents or Third party Respondents, the Director of Arbitrations shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determinations will be considered subsequent to the filing of all responsive pleadings. The Director of Arbitration shall be authorized to determine preliminarily whether claims filed separately are related and shall be authorized to consolidate such claims for hearing and award purposes.

Section 13(d)(1) is proposed to state that all persons may join in one action as Claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence, or series or transactions or occurrences and if any questions of law or fact common to all these Claimants will arise in the action. All persons may be joined in one action as respondents if there is asserted against them jointly or severally any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action. A Claimant or respondent need not assert rights to or defend against all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.

Rule 24, Section 14 is proposed to be amended to state that the time and place for the initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators. Notice of the time and place for the initial hearing shall be given at least eight business days prior to the date fixed for the hearing by personal service, registered, or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this section. Notice for each hearing, thereafter, shall be given as the arbitrators may determine. Attendance at a hearing waives notice thereof.

[10] Section 18(b) is proposed to be amended to state that a party requesting an adjournment after arbitrators have been appointed shall, if an adjournment is granted, deposit a fee, equal to the initial deposit of forum fees for the first adjournment and twice the initial deposit of forum fees, not to exceed $1,000, for a second or subsequent adjournment requested by that party. The arbitrators may waive the deposit of this fee or in their awards may direct the return of the adjournment fee.

[11] Proposed Section 22 to Rule 24 provides: "The arbitrator(s) shall be empowered to interpret and determine the applicability of all provisions under this Rule and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such interpretations and actions to obtain compliance shall be final and binding upon the parties."

[12] Amended Rule 24, Section 26 is proposed to state, in part, that the party filing a new or different pleading shall serve on all other parties, a copy of the new or different pleading in accordance with the provisions set forth in Section 13(b). The other parties may, within ten business days from the receipt of service, file a response with all other parties and the Director of Arbitration in accordance with Section 13(b).

[13] Rule 24, Section 28 is proposed to be amended to include Paragraphs (f) and (g). Rule 24, Section 28(f) is proposed to state that the awards shall be made publicly available, provided however, that the name of the customer party to the arbitration will not be publicly available if he or she so requests in writing.

[14] With respect to the following schedule, italicizing indicates new material.

SCHEDULE OF FEES—PUBLIC CUSTOMER CLAIMANT

| Amount in dispute | Filing fee | Paper | Hearing deposit | |
|---|---|---|---|---|
| | | | 1 Arb.* | 3 Arb. |
| $1,000 or less | $15 | $15 | *$15 | ..... |
| $1,001–$2,500 | 25 | 25 | *25 | ..... |
| $2,501–$5,000 | 50 | 75 | *100 | ..... |
| $5,001–$10,000 | 75 | 75 | *200 | ..... |
| $10,001–$30,000 | 100 | ..... | 300 | $400 |
| $30,001–$50,000 | 120 | ..... | 300 | 400 |
| $50,001–$100,000 | 150 | ..... | 300 | 500 |
| $100,001–$500,000 | 200 | ..... | 300 | 750 |
| $500,001–$5,000,000 | 250 | ..... | 300 | 1,000 |
| Over $5,000,000 | 300 | ..... | 300 | 1,500 |

*The 1 Arbitrator column also sets forth the forum fees for pre-hearing conferences with a single arbitrator.

INDUSTRY CLAIMANT*

| Amount in dispute | Filing fee | Paper | Hearing deposit | |
|---|---|---|---|---|
| | | | 1 Arb. | 3 Arb. |
| $1,000 or less | $500 | $75 | *$300 | ..... |
| $1,001–$2,500 | 500 | 75 | *300 | ..... |
| $2,501–$5,000 | 500 | 75 | *300 | ..... |
| $5,001–$10,000 | 500 | 75 | *300 | ..... |
| $10,001–$30,000 | 500 | ..... | 300 | $600 |
| $30,001–$50,000 | 500 | ..... | 300 | 600 |
| $50,001–$100,000 | 500 | ..... | 300 | 600 |
| $100,001–$500,000 | 500 | ..... | 300 | 750 |
| $500,001–$5,000,000 | 500 | ..... | 300 | 1,000 |
| Over $5,000,000 | 500 | ..... | 300 | 1,500 |

*This is the fee schedule for claims submitted by members or member organizations, against public customers, registered representatives or non-members other than public customers, and for claims submitted by registered representatives or non-members other than public customers against members or member organizations or non-members. The one arbitrator column also sets forth the forum fee for pre-hearing conferences with a single arbitrator.

MEMBER CONTROVERSIES

| Amount in dispute | Filing fee | Pre-hearing conference | Hearing deposit |
|---|---|---|---|
| $10,000 or less | $100 | $150 | $200 |
| $10,001 to $100,000 | 200 | 300 | 750 |
| $100,001 or more | 300 | 500 | 1,000 |

Finally, CHX Rule 23 is being amended to clarify that members must arbitrate controversies unless the parties agree to bring a matter before the Exchange's Floor Procedure Committee.[15] The rule also provides that the Floor Procedure Committee may appoint an arbitrator if a member party fails to do so after due notice.[16]

[15] The Committee on Floor Procedure has general supervision of the conduct and dealings on the Floor of the Exchange and recommends for adoption by the Exchange Committee such rules and regulations as may be necessary for the convenient and orderly transaction of business of the Floor of the Exchange. The Committee has the power to enforce such rules and regulations by recommending staff investigations for violations thereof, in accordance with the procedure provided in Article XII. See CHX Article IV, Rule 3.

[16] CHX Rule 23(a) would be amended to state that any controversy between parties who are members, member organizations or their nominees or associated persons which arises out of the Exchange business of such parties shall be submitted to arbitration, through the Director of Arbitration, to an Arbitration Panel composed of members of the Committee on Floor Procedure, unless non-members are also parties to the controversy. If non-members are also parties to such controversies, the arbitrator shall be appointed in accordance with Section 8 of Rule 24 under this Article unless the non-members consent to arbitration before an arbitration panel selected by parties as provided in this Rule. However, controversies shall be resolved by the Committee on Floor Procedure if the parties to such controversy agree to be bound by the decision of that Committee or if Exchange rules otherwise require resolution by the Committee on Floor Procedure. The rules and procedures applicable to arbitrations which are set forth in Rule 24 do not apply to controversies which are to be resolved by the Committee on Floor Procedure.

(2) *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5), in particular in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change

*C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No comments were received on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period as (i) the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, 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 at the principal office of the CHX. All submissions should refer to the file number SR–MSE–93–9 and should be submitted by June 28, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary*

[FR Doc. 94–13734 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–34134; File No. SR–GSCC 94–2]**

## Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Comparison and Netting of Non-Member Trades

May 31, 1994.

On March 28, 1994, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change that will allow GSCC to continue to offer comparison and netting services for trades which have been submitted to GSCC by netting members on behalf of non-member executing firms. On April 25, 1994, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comment from interested persons.[2] No comments were received. This order permanently approves the proposal.

**I. Description**

On December 13, 1991, the Commission approved, on a temporary basis through December 31, 1992, a rule change authorizing GSCC to implement a non-member, "executing firm" information feature as an enhancement to its comparison service.[3] On December 23, 1992, the Commission extended its temporary approval of the executing firm feature until June 30, 1994.[4] The proposed rule change allows GSCC netting members to submit trading activity of non-members to GSCC. The proposal effectively expands the scope of trades eligible for GSCC's comparison and netting systems by allowing GSCC to identify, compare, and net trades where one or both sides to the transaction are non-members that have entered into clearing or correspondent arrangements with a GSCC member. The proposal will not result in GSCC's interacting directly with non-members.

Prior to its first submission on behalf of a non-member ("executing firm"), the GSCC member ("submitting member") must provide notice to GSCC of each executing firm on whose behalf the submitting member intends to act. The submitting member must indicate whether the executing firm's trades are to be compared and netted, or compared only. The submitting member's obligations to GSCC with respect to the non-member trade are the same as if the submitting member had executed the trade. Therefore, if the submitting member permits non-member trades to be included in GSCC's netting system, such member's margin and clearing fund deposits will be calculated based on its trades and non-member trades submitted to the netting system. The submitting member also will be required to complete delivery, receipt, and payment on netted trades of executing firms.

A submitting member would submit trades to GSCC on behalf of an executing firm that it clears for by indicating to the comparison system: (1) The name of the executing party associated with the member; and (2) the name of the executing party associated with the contra-party member. In general, for a comparison to be generated by GSCC, there must be an exact match of all required match data,[5] except for the contract value for which GSCC may set a tolerance on a systemwide basis. In order to minimize the number of uncompared trades that this system could initiate, GSCC in some instances may permit comparison even if certain fields do not match. If the identity of the executing firm does not match, GSCC may still compare a trade based on a match of submitting members. If the submitting party for the contra-party executing firm is incorrectly identified, GSCC may compare the trade if it has received notice from a GSCC member that it wishes to be deemed the appropriate submitting party for such executing firm. If data on a trade submitted against a member does not compare, but would compare if matched against data submitted by an affiliate of such member, GSCC may compare the transaction as if the member had submitted the trade against the affiliate.[6] If a trade is submitted without identifying an executing party, GSCC will compare the trade as if there is no executing party for that side of the trade. GSCC would, if requested, translate a member's internal contra-participant identifiers to a valid GSCC member identifying number.[7]

**II. Discussion**

Section 17A(b)(3)(F) of the Act provides that the rules of a clearing agency must promote the prompt and accurate clearance and settlement of securities transactions and remove impediments to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. By accepting

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33887 (April 8, 1994), 59 FR 19743.

[3] Securities Exchange Act Release No. 30078 (December 13, 1991), 56 FR 66110.

[4] Securities Exchange Act Release No. 31651 (December 23, 1992), 57 FR 62586.

[5] The required items that must match are participant/contra-participant, par value, CUSIP number, buy versus sell indication, trade date, settlement date, final money or yield and commission, and executing firm/contra-executing firm.

[6] Prior to this comparison, GSCC must have received notice from the two parties stating that they are affiliates and that each wishes to be presumed to be the correct contra-party to a side of a trade submitted with the other as contra-party.

[7] This would assist GSCC members that, for operational reasons, have more than one contra-trading account set up for a given member.

non-member trades into GSCC's comparison system, a greater number of trades are included in the national clearance and settlement system. These trades are given the benefit of a centralized clearance and settlement system.

In the initial approval order,[8] the Commission stated that GSCC should encourage its members to be more accurate in the data they submit in order to reduce, and eventually eliminate, the need for GSCC to substitute or supplement data on behalf of members. The Commission also stated that GSCC should track the identity of the submitting member and the executing firm in order to identify by type of match each trade involving a non-member. The Commission stated that the tracking should provide a basis for GSCC to test the accuracy of member input. Finally, the Commission requested that GSCC provide on a quarterly basis during the temporary approval period data concerning GSCC's comparison rates.

GSCC reports that since January of this year, the rate of successfully compared trades executed by non-member firms was 63%.[9] This figure is down slightly from the 69% figure reported to the Commission for the third quarter of 1992.[10] In order to increase the comparison rate, GSCC issues a report each month to members indicating the comparison rate for member trades and for non-member trades.[11] GSCC will counsel firms that have low comparison rates for non-member trades.

Currently, twelve firms act as submitting members for a total of 271 non-member executing firms. This is a substantial increase from December 1992, when four firms acted as submitting members, for a total of fifty-eight non-members. GSCC should continue to attract more firms that provide a correspondent clearing service.

The Commission believes that GSCC should be able to deem a trade as compared when both sides of the trade do not agree as to the executing firm information.[12] GSCC structured the proposal in this manner to facilitate the successful comparison of trades because not all GSCC members' internal systems are equipped to accommodate additional information fields. The Commission believes that as participation in the executing firm program grows, the exceptions to the requirements for a matched trade will help bolster the percentage of successfully compared trades.

GSCC has had more than two years experience in administering the program. To date, GSCC has not experienced any operational or other problems with regard to the executing firm feature. While the Commission believes that GSCC should continue to work to improve the comparison rate, the Commission also believes that GSCC has demonstrated sufficient expertise to warrant permanent approval of this rule filing.

### III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with Section 17A of the Act.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–GSCC–94–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–13735 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–M

[8] Securities Exchange Act Release No. 30078 (December 13, 1991), 56 FR 66110.

[9] During this same period, forty trades for non-members have been submitted each day on average. Telephone conversation between Jeffrey Ingber, General Counsel, GSCC and Christine Sibille, Attorney, Commission (April 8, 1994).

[10] See Securities Exchange Act Release No. 31651 (December 23, 1992), 57 FR 62586.

[11] Telephone conversation between Jeffrey Ingber, General Counsel, GSCC and Christine Sibille, Attorney, Commission (April 11, 1994).

[12] Other clearing agencies have programs which allow trades to compare even though certain items do not precisely match. Securities Exchange Act Release Nos. 31352 (October 23, 1992), 57 FR 49728 (MBSCC's Comparison and Clearing System); and 32747 (August 13, 1993), 58 FR 44530 (NSCC's Fixed Income Transaction System).

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**[Release No. 34–34143; File No. SR–NASD–94–26]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Subscriber Charge for Expanded Last Sale Information

June 1, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 2, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On May 25, 1994, the NASD filed Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to section 19(b)(1) of the Act, the following is the full text of a proposed rule change to authorize implementation of an increase in the fee charged by The Nasdaq Stock Market, Inc. ("Nasdaq") to access the last sale information which it collects, processes, and distributes through vendors and to incorporate the amended fee into part VIII, section A.5 of Schedule D to the NASD By-Laws. (New language is italics and deletions are in brackets.)

A. System Services

* * * * *

5. [NASDAQ] Last Sale Information

a. The charge to be paid by the subscriber for each terminal receiving [NASDAQ] Last Sale Information through a vendor shall be determined by the total number of securities classified by the Corporation (i) as designated securities under parts *X*[XII] and *XI*[XIII] and (ii) those classified as OTC Equity Securities under part XII of Schedule D to the NASD By-Laws. The following schedule of charges shall apply to the receipt of last sale information for such securities.

| No. of [Designated] Securities | Charge per terminal per month |
|---|---|
| 250 or less | $2.50 |
| 251 to 500 | 5.00 |
| 501 to 1,000 | 7.50 |
| 1001 or more | 9.75 |
| | *[9.00] |

[*On March 13, 1992, the Association's Board of Governors voted to increase the charge from $7.50 to $9.00 based on existing authorization from the Securities and Exchange Commission to levy a maximum charge of $10.00/terminal/month for receipt of last sale information on more than 1,000 designated securities.]

b. The rate for each month shall be determined by the total number of designated securities and OTC Equity Securities at the start of business on the first day of that month.

The NASD requests the Commission to find good cause, pursuant to Section

[2] See letter from Michael Kulczak, Associate General Counsel, NASD, to Elizabeth L. Prout, Staff Attorney, Commission, dated May 25, 1994. Amendment No. 1 corrects a clerical error in the text of the proposed rule change.

19(b)(2) of the Act,[3] for approving the proposed rule change prior to the thirtieth day after publication in the Federal Register. The NASD and Nasdaq believe that accelerated approval is appropriate because: (1) The instant fee increase to $9.75/terminal/month is below the $10 maximum originally approved by the Commission in 1982 for subscribers to access the Last Sale information on more than 1,000 reportable securities;[4] (2) the increase of $.75/terminal/month will entitle vendors' subscribers to access real-time last sale data on substantially more securities, approximately 20,000 issues classified as OTC Equity Securities (hereinafter referred to as "OTC equities");[5] (3) the amount of the increase is reasonable in light of (i) the number of additional reportable issues, (ii) their relative share volume in comparison to the volume being reported in Nasdaq-listed securities, and (iii) the amount of additional data that must be collected, processed, and distributed to support the expanded Last Sale Service; (4) the expanded data has been available to vendors' subscribers since April 4, 1994 at no additional charge; and (5) the next bi-monthly billing cycle for Last Sale Service begins on June 1, 1994 and the increased fee will be applied prospectively.

## 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 NASD 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 IV below. The NASD has proposed 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

This rule change is designed to effect an increase of $.75/terminal/month for receipt of an expanded Last Sale Service that now includes real-time transaction reports in OTC equities. Last Sale Service is provided to the subscribers of authorized vendors who redistribute last sale information pursuant to an agreement with Nasdaq.

The actual distribution of last sale information that includes trade reports on OTC equities commenced on April 4, 1994. Access to this expanded stream of last sale information is now provided to all subscribers who had been receiving last sale information on Nasdaq-listed securities. The proposed fee increase will apply prospectively to all such subscribers, starting June 1, 1994.[6] In sum, a bundled last sale service—covering all Nasdaq-listed securities and all domestic OTC equities—will be provided to vendors' subscribers for a single monthly charge of $9.75/terminal.

The instant filing also includes technical changes in the language of the present fee schedule to indicate (i) changes in the numbering of other parts of Schedule D and (ii) expansion of the Last Sale Service offering to include reportable OTC equities. These changes are necessary to update the service description contained in the published fee schedule.

2. Statutory Basis

The NASD and Nasdaq believe that the proposed rule change is consistent with the requirements of Section 15A(b)(5) of the Act.[7] Section 15A(b)(5) specifies that the rules of a national securities association shall provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers and other persons using any facility or system that the Association operates or controls. The proposed increase of $.75/terminal/month represents an 8.3% increase over the prevailing rate. This increase is designed to offset the developmental and operating costs associated with extending real-time trade reporting to a large universe of OTC equities, numbering more than 20,000 securities. This universe includes approximately 4,200 OTC equities that are quoted in the OTC Bulletin Board Service ("OTCBB"). In terms of reported share volume for the month ending January 31, 1994, share volume attributable to OTC equities quoted in the OTCBB equaled 8.4% of share volume in Nasdaq-listed securities; the comparable figure for OTC equities not quoted in the OTCBB was approximately 11% of Nasdaq share volume. Accordingly, the NASD and Nasdaq believe that the proposed 8.4% increase in the last sale charge is reasonable in relation to the expanded base of reportable securities and the relative share volume in those issues for which last sale data will be collected, processed and disseminated. Lastly, the amended fee remains below the $10/terminal/month maximum that the Commission previously approved when real-time trade reporting commenced for Nasdaq-listed securities.

### *B. Self-Regulatory Organization's Statement on the Burden on Competition*

The NASD and Nasdaq believe that this proposal will not create any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Comments were neither solicited nor received.

## 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 at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SD–NASD–94–26 and should be submitted by June 28, 1994.

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[3] 15 U.S.C. 78s(b)(2) (1988).

[4] See Securities Exchange Act Release No. 19108 (October 6, 1982). The Commission notes that the approval order permitted a maximum charge of $10.00 per month per subscriber terminal for the receipt of lover 1,000 Nasdaq "National Market System" (currently called "Nasdaq/National Market") securities. Currently, of the total number of securities for which last sale reports are available to subscribers, 3,599 are Nasdaq/National Market securities. Conversation between Michael Kulczak, NASD, with Elizabeth Prout, Commission, on May 31, 1994.

[5] OTC equities comprise the universe of equity securities that are (i) not listed on Nasdaq and (ii) not qualified as "reported securities" for purposes of the National Market System plans governing the collection and dissemination of transaction data. Pursuant to Part XII of Schedule D to the NASD By-Laws, NASD members are required to report their transactions in OTC equities within 90 seconds of execution for regulatory purposes as well as for dissemination through vendor channels.

[6] Last Sale subscribers are billed bi-monthly in advance; the next billing cycle begins on June 1, 1994.

[7] 15 U.S.C. 78o–3(b)(5) (1988).

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(5), which specifies that the rules of a national securities association provided for the equitable allocation of reasonable dues, fees, and any other charges among members and issuers and other persons using any facility or system which the association operates or controls. As discussed above, the present proposal sets subscribers fees at $9.75 per terminal which is below the $10.00 terminal ceiling that the Commission, in 1982, found to be reasonable for subscriber access to last sale reports for over 1,000 Nasdaq/National Market securities. The Commission believes that the present proposal is consistent with the 1982 order because subscribers now may access last sales reports in over 20,000 securities, which nearly 4000 are Nasdaq/National Market securities.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission increase is consistent with the 1982 order. The Commission also believes that accelerated approval of the present proposal is appropriate because, since April 4, 1994, subscribers have been receiving last sale information at no additional charge in the expanded universe of securities that recently became subject to last sale reporting requirements.

It Is Therefore Ordered, pursuant to section 19(b)(2)[8] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority[9]

**Margaret H. McFarland,**

*Deputy Secretary*

[FR Doc. 94-13775 Filed 6-6-94; 8:45 am]

BILLING CODE 8010-01-M

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12)(1991).

[Release No. 34-34136; File No. SR-NYSE-89-17]

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Trades One or Two Points Away From the Last Sale and To Stop Orders

May 31, 1994.

### I. Introduction

On July 12, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend NYSE Rules 79A.30 and 123A.40. On March 15, 1993, the NYSE submitted Amendment No. 1 to the rule filing.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 28202 (July 13, 1990), 55 FR 29696 (July 20, 1990). No comments were received on the proposal.

### II. Description of the Proposal

Currently, all transactions made at one point or more away from the last previous sale when such previous sale is under $20 per share, or at two points or more away from the last previous sale when such previous sale is at $20 per share or over, may not be published on the tape without the prior approval of a Floor Official.[4] The rule change to NYSE Rule 79A.30 will permit a Floor Governor, during unusual market conditions, to change the two point parameter requiring Floor Official approval for a particular security when the last previous sale for such security occurs at $100 per share or more. The special price parameter will apply only for the trading day it was approved, but may be re-confirmed by the Floor Governor for subsequent trading sessions for the particular security on a day-by-day basis. Once a Floor Governor has established a special price parameter, a Floor Official must approve the publication on the tape of any trade that exceeds such parameter, except when Floor Governor approval is required under Rule 123A.40, as discussed below. Changes to the two point parameter must be reported to the Exchange's Market Surveillance Division by the Floor Governor.

NYSE Rule 123A.40 prohibits a specialist from trading for his own account in a stock in which he is registered if the trade would result in electing any stop order on his book, unless (i) his bid or offer has the effect of bettering the market, (ii) a Floor Official approves the transaction, and (iii) the stop order is guaranteed to be executed at the same price as the electing sale.[5] While the above requirements would remain for transactions where the specialist's bid or offer results in the election of a stop order, under the proposal a specialist would be permitted to participate in a trade solely for the purpose of facilitating the completion of an order at a single price where the depth of the current public bid or offer (which would not be the specialist's bid or offer) is not sufficient to do so, without guaranteeing the execution price of any stop orders elected by the transaction and without obtaining Floor Official approval for each transaction. The proposal, however, requires a specialist to obtain the approval of a Floor Governor rather than a floor official as currently required, prior to engaging in a transaction for his own account at the electing sale price if a stop order will be elected (pursuant to the rule's conditions) and executed at a price outside the price parameters provided in NYSE Rule 79A.40.[6]

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] Amendment No. 1 limited the proposed rule change to NYSE Rule 79A.30 to securities trading at $100 or over.

[4] *See* NYSE Rule 79A.30.

[5] Stop orders are orders which become executable market or limit orders once the price specified on the order is reached in the market. If the order is an executable market order, it will be executed at the next best market price, which may not be the stop order ("electing") price.

[6] See *supra* note 4 and accompanying text. Should the two point price parameter provided in Rule 79A.30 be change for securities traded at $100 or over pursuant to the change to Rule 79A.30 being approved herein, that temporary price parameter will be the determining point for floor Governor approval pursuant to Rule 123A.40.

[7] 15 U.S.C. 78f(b) (1988).

manipulative acts, and, in general, to protect investors and the public.

The Commission believes that the rule change to NYSE Rule 79A.30 to permit a Floor Governor to change the two point parameter for transactions in securities trading at $100 or over, is consistent with Section 6(b)(5) of the Act in that it will facilitate trading during unusual market conditions. The Commission believes that the rule change may help to minimize the possibility of delays in reporting trades to the Tape during highly volatile trading days by eliminating the need to obtain Floor Official approval for certain trades of higher priced securities.

Furthermore, because Floor Official approval is required for each transaction to be executed outside of the price parameters once a Floor Governor approves a change, the Commission believes that the rule change provides appropriate Exchange oversight of trades away from the last sale of a security, which will help to ensure that specialists satisfy their market making responsibilities during unusual market conditions.[8] In addition, all changes in the two point parameter will be reported to the exchange's Market Surveillance Division by the Floor Governor, thereby providing Exchange oversight of the Floor Governor's decision. The Commission further believes requiring that the decision to change the two point price parameter be made by a Floor Governor on a day-by-day basis will emphasize the intent that the two point parameter be changed only in unusual circumstances.[9]

The Commission believes the rule change to NYSE Rule 123A.40 to permit specialists to participate in transactions which result in the election of stop orders without guaranteeing the execution price of the stop orders is consistent with Section 6(b)(5) of the Act in that it will benefit investors by facilitating single-price executions of orders. Currently, when a market order arrives at a specialist's post and the depth of the current bid or offer is not sufficient to provide a single-price execution of the order, the specialist cannot participate in the transaction if a stop order would be elected without guaranteeing the price of the stop order and obtaining Floor Official approval. When the specialist does not participate, the market order is partially executed against the best bid or offer, and partially executed against any elected stop orders and limit orders on the specialist's book, usually at different prices. The rule change allows the specialist to participate in such transactions without guaranteeing the price of any elected stop orders or obtaining Floor Official approval, and thereby makes it more likely that specialists will provide investors with single-price execution of their orders.

While the Commission views the prohibition on specialist participation in the election of stop orders as helpful in guarding against the potential for abuse,[10] we recognize that certain benefits can accrue from permitting limited specialist participation under the conditions set forth in the rule to facilitate single price executions. Specifically, unlike the situation where the specialist enters his own bid or offer, when a specialist participates in the execution of a customer's market order under the proposed rule, he will not be setting the price of the transaction that elects the stop orders. Rather, the price will be determined by another market participant, independent of any price-setting determination by the specialist. The Commission therefore believes that allowing specialists to facilitate single-price execution of market orders through passive participation will not negatively affect the execution of stop orders elected by the transactions, and does not present the opportunity for abuses that may be present were the specialist is actively setting the price through his own proprietary bids or offers.[11]

The Commission further believes that the rule change requiring Floor Governor approval for any transactions which will result in the execution of an elected stop order outside the one or two point parameters contained in NYSE Rule 79A.30, or any temporary parameters established by a Floor Governor during unusual market conditions pursuant thereto, will provide increased scrutiny of gap-executions of stop orders and thereby benefit investors consistent with section 6(b)(5) of the Act. The Commission notes that under Rule 79A.30, Floor Official approval is needed for transactions effected outside the price parameters contained therein, but that under Rule 123A.40, Floor Governor approval is necessary for the execution of stop orders outside the price parameters of Rule, 79A.30 when the stop orders are elected by a transaction in which a specialist participated. The Commission believes this increased Exchange oversight of specialists' proprietary activity will provide investors with additional protection against potential trading abuses related to the execution of stop orders.

The Commission finds good cause for approving Amendment No. 1 to the rule change prior to the thirtieth day after publication of notice of filing thereof. Amendment No. 1 added language to the rule change that limits Floor Governor changes to the price parameters provide in NYSE Rule 97A.30 to securities traded at $100 per share or over.[12] The NYSE's proposed rule change was published in the **Federal Register** for the full statutory period and no comments were received.[13]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. 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

[8] Under Section 11 of the Act, 15 U.S.C. 78k, specialists have the responsibility to act as dealers to the extent necessary to maintain fair and orderly markets, which includes tempering sudden price movements and keeping any general price movements orderly. See Division of Market Regulation, October 1987 Market Break Report, at 4–3.

[9] This rule change is intended to apply only to intra-day trading, and will not affect opening transactions. See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Assistant Director, Division of Market Regulation, dated June 12, 1990. The Exchange states that it has a "a long-standing policy of requiring Floor Official approval for the opening trades in any stock transaction that will result in a price change of * * * two points or more away from a last sale of $20 or more." *Id.*

[10] The provision of Rule 123A.40 that requires specialists to guarantee the price of elected stop orders and requires floor official approval when a specialist elects stop orders through his own bid or offer are intended to address, in part, the situation where a specialist has an accumulation of stop orders and desires to "clean up the book." This can be accomplished by the specialist entering a bid, for example, that elects all of the stop sell orders at the lowest stop order price, or by electing stop sell orders in a series of descending prices until the lowest order is reached. The specialist could use these stop order election processes to drive the share price down to an artificially low level in order to obtain cheap stock at the expense of the public customers. The potential for this type of abuse is not present, however, where a customer market order sets the trading price and incidentally elects stop orders of which the customer was unaware.

[11] See *id.*

[12] As originally filed, the proposed rule change would have allowed Floor Governors to change the price parameters in NYSE Rule 79A.30 for all securities.

[13] See Securities Exchange Act Release No. 28202 (July 13, 1990), 55 FR 29696 (July 20, 1990).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspecting and copying at 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 NYSE. All submissions should refer to File No. SR–NYSE–89–17 and should be submitted by June 28, 1994.

**V. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–89–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–13737 Filed 6–6–94; 8:45 am]

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**[Release No. 34–34135; File No. SR–NYSE–93–17]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change To Amend Exchange Rule 96 to Permit Floor Professionals Who Have a Listed Option Position in a Stock To Initiate an On-Floor Proprietary Trade in That Stock

May 31, 1994.

On March 15, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 96 to permit NYSE Floor professionals who have a listed option position in a stock to initiate an on-Floor proprietary trade in that stock.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33642 (February 18, 1994), 59 FR 9506 (February 28, 1994). No comments were received on the proposal. This order approves the proposed rule change.

Exchange Rule 96 currently prohibits a member registered as a Competitive Trader[3] or Registered Competitive Market Maker ("RCMM")[4] from initiating, while on the Floor of the Exchange, the purchase or sale, for his own account or his member organization's account, of any stock in which he has an option position or in which he knows that his member organization has an option position. Competitive Traders and RCMMs are not subject to any direct limitation on their trading of options; however, once an NYSE Floor professional acquires an option position, he must effect subsequent proprietary transactions in the underlying stock pursuant to an off-Floor order.[5] At present, Rule 96 applies to all options, including those traded on a national securities exchange ("listed options") and those traded over-the-counter ("OTC options").[6]

The NYSE proposes to remove the prohibition in Rule 96 as to listed options. As a result, a Competitive Trader or RCMM with a listed option position in a stock will be permitted to initiate an on-Floor proprietary trade in that stock. In contrast, an NYSE Floor professional with an OTC option position in the same stock will continue to be subject to Rule 96's restrictions.

The Exchange states that the statutory bases for the proposed rule change are Sections 6(b)(5), 6(b)(8) and 11A(a)(1)(c)(ii) of the Act. According to the NYSE, by removing the prohibition on Competitive Traders and RCMMs initiating proprietary transactions on the Floor in a stock where they have a listed option position in such stock, and thereby permitting such members to add to the depth and liquidity of the Exchange market in situations where they may not currently do so, the proposed rule change will have the effect of "facilitating transactions in securities" and will "perfect the mechanism of a free and open market," as called for in Section 6(b)(5).

The NYSE also believes that, to the extent that the proposed rule change permits Floor professionals to initiate transactions on a more equal regulatory footing with other securities professionals, the proposed rule change is designed to eliminate unfair discrimination between brokers or dealers, as called for in Section 6(b)(5); to remove a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as called for in Section 6(b)(8); and to promote fair competition among brokers and dealers, as called for in Section 11A(a)(1)(C)(ii).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b).[7] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

In light of the changes in market structure that have taken place since Rule 96 was adopted, the Commission believes that the benefits of the NYSE proposal outweigh any burdens it may impose. Specifically, the Commission has concluded that the proposed rule change should enhance the quality of the NYSE market. The NYSE established the membership categories of Competitive Trader and RCMM to provide a means by which NYSE members could, under certain conditions, add depth and liquidity to the market by initiating proprietary transactions on the Floor of the Exchange.[8] The Commission, however, notes that Rule 96 may frustrate that purpose,[9] to the extent it may be unnecessarily restrictive given the risks posed by Competitive Traders' and RCMMs' dealings in stocks in which

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[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] A Competitive Trader is an NYSE member who is authorized to initiate proprietary transactions on the Floor of the Exchange but who is not registered as a specialist, odd-lot dealer or Registered Competitive Market Maker. See NYSE rules 111 & 112(e). Competitive Traders exist pursuant to, and must comply with the requirements of, Section 11(a)(1)(G) of the Act. See also SEC Rule 11a1–1(T). In addition, the NYSE requires that 75 percent of a Competitive Trader's monthly transactions must be stabilizing transactions under the tick-test. See NYSE Rule 112(d).

[4] A RCMM is an NYSE member who is authorized to initiate proprietary transactions on the Floor of the Exchange. See NYSE Rule 107. See also SEC Rule 11a1–5. RCMMs are not subject to the same tick-test as Competitive Traders; however, they must comply with a complex series of rules about the price at which they can trade and the size of those trades. See NYSE Rule 107. Unlike Competitive Traders, RCMMs have an affirmative obligation to maintain a fair and orderly market. See NYSE Rule 107(B)(4).

[5] The terms "on-Floor" and "off-Floor" are defined in NYSE Rule 112.20.

[6] As used herein, the term "OTC option" means "conventional option." Art. III, Rule 33(gg) of the National Association of Securities Dealers' Rules of Fair Practice defines a conventional option as any option contract not issued, or subject to issuance, by the Options Clearing Corporation.

[7] 15 U.S.C. 78f(b) (1988).

[8] For further discussion of the conditions for Competitive Trader and RCMM participation, see *supra*, notes 3–4.

[9] The NYSE argues that the ability of a Competitive Trader or RCMM with an option position to trade the underlying stock pursuant to an off-Floor order may not be meaningful, given how these Floor professionals routinely conduct their business. If so, there could be a disincentive for any NYSE member who participates in the options market (or who is associated with a member organization that participates in the options market) to be active as a Competitive Trader or RCMM.

they (or their member organization) have an option position.[10]

After careful review, the Commission believes that the NYSE proposal may reduce the current disincentive for members, especially options market participants and their associated persons, to act as a Competitive Trader or RCMM given Rule 96's restrictions.[11] For instance, NYSE members currently serving as Competitive Traders and RCMMs could initiate proprietary Floor Trades in situations where they presently cannot do so; moreover, other members might be encouraged to serve in that capacity. In the Commission's view, an increase in the capital committed to such supplemental market making activities could improve the depth and liquidity of the NYSE market, particularly in times of market stress.

Furthermore, the Commission is satisfied that the NYSE proposal contains adequate safeguards to protect investors in the securities markets. In this respect, the Commission notes that a comprehensive regulatory framework has been developed for the trading of listed securities, including listed options.[12] For example, in 1983, an Intermarket Surveillance Group ("ISG") was formed to coordinate more effectively surveillance and information sharing arrangements between the stock and options markets.[13] Using procedures developed in that forum, among other things, the national securities exchanges identify and investigate stock and/or options transactions that, used on certain parameters, raise manipulative concerns. The Commission believes that this regulatory scheme, including NYSE monitoring and surveillance of amended Rule 96, should be sufficient to detect and deter intermarket manipulation and other fraudulent or abusive practices.

Specifically, the NYSE has informed the Commission that the Exchange will increase the frequency of its examination of the trading activity of Competitive Traders and RCMMs. The Commission expects that NYSE staff will utilize such information as part of its on-going efforts to ensure compliance with the Act, the rules and regulations thereunder and Exchange rules. In this respect, the Exchange has assured the Commission that, if a transaction raises concerns about intermarket manipulation, NYSE staff, with the cooperation of the options exchanges where appropriate, will conduct a thorough examination of all the relevant facts. Accordingly, the Commission believes that the NYSE's monitoring and surveillance of Rule 96, as amended, will aid the Exchange in detecting any trading abuses.

More generally, the Commission agrees with the Exchange that, independent of Rule 96, other NYSE rules, which the NYSE will continue to monitor for compliance, should help to keep Floor professionals from being in a position where they can engage in trading abuses. As examples, the NYSE cites the yielding requirement imposed on certain on-Floor orders for a member's own account,[14] and the conditions placed on when a Competitive Trader or RCMM can initiate a proprietary Floor trade.[15] Further, Competitive Traders and RCMMs, like other NYSE members, are subject to the prohibition on frontrunning of block transactions.[16]

Finally, the Commission notes that, Competitive Traders and RCMMs currently are not prohibited from trading in stocks in which they have an existing option position. Such transactions, however, must be initiated off-Floor. To the extent that the amended rule will permit such transactions to be initiated on-Floor, NYSE surveillance should detect and deter any trading abuses derived from informational advantages. In sum, the Commission believes that the proposed rule change should not materially affect the NYSE's ability to address the regulatory concerns raised by Floor professionals' intermarket trading activity.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–93–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–13736 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–M

[10] For further discussion of the risks of such activity and the safeguards contained in the NYSE proposal, *see infra*, notes 12–15 and accompanying text.

[11] See *supra*, note 9 and accompanying text.

[12] Listed options are standardized contracts traded in an open auction market environment. Exchange-traded options are subject, among other things, to real-time quotation and last-sale reporting; anti-fraud provisions; and minimum criteria for initial and continued listing. Transactions in listed options become part of the integrated audit trail. In contrast, OTC options are individualized contracts that are negotiated between the counterparties. There is minimal, if any, public disclosure and a relatively illiquid secondary trading market.

[13] The full members of the ISG are the American Stock Exchange; the Boston Stock Exchange; the Chicago Board Options Exchange; the Chicago Stock Exchange; the National Association of Securities Dealers; the NYSE; the Pacific Stock Exchange; and the Philadelphia Stock Exchange.

[14] Under NYSE Rule 108, an on-Floor order placed by a member to establish or increase a position in the member's proprietary account is not entitled to priority, or precedence based on size, over an off-Floor order placed by a public customer.

[15] See *supra*, notes 3–4.

[16] See NYSE Rule 122.20(d) and Information Memorandum 89–53 (November 27, 1989).

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1991).

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[Investment Company Act Rel. No. 20325; 812–8494]

## Lehman Brothers Institutional Funds Group Trust, et al.; Application

May 31, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("Act").

**APPLICANTS:** Lehman Brothers Institutional Funds Group Trust and Lehman Brothers Funds, including the series thereof, on behalf of themselves and any other investment companies existing or created in the future for which the Advisers (as defined below) or persons controlling, controlled by, or under common control with the Advisers serves or may serve in the future as investment adviser (the "Funds"); and Lehman Brother Global Asset Management, Ltd. and Lehman Brothers Global Asset Management Inc. (the "Advisers").[1]

**RELEVANT ACT SECTIONS:** Order requested under sections 6(c) and 17(b) to exempt the Funds from sections 17(a) and 17(e)(2).

**SUMMARY OF APPLICATIONS:** Applicants seek an order to permit the Funds to engage in certain transactions in U.S. government securities, repurchase agreements, tax-exempt obligations, and taxable obligations with banks (and their affiliated persons) that are remote affiliates of the Funds.

**FILING DATE:** The application was filed on July 19, 1993, and amended on January 14, 1994, April 13, 1994, and May 31, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by

[1] All existing investment companies that presently intend to rely on the requested order have been named as applicants. Other existing companies will be covered by the order if they later propose to engage in the proposed transactions, as described in the application.

mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Lehman Brothers Institutional Funds Group Trust, one Exchange Place, Boston, Massachusetts 02109. Lehman Brothers Global Asset Management, Ltd., Two Broadgate, London EC2M 7HA, England. Lehman Brothers Funds and Lehman Brothers Global Asset Management Inc., 200 Vesey Street, New York, New York 10285.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Staff Attorney, at (202) 942–0573, or C. David Messman, Branch Chief, at (202) 942–0564 (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.

### Applicants' Representations

1. Each of the Funds is a registered open-end management investment company that is authorized to issue shares in series. The existing series of the Funds are money market funds. One of the Funds and the series thereof are designed exclusively for institutional investors, particularly banks seeking investment of assets on behalf of fiduciary or trust accounts. Lehman Brothers Global Asset Management Inc. serves as investment adviser to the Funds.

2. The number of outstanding shares of each Fund can fluctuate significantly, even on a daily basis, particularly for those sold to institutions. From time to time, the number of shares held of record by a bank in a master account for its agency or fiduciary accounts could exceed 5% of a Fund's outstanding voting shares. In that case, the Fund would become an Affiliated person of the bank and the prohibitions of section 17 would apply.

3. Applicants seek an exemption from sections 17(a) and 17(e)(1) to permit the Funds to engage in certain transactions with "Affiliated Banks." For purposes of this application, "Affiliated Banks" are banks, bank holding companies, or affiliated persons thereof that are affiliated persons of the Funds *solely* because they: (a) Directly or indirectly own, control, or hold with the power to vote 5% of the outstanding voting securities of any of the Funds; or (b) act as investment adviser to any of the Funds.

4. The exemption from section 17(a) would permit the Funds to purchase both long and short-term U.S. government securities from Affiliated Banks that act as primary dealers in these securities.[2] The exemption from section 17(a) also would permit a Fund to enter into repurchase agreement transactions with, or purchase short-term obligations issued by, an Affiliated Bank, provided that all such securities meet the credit standards set forth in condition 1 below ("Qualified Securities"). The exemption from section 17(e)(1) would permit an Affiliated Bank, acting as an agent for any Fund in connection with the purchase or sale of U.S. government securities or tax-exempt obligations, to accept compensation that would be permitted a broker under the limitations of section 17(e)(2).

5. Primary dealers in U.S. government securities are dealers that are permitted to deal directly with the Federal Reserve Bank of New York. In purchasing and selling U.S. government securities, it is critical that the Funds obtain prompt execution of their transactions at a competitive cost. Each primary dealer is a major factor in the U.S. government securities market. If the Fund cannot trade with one or more primary dealers, the Funds may be deprived of the most favorable price and execution as against other dealers.

6. Applicants believe that the elimination of even a few major banks from the universe of money market instrument issuers and dealers with whom the Funds may do business would have a noticeable impact on portfolio management flexibility. Each issuer of Qualified Securities contributes to the depth and liquidity of the market for short-term obligations.

7. Commercial banks are important factors in the municipal bond dealer community, particularly in the general obligation area. The municipal bond market is more disparate, much less structured, and considerably less liquid than the market for money market instruments. As a result, much greater reliance is placed on the dealer community to keep portfolio managers apprised of, and to supply the Funds with, suitable issues of municipal securities, as well as to assist in the disposition of portfolio securities.

8. The Funds' board of directors, trustees, or managing general partners will be responsible for adopting and monitoring appropriate methods to ensure that the price and terms of transactions in U.S. government securities and Qualified Securities will be reasonable and fair to participating Funds. In evaluating the fairness and reasonableness of transactions in U.S. government securities, a Fund or its investment adviser will obtain and document competitive quotations from at least one other dealer. In evaluating the fairness and reasonableness of transactions in Qualified Securities, applicants may use a matrix pricing system to assess the price offered by the Affiliated Bank relative to market transactions involving comparable securities.[3]

### Applicants' Analysis

1. Section 2(a)(3) defines an "affiliated person" of another person as, among other persons: (a) Any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (d) any officer,director, partner, copartner, or employee of such other person; and (e) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof.

2. By virtue of section 2(a)(3), if a bank owns, controls, or holds with the power to vote more than 5% of the outstanding shares of a Fund, that bank is an affiliated person of the Fund. Any person who is an affiliated person of a registered investment company also may be deemed to be an affiliated person of an affiliated person of each other registered investment company which has a common investment adviser, or investment advisers which are affiliated persons of each other, or common directors or common officers, or a combination of the foregoing, because such investment companies may be deemed to be under common

[2] As used in the application, the term U.S. government securities are securities that are guaranteed as to payment of principal and interest by the U.S. government or its agencies or instrumentalities.

[3] A matrix pricing system uses market data from transactions involving securities having comparable ratings, credit quality, maturity, collateral, amortization and other relevant terms to evaluate the price of a security.

control. Accordingly, a bank, bank holding company, or affiliated person thereof that is deemed to be an affiliated person of one Fund may be deemed to be an affiliated person of an affiliated person of all the other Funds.

3. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other property. The operation of these provisions could prohibit all of the Funds from engaging in a variety of transactions with a wide range of banks, bank holding companies, and affiliated persons thereof.

4. Applicants believe that a bank, bank holding company, or affiliated person thereof that is affiliated with a Fund solely because it owns, holds, or controls 5% or more of the Fund's outstanding voting securities and/or acts as investment adviser to a different Fund, although an "affiliated person" of the Fund, or an "affiliated person of an affiliated person" of the Fund, within the meaning of section 2(a)(3) of the Act, is unlikely to possess the power to influence improperly the Fund with respect to purchases or sales by the Fund of securities from or to an Affiliated Bank. As a condition to the order, no Fund will engage in transactions with any Affiliated Bank which serves as investment adviser or sponsor to that Fund, controls or is under common control with the investment adviser or sponsor, or otherwise controls such Fund within the meaning of section 2(a)(9). Applicants believe that permitting transactions only with remote affiliates precludes the possibility of any overreaching by an Affiliated Bank and thus eliminates the concerns that section 17(a) was designed to address.

5. Section 17(e)(1) prohibits an affiliated person of a registered investment company, or an affiliated person thereof, from accepting any compensation for acting as an agent for the investment company unless it is in the course of such person's business as an underwriter or broker. Section 17(e)(2) provides that an affiliated person of a registered investment company, or an affiliated person thereof, acting as a broker or underwriter for the registered investment company may accept a limited commission or fee for conducting such transactions. Because banks are specifically excluded from the definition of broker in section 2(a)(6), however, they are unable to accept compensation under section 17(e) for acting as an agent for an affiliated investment company.

6. Applicants believe that the execution of transactions through Affiliated Banks as agents is appropriate for a number of reasons. First, any such transactions will comply with section 17(e)(2), assuring that the compensation received is fair and reasonable. Second, granting the relief merely would put an Affiliated Bank in the same position as any other affiliated person of a Fund that happened to meet the definition of broker. Finally, the use of Affiliated Banks promotes investment flexibility by expanding the range of entities available for execution of securities transactions.

**Applicants' Conditions**

1. The Funds will engage in transactions with Affiliated Banks only in U.S. government securities or Qualified Securities, For purposes hereof, the term Qualified Securities is defined to mean:

(a) For obligations which are "short-term" securities within the meaning of rule 2a–7 under the Act, each such security shall constitute an "Eligible Security" within the meaning of rule 2a–7; provided, that in the case of Unrated Securities (as defined in rule 2a–7(a)(20)), in addition to the requirements of rule 2a–7 applicable to such Unrated Securities, all determinations with respect to comparability of such securities to rated securities are also reviewed and approved at least quarterly by a majority of a Fund's board of directors/ trustees who are not interested persons of the Fund.

(b) For obligations which are "long-term" securities within the meaning of rule 2a–7, each such security (or another long-term security of the same issuer having comparable priority and security to such obligation) shall have been rated by a nationally-recognized statistical rating organization ("NRSRO") in one of the four highest rating categories for long-term obligations; or, if the security and issuer have not been rated by any NRSRO, are determined by a Fund's investment adviser to be comparable in credit quality to a security carrying a long-term rating in one of such four highest rating categories of a NRSRO, and such determination is reviewed and approved at least quarterly by a majority of such Fund's board of directors/ trustees who are not interested persons of the Fund. In addition, if a Fund proposes to invest in a security that at the time of issuance was a long-term security but that has a remaining maturity of 397 calendar days or less, then the issuer of such security shall have received a rating from a NRSRO, with respect to a class of short-term securities that is comparable in priority and security to the long-term security, in one of the two highest rating categories. If the issuer has not received such a rating with regard to comparable short-term securities, then a long-term security with a remaining maturity of less than 397 calendar days is not eligible unless it has a long-term rating from a NRSRO within the two highest rating categories.

(c) Any repurchase agreements will be "collateralized fully" within the meaning of rule 2a–7.

(d) For obligations subject to unconditional, irrevocable credit enhancement (including, without limitation, a guarantee, letter of credit, or put), the Funds may rely upon the NRSRO ratings of the provider of such credit enhancement to determine whether the obligation satisfies the requirements of subparagraphs (a) and (b) above. Such obligations shall be treated as rated securities to the extent that the credit enhancement is of comparable priority and security to the rated obligations of the provider of such credit enhancement.

2. No Fund will engage in transactions with an Affiliated Bank that exercises a controlling influence over that Fund (and "controlling influence" shall be deemed to include, but is not limited to, directly or indirectly, owning, controlling or holding more than 25% of the outstanding voting securities of the Fund). Further, no Fund will engage in a transaction in Qualified Securities with an Affiliated Bank that is an investment adviser or sponsor to that Fund, or an Affiliated Bank controlling, controlled by, or under common control with such investment adviser or sponsor. No Fund will purchase obligations of any Affiliated Bank (other than repurchase agreements) if, as a result, more than 5% of that Fund's total assets would be invested in obligations of that Affiliated Bank.

3. Each Fund: (a) Will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 8; and (b) will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the

transaction, the terms of the purchase or sale transaction, and the information or material upon which the determinations described below were made.

4. The security to be purchased or sold by a Fund will be consistent with the investment objectives and policies of that Fund as recited in the registration statement relating to the Fund, and will be consistent with the interests of the Fund and its shareholders. Further, the security to be purchased or sold by that Fund must be comparable in terms of quality, yield, and maturity to other similar securities that are appropriate for the Fund and that are being purchased or sold during a comparable period of time.

5. The terms of the transactions will be reasonable and fair to the shareholders of a Fund and will not involve overreaching of the Fund or its shareholders on the part of any person concerned. In considering whether the price to be paid or received for the security is reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time. In making this analysis, the board of directors/trustees may rely on a matrix pricing system which they believe properly assists them in determining the value of the securities pursuant to section 2(a)(41)(ii) of the Act.

6. Before any transaction in U.S. government securities may be conducted pursuant to the exemption, the Fund involved or its investment adviser must obtain such information as they deem necessary to determine that the price to be paid or received for the security is at least as favorable as that from other sources. The Fund or its investment adviser must obtain and document competitive quotations from at least two other dealers with respect to the specific proposed U.S. government securities transaction, except that if quotations are unavailable from two such dealers, only one other competitive quotation is required. With respect to prospective purchases of U.S. government securities, these dealers must be those who have securities of the categories and the type desired in their inventories and who are in a position to quote favorable prices with respect thereto. With respect to the prospective disposition of U.S. government securities, these dealers must be those who, in the experience of the Fund and its investment adviser, are in a position to quote favorable prices.

7. The commission, fee spread, or other remuneration to be received by the Affiliated Bank as dealer will be reasonable and fair compared to the commission, fee, spread, or other remuneration received by other brokers or dealers in connection with comparable transactions involving similar securities being purchased or sold during a comparable period of time but in no event will such fee, commission, spread or other remuneration exceed that which is stated in section 17(e)(2) of the Act.

8. The board of directors/trustees of each of the Funds: (a) Will adopt procedures, pursuant to which transactions may be effected for the Funds, which are reasonably designed to provide that the conditions in the foregoing paragraphs and the requirements of Investment Company Act Release No. 13005 (Feb. 2, 1983) have been compiled with; (b) will make and approve such changes as deemed necessary; and (c) will determine no less frequently than quarterly that such transactions made during the preceding quarter were effected in compliance with such procedures. These procedures will also be approved by a majority of the non-interested members of each board of directors/trustees. The investment adviser to each Fund will implement these procedures and make decisions necessary to meet these conditions, subject to the direction and control of the board of directors/trustees of the relevant Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–13738 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–M

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**[Investment Company Act Rel. No. 20326; 812–8860]**

## Princor Blue Chip Fund, Inc., et al.; Application

May 31, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

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**APPLICANTS:** Princor Blue Chip Fund, Inc.; Princor Bond Fund, Inc.; Princor Capital Accumulation Fund, Inc.; Princor Cash Management Fund, Inc.; Princor Emerging Growth Fund, Inc.; Princor Government Securities Income Fund, Inc.; Princor Growth Fund, Inc.; Princor High Yield Fund, Inc.; Princor Managed Fund, Inc.; Princor Tax-Exempt Bond Fund, Inc.; Princor Tax-Exempt Cash Management Fund, Inc.; Princor Utilities Fund, Inc.; and Princor World Fund, Inc. (collectively, the "Funds"); Princor Financial Services Corporation (the "Distributor"); and Princor Management Corporation (the "Adviser"); on behalf of the Funds and any other open-end management investment companies that may in the future become a member of the same "group of investment companies" as that term is defined in rule 11a-3 under the Act.

**RELEVANT ACT SECTIONS:** Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order that would permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities, assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and waive the CDSC in certain instances.

**FILING DATE:** The application was filed on February 28, 1994, and amended on April 21, 1994 and May 27, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o The Principal Financial Group, Des Moines, Iowa 50392.

**FOR FURTHER INFORMATION CONTACT:** Marc Duffy, Staff Attorney, at (202) 942–0565, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (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.

### Applicants' Representations

1. Each of the Funds is a Maryland corporation that is registered under the Act as an open-end, management

investment company. Two of the Funds (the "Money Market Funds") are offered to the public at net asset value with no sales charge. The other Funds (the "Load Funds") are offered to the public at net asset value plus a sales charge. Each Load Fund has adopted a distribution plan (the "Distribution Plan") under rule 12b–1 under the Act, which permits each Load Fund to pay the Distributor up to 0.25% of that Fund's average daily net assist value on an annual basis.

2. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as the investment adviser of each of the Funds. The Adviser is a wholly-owned subsidiary of the Distributor. The Distributor is an indirect, wholly-owned subsidiary of Principal Mutual Life Insurance Company. The Distributor, a registered broker-dealer, serves as the principal underwriter for each of the Funds.

3. Applicants seek to implement multi-class distribution arrangements (the "Multi-Class System") for each of the Funds. Under the Multi-Class System, each Fund will issue two classes of shares. All shares outstanding as of the time of implemention of the Multi-Class System will be designated as "Class A" shares. The offering price of Class A shares of a Load Fund purchased in amounts of less than $1 million will be net asset value plus a front-end sales charge. Class A shares of the Load Funds will be subject to the Distribution Plan currently in effect, as modified to accommodate the mutli-class structure. Class A shares of the Money Market Funds will be sold at net asset value, and will not be subject to a Distribution Plan.

4. Under the Multi-Class System, each Fund will create an additional class of shares designated as "Class B" shares. Class B shares will be subject to a Distribution Plan fee of 1% of average daily net assets on an annual basis, of which up to 0.25% will be paid to dealers' registered representatives as a service fee. The remainder of the Distribution Plan fee on Class B shares will be used primarily to reimburse the Distributor for commissions paid to dealers and registered representatives in connection with sales of Class B shares. Class B shares of the Money Market Funds can be acquired only through exchanges for Class B shares of other Funds.

5. Class B shares also will be subject to a CDSC of up to 4% for a period of six years. The amount of any CDSC imposed upon a redemption of Class B shares will be computed as a percentage of the lesser of the value of the redeemed shares at the time of purchase or their value at redemption. The holding period and amount of the CDSC, and the magnitude of the purchases to which it applies are each subject to change. No CDSC will be imposed on Class B shares: (a) Purchased with reinvested income dividends or capital gains distributions, (b) purchased more than six years prior to the date of the redemption, or (c) acquired through an exchange for other Class B shares, if the exchanged Class B shares would not have been assessed a CDSC upon redemption.

6. Applicants proposed to waive any CDSC that otherwise would be applicable to a redemption of Class B shares in connection with shares redeemed: (a) Due to the death or disability, as defined in the Internal Revenue Code (the "Code"), of a shareholder; (b) from retirement plans to satisfy minimum distribution rules under the Code; (c) to pay surrender charges; (d) to pay retirement plan fees; (e) involuntarily from small balance accounts (values of less than $300); (f) through a systematic withdrawal plan that permits 10% of the value of a shareholder's Class B shares of a particular Fund on January 1 of each year to be withdrawn automatically in equal monthly installments throughout the year without payment of the otherwise applicable CDSC; or (g) from a retirement plan to assure the plan complies with section 401(k) and 401(m) of the Code.

7. Class A shares of the Load Funds will be sold with no sales charge to persons who reinvest, within 60 days, the proceeds of redemptions of Class B shares of the Load Funds on which the CDSC was waived because of the death or disability of the original shareholder.

8. Any Class B shares purchased will convert automatically to Class A shares seven years after the end of the month of the date of their purchase. At the same time, a *pro rata* portion of all shares purchased through reinvestment of dividends and distributions will convert into Class A shares, with that portion determined by the ratio that the shareholder's Class B shares converting into Class A shares bears to the shareholder's total Class B shares not acquired through dividends and distributions. The conversion of Class B shares into Class A shares will be subject to the availability of an opinion of counsel or Internal Revenue Service private letter ruling to the effect that the conversion does not constitute a taxable event.

9. Exchanges for shares of another Fund generally will be permitted only for shares of the same class. However, to facilitate automatic exchanges used by some investors to effect a dollar-cost averaging strategy, Class B shares of the Load Funds may be acquired in exchange for Class A shares of Princor Cash Management Fund, Inc. that were purchased without payment of a sales load. All exchanges will comply with rule 11a–3 under the Act.

10. Under the Multi-Class System, all expenses incurred by a Fund will be allocated among the classes of shares of such Fund based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect the Distribution Plan expenses (if any) and any expenses attributable to the class as set forth in condition 1 below ("Class Expenses"). Expenses allocated to a particular class of shares of a Fund will be borne on a proportionate basis by each outstanding share of that class.

11. From time to time, a Fund may create additional classes of shares of beneficial interest, the terms of which may differ from the classes described herein only in the following respects: (a) Each new class of shares might have a different designation; (b) the impact of the disproportionate payments made under a Distribution Plan; (c) each new class of shares will hold any voting rights as to matters exclusively affecting that class, except as provided in condition 14 below; (d) each new class of shares will bear Class Expenses specifically attributable to the particular class; (e) each new class of shares will have different exchange privileges; and (f) certain classes may have a conversion feature. Applicants also may charge different sales loads on different classes of shares.

12. Applicants will comply with applicable portions of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD"), including in particular the portions of Rule 26 that relate to sales loads, asset-based sales charges and service fees.

**Applicants' Legal Analysis**

1. Section 18 is designed to prohibit material differences among the rights of shareholders in a fund, including abuses resulting from complex capital structures (such as excessive leverage, conflicts of interest among classes, and investor confusion), and discriminatory shareholder voting provisions. Applicants request an exemptive order to the extent that the proposed Multi-Class System might be deemed to result in a "senior security" within the meaning of section 18(g) of the Act, and thus be prohibited by section 18(f)(1), and violate the equal voting provisions of the Act.

2. Applicants assert that the Multi-Class System would present none of the abuses addressed by section 18. No leverage would result from the issuance or purchase of different classes of shares. Mutuality of risk would be preserved, and each class of Fund shares would be redeemable at all times. No class of shares of a Fund would have any distribution or liquidation preference with respect to particular assets, and no class would be protected by any reserve or other account. Investors would not be given misleading impressions about the safety or risk of any class of shares, because the similarities and ifferences of the classes of shares would be disclosed in the prospectuses and statements of additional information describing the Funds.

3. Applicants also request an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder to the extent necessary to permit the Funds to assess a CDSC on certain redemptions of shares and to waive the CDSC in certain instances.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each class of shares of a Fund will represent interests in the same portfolio of investments of that Fund and will be identical in all respects, except as set forth below. The only differences among the classes of shares of the same Fund will relate solely to: (a) The designation of each class of shares of a Fund; (b) the impact of the disproportionate payments made under the Distribution Plan; (c) different Class Expenses for each class of shares, which are limited to: (i) Transfer agency fees identified by the transfer agent of the Funds as being attributable to a specific class; (ii) blue sky registration fees incurred with respect to a class of shares; (iii) SEC registration fees incurred with respect to a class of shares; (iv) the expenses of administrative personnel and services as required to provide services to the shareholders of a specific class; (v) litigation or other legal expenses, or audit or other accounting expenses relating solely to one class of shares; (vi) directors' fees incurred as a result of issues relating to one class of shares; and (vii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a given class; (d) the voting rights as to matters exclusively affecting one class of shares (*e.g.*, the adoption, amendment or termination of a Distribution Plan) except as provided in condition 14 below; (e) different exchange privileges; and (f) certain classes may have a conversion feature. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares will not be so allocated unless and until approved by the SEC pursuant to an amended order.

2. The directors of the Funds, including a majority of the independent directors, will approve the creation and issuance of any new classes of shares in their respective Funds. The minutes of the meetings of the directors of each of the Funds regarding the deliberations of the directors with respect to the approvals necessary to add or change a class of shares will reflect in detail the reason for the directors' determination that such an addition or change is in the best interests of the Funds and their respective shareholders.

3. On an ongoing basis, the directors of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares offered by each Fund. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Adviser and the Distributor, at their own cost, will remedy such a conflict, up to and including establishing one or more new registered management investment companies.

4. The directors of the Funds will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures under any distribution or servicing plan, in compliance with paragraph (b)(3)(ii) of rule 12b–1 under the Act, as amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify the Distribution Plan fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee charged to shareholders of that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

5. Dividends paid by a Fund regarding its various classes of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Distribution Plan fee payments relating to each respective class of shares will be borne exclusively by that class, and any Class Expenses attributable solely to one class will be borne exclusively by that class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of multiple classes, and the proper allocation of expenses among them has been reviewed by an expert (the "Expert"), who has rendered a report to applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon that review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to those reports, following a request by a Fund (which each Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to a Fund for those work papers by a senior member of the SEC's Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation," and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness," as defined and described in Statement of Auditing Standards No. 70 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares, and the proper allocation of expenses among the various classes of shares, and this representation has been concurred with by the initial report referred to in

condition 6 above, and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 6 above. Applicants will take immediate corrective action if this representation is not concurred in by the Expert or an appropriate substitute Expert.

8. The prospectus of each Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different levels of compensation with respect to one particular class of shares over another in the Fund.

9. The Distributor will adopt compliance standards for determining when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to conform to those standards.

10. The conditions pursuant to which the exemptive order is granted, and the duties and responsibilities of the directors of the Funds with respect to the various classes of shares will be set forth in guidelines that will be furnished to the directors.

11. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in each of its prospectuses regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of the Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it also will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present each class of shares separately.

12. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to Distribution Plans in reliance on the exemptive order.

13. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of shares on the basis of the relative net assets of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

14. If a Fund implements any amendment to the Distribution Plan or other plan adopted under rule 12b–1 (or, if presented to shareholders, adopts or implements any amendment of a "non-rule 12b–1" shareholder services plan) that would increase materially the amount that may be borne by a Target Class under the plan, then Purchase Class shares will stop converting into shares of that Target Class, unless Purchase Class shareholders, voting separately as a class, approve the amendment. The directors shall take any action necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class shares as they existed prior to implementation of the amendment, no later than the date those Purchase Class shares were scheduled to convert into Target Class shares. If deemed advisable by the directors to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class") of shares, identical to existing Purchase Class shares in all material respects, except that the new Purchase Class will convert into the New Target Class. The New Target Class and New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the directors reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of the New Target Class or New Purchase Class shares shall be borne solely by the Adviser and the Distributor. Purchase Class shares sold after the implementation of the amendment may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of that plan to the Purchase Class are disclosed in an effective registration statement.

15. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of directors of the Funds, including a majority of the independent directors. Any person authorized to direct the allocation and disposition of monies paid or payable by the Funds to meet class expenses shall provide to the board of directors and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which those expenditures were made.

16. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, as that rule is currently stated in Investment Company Act Release No. 16619 (Nov. 2, 1988), and as it may be reproposed, adopted, or modified in the future.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–13739 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–20324; File No. 812–8904]**

## Western-Southern Life Assurance Company, et al.

May 31, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC" or the "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

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**APPLICANTS:** Western-Southern Life Assurance Company ("Western Southern"), Western-Southern Life Assurance Company Separate Account I (the "Account") and Interactive Financial Solutions, Inc. ("Interactive") (collectively, "Applicants").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting them to deduct a daily charge from the assets of the Account for mortality and expense risks in connection with the offering of certain variable annuity contracts.

**FILING DATE:** The application was filed on March 27, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be

issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 25, 1994 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Donald J. Wuebbling, Vice President and General Counsel, Western & Southern Life Insurance Company, 400 Broadway, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Attorney, or Wendell M. Faria, Deputy Chief, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the Public Reference Branch of the SEC.

**Applicants' Representations**

1. Western Southern, a stock life insurance company organized under Ohio law, is a wholly owned subsidiary of the Western and Southern Life Insurance Company, a mutual life insurance company also organized under Ohio law. Western Southern serves as the sponsor and the depositor of the Account.

2. The Account, established by Western Southern on July 27, 1992 as a separate investment account of Western Southern under Ohio law, will be used to support certain variable annuity contracts (the "Contracts") and for other lawful purposes. The Account is registered with the Commission under the 1940 Act as a unit investment trust. The application incorporates by reference the registration statement, currently on file with the Commission (File No. 33–76582), for the Account.

3. Interactive, a wholly owned subsidiary of IFS Financial Services, Inc. ("IFS Financial"), is the distribution of the Contracts. IFS Financial is a wholly owned subsidiary of Western Southern. Interactive is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

4. The Contracts are flexible payment, tax-deferred variable annuities available to both individual investors and group plans on either a nonqualified ("Nonqualified Contract") or qualified ("Qualified Contract") basis. Qualified Contracts qualify for favorable federal income tax treatment under Sections 401, 403 or 408 of the Internal Revenue Code of 1986, as amended.

5. Nonqualified Contracts require a minimum initial purchase payment of $2000. Qualified Contracts require a minimum initial purchase payment of $1000. Subsequent purchase payments under both types of Contracts may be made at any time and must be at least $100. Maximum cumulative total of all purchase payments under any Contract may not exceed $500,000 without the prior approval of Western Southern. Purchase payments may be allocated to the Account, to the general account (the "Fixed Account") of Western Southern, or, to a combination of the Account and the Fixed Account.

6. The Account has seven subaccounts, each of which invest in shares of an investment portfolio of either The IFS Variable Insurance Trust (the "IFS Trust") or The Select Advisers Portfolio (the "SA Trust"). The IFS Trust, a no load open-end diversified investment management company organized as a Massachusetts business trust, consists of five portfolios available through the subaccounts for investment of funds allocated by Contract owners to the Account. The SA Trust, a no load open-end diversified investment management company organized as a business trust, has two portfolios available for investment by Contract owners.

7. The Contracts permit transfers among the subaccounts of the Account and between the Account and the Fixed Account. There is currently no charge for transfers although Western Southern reserves the right to impose such a charge in the future.

8. Western Southern reserves the right to impose a deduction for premium taxes when the applicable jurisdiction imposes the tax liability. The application states that the applicable premium taxes depend upon the Contract owner's then current place of residence and generally range from 0 to 3% of purchase payments or of the amount annuitized. Applicants state that Western Southern will not make a profit on premium taxes.

9. Applicants impose an annual Contract maintenance charge of $35 per Contract and this charge is deducted from the Contract value. A Contract administration charge is also deducted and this charge is deducted as a percentage of and from the assets of the Account of an annual effective rate of .15%. Western Southern represents that the administrative charges will not increase for the life of the Contracts. Western Southern represents that it does not expect that the total revenues from the administrative charges will exceed the expected costs of administering the Contracts. Further, Applicants state that Western Southern will monitor the relationship of the administrative expenses and the proceeds collected from the administrative expenses and the proceeds collected from the administrative charges for compliance with Rule 26a–1 under the 1940 Act.

10. A contingent deferred sales charge (the "Sales Charge") of up to 7% of the amount withdrawn is imposed upon total surrender, partial withdrawal or commencement of an annuity payment option within the first seven years of the Contract. The Sales Charge is a percentage of the amount of each purchase payment that is withdrawn. The percentage declines depending upon how many years have passed since the withdrawn purchase payment was originally credited to a Contract owner

11. Western Southern will impose a daily charge equal to an annual effective rate of 1.20% of the value of the net assets of the Account to compensate for Western Southern bearing certain mortality and expense risks in connection with the Contracts. Approximately .80% of the 1.20% charge is attributable to mortality risk, and approximately .40% is attributable to expense risk. Applicants represent that the charge for mortality and expense risks will not increase. If the mortality and expense risk charge is insufficient to cover assumed costs and expenses, Western Southern will bear the loss. Conversely, if the charge exceeds costs, this excess will be profit to Western Southern. If Western Southern realizes a gain from the charge for mortality and expense risks, the amount of such gain will be placed in the general account of Western Southern and may be used in its discretion, including for payment of a portion of the costs relating to the distribution of the Contracts.

12. Applicants state that the mortality risk borne by Western Southern is threefold. First, Western Southern assumes a mortality risk because of its contractual obligation to pay a death benefit in a lump sum (which sum may also be taken in the form of an annuity payment option) upon the death of an annuitant prior to the date on which annuity payments are scheduled to begin. Second, Western Southern assumes a mortality risk because of its

agreement not to impose any surrender charge or any other charge on the death benefit. Finally, Western Southern assumes a mortality risk because of its contractual obligation to continue to make annuity payments for the entire life of the annuitant under annuity payment options involving life contingencies, thereby assuring each annuitant that neither the annuitant's longevity nor an improvement in life expectancy generally will have an adverse effect on annuity payments received under the Contract.

13. Applicants state that the expense risk assumed by Western Southern is the risk that the administrative charges, which are guaranteed not to increase under outstanding Contracts, will be insufficient to cover actual administrative expenses.

**Applicants' Legal Analysis and Conditions**

1. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for the mortality and expense risks. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

2. Applicants assert that the charge for mortality and expense risks is reasonable compensation for the risks assumed.

3. Applicants represent that the charge of 1.20% for the mortality and expense risks assumed by Western Southern is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon their analysis of publicly available information regarding products of other companies, taking into consideration such factors as: Guaranteed minimum death benefits and guaranteed annuity purchase rates; minimum initial and subsequent purchase payments; other contract charges and the manner in which such charges are imposed; investment options available under other contracts; and the availability of other contracts to individual qualified and nonqualified plans. Applicants represent that Western Southern will maintain at its principal office, available to the Commission upon request, a memorandum setting forth in detail the variable annuity products analyzed and the methodology and results of Western Southern's comparative review.

4. Applicants acknowledge that the Sales Charge may be insufficient to cover all costs relating to the distribution of the Contracts and that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the Sales Charge. Applicants represent that Western Southern has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Western Southern at its principal office and will be made available to the Commission upon request.

5. Western Southern also represents that the Account will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by the company's board of directors, a majority of whom are not interested persons of such company within the meaning of the 1940 Act.

**Conclusion**

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–13740 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20327; 812–8962]

## Williamsburg Investment Trust, et al.; Application

June 1, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC" or the "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Williamsburg Investment Trust (the "Trust"); Lowe, Brockenbrough, Tierney & Tattersall, Inc. ("LBT&T"); Flippin, Bruce & Porter, Inc. ("FBP"); and T. Leavell & Associates, Inc. ("T. Leavell").

**RELEVANT ACT SECTIONS:** Exemption requested under sections 6(c) and 17(d) and rule 17d–1.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order permitting series of the Trust to deposit their daily uninvested cash balances into a single joint account to be used to enter into repurchase agreements. Applicants request that the order also apply to all future registered investment companies and series thereof ("Future Funds," and collectively with the Trust, the "Funds") for which LBT&T, FBP, or T. Leavell (collectively, the "Advisors"), or any entity controlling, controlled by, or under common control with one or more of the Advisors serves as investment adviser.

**FILING DATE:** The application was filed on April 29, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1994 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o John F. Splain, Esq., MGF Service Corp., 312 Walnut Street, 21st Floor, Cincinnati, Ohio 45202.

**FOR FURTHER INFORMATION CONTACT:** John V. O'Hanlon, Senior Attorney, at (202) 942–0578, or C. David Messman,

Branch Chief, at (202) 942–0564 (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.

**Applicants' Representations**

1. The Trust is a registered open-end investment company that offers ten series: The Jamestown Balanced Fund, The Jamestown Equity Fund, The Jamestown Bond Fund, The Jamestown Short Term Bond Fund, The Jamestown Tax Exempt Virginia Fund, FBP Contrarian Balanced Fund, FBP Contrarian Equity Fund, the Alabama Tax Free Bond Fund, The Government Street Bond Fund, and the Government Street Equity Fund.

2. The Advisors are investment advisers registered under the Investment Advisers Act of 1940. Each Fund is advised by one of the Advisors. One or more of the Advisors (or a successor entity) will serve as the investment adviser to the Future Funds.

3. Each series of the Trust is authorized, and the Future Funds will be authorized, by their investment policies to invest in repurchase agreements.

4. Each Fund has or may be expected to have uninvested cash balances with its custodian bank which otherwise would not be invested in portfolio securities by its Advisor at the end of each trading day. In the normal course of business, such assets are or would be invested in overnight repurchase agreements with a bank or major brokerage house collateralized by U.S. Government securities in order to earn additional income. Every morning each Advisor, on behalf of the Funds it serves, begins negotiating the interest rate for repurchase agreements for that day and lining up securities required as collateral. Generally, some portion of the assets in the respective account of each Fund is received too late, or is too small, to be invested effectively in a separate transaction. Further, because each Fund must separately pursue, secure, and implement such investments, there is a duplication of effort that results in certain inefficiencies and may limit the return which some or all Funds can achieve.

5. Applicants seek a conditional order permitting the Funds to deposit their daily uninvested cash balances into a single joint account, the daily balance of which would be used to enter into one or more overnight (or weekend or holiday) repurchase agreements. The requested order will maximize the return by minimizing economic and administrative efficiencies by allowing the Funds to enter into large repurchase agreements.

6. Each repurchase agreement will be made by calling a government securities dealer and indicating the rate of interest and size of the desired repurchase agreement. Particular securities to be held as collateral will then be identified and the Fund's custodian bank will be notified. The securities will be wired to the account of the custodian bank at the proper Federal Reserve Bank, transferred to a sub-custodian account of the Funds at another qualified bank, or redesignated and segregated on the records of the custodian bank if the custodian bank is already the record holder of the collateral for the repurchase agreement. The Funds will not enter into repurchase agreements with the custodian bank, except where cash is received very late in the business day and otherwise would be unavailable for investment at all.

7. Each of the Funds has established the same systems and standards, including quality standards for issuers of repurchase agreements and for collateral, and requirements that the repurchase agreements will be "collateralized fully," as that term is defined in rule 2a–7 under the Act. Identical systems and standards will be adopted by any Future Funds which invest in the proposed joint account.

**Applicants' Legal Analysis**

1. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, to effect any transaction in which such registered investment company is a joint or a joint and several participant with such person in contravention of rules and regulations which the Commission prescribes for the purpose of preventing participation by such company on a basis different from or less advantageous than that of other participants.

2. Rule 17d–1 provide that no affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which such registered investment company is a participant unless an application regarding such joint arrangement has been filed with the Commission and has been granted an order. In passing upon such applications, the Commission will consider whether the investment company's participation in the proposed joint enterprise or arrangement is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Each Fund might be deemed an affiliated person of each other Fund under section 2(a)(3) of the Act. Each Fund, by participating in the proposed account, and the Advisors, by managing the proposed account, could be deemed to be a "joint participant" in a "transaction" within the meaning of section 17(d), and the proposed account could be deemed to be a "joint enterprise or other joint series issue arrangement" within the meaning of rule 17d–1.

4. The proposed account will not be distinguished from any other account maintained by the Funds with their custodian bank except that monies from the Funds could be deposited in the proposed account on a commingled basis. The sole function of this account will be to provide a convenient way of aggregating what otherwise would be the individual daily transactions for each Fund necessary to manage the daily uninvested cash balances of each Fund. Each Fund will participate in the account on the same basis as every other Fund. The Adviser will have no monetary participation in the account, but will be responsible for investing amounts in the account, establishing control procedures, and ensuring the equal treatment of each Fund. The proposed method of operating the account will not result in any conflicts of interest between any of the Funds, or between a Fund and its Advisor.

5. The Funds will benefit from the proposed arrangement because, on any given day and under most market conditions, it is possible to negotiate a rate of return on large repurchase agreements which is greater than the rate of return available for smaller repurchase agreements. In addition, by reducing the number of trade tickets, repurchase transactions will be simplified and the opportunity for errors will be reduced. Each Fund will also benefit from the fact that an institution entering into a very large repurchase agreement is almost always able and willing to increase the amount covered by such agreement near the end of the day, which possibility may not exist with smaller repurchase agreements. Moreover, without a joint account, some Funds may find that they will be unable to invest in repurchase agreements because their respective daily cash balances would not meet the

minimum investment requirement for a repurchase agreement.

6. Applicants assert that granting the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants further assert that participation in the proposed joint account by each Fund would not be on a basis different from or less advantageous that of any other Fund participant and that the participation by the Advisors will be ministerial only.

**Applicant's Conditions**

As express conditions to the granting of the requested relief, applicants agree that the joint repurchase account will operate as follows:

1. A separate custodian cash account will be established into which each Fund will cause its uninvested net cash balances to be deposited daily. The joint account will not be distinguished from any other accounts maintained by a Fund with its custodian bank except that monies from a Fund will be deposited on a commingled basis. The account will not have any separate existence or have any indicia of a separate legal entity. The sole function of the account will be to provide a convenient way to aggregating individual transactions which would otherwise require daily management by each Fund of its uninvested cash balance.

2. Cash in the account will be invested solely in repurchase agreements with a duration not to exceed one business day and collateralized by suitable U.S. Government securities (*i.e.*, obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities) and satisfying the uniform standards set by the Funds for such investments.

3. All securities held by the joint account will be valued on an amortized cost basis.

4. Each Fund relying upon rule 2a–7 under the Act for valuation of its net assets on the basis of amortized cost will use the average maturity of the repurchase agreements purchased by the Funds participating in the account for the purpose of computing the Fund's average portfolio maturity with respect to the portion of its assets held in such account on that day.

5. In order to assure that there will be no opportunity for one Fund to use any part of a balance of the account credited to another Fund, no Fund will be allowed to create a negative balance in the account for any reason, although a Fund will be permitted to draw down its entire balance at any time; each Fund shall retain the sole rights of ownership of any of its assets, including interest payable on the assets invested in the account.

6. Each Fund will participate in the net income earned or accrued in the account on the basis of the percentage of the total amount in the account on any day represented by its share of the account.

7. Each Advisor will administer the investment of the cash balance in and the operation of the account as part of its duties under its existing or any future investment advisory contract with each Fund and will not collect any additional fees for management of the account. The Advisors will collect their fees based upon the assets of each separate Fund as provided in each respective investment advisory agreement.

8. Each Fund's decision to invest in the account shall be solely at the Fund's option and no Fund shall be obligated to invest or to maintain any minimum amount in the account.

9. Each Fund's investment in the account shall be documented daily on the books of each Fund as well as on the books of the Fund's custodian bank.

10. All repurchase agreements will have an overnight, over-the-weekend, or over-a-holiday duration.

11. The Funds will enter into an agreement with each other to govern the arrangements in accordance with the foregoing principles.

12. The administration of the account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

13. The trustees of the Trust and the boards of directors of any Future Funds participating in the joint account shall evaluate the joint account arrangement annually, and shall continue the account only if they determine that there is a reasonable likelihood that the account will benefit the Funds and their shareholders.

14. All joint repurchase agreement transactions will be effected in accordance with Investment Company Act Release No. 13005 (Feb. 2, 1983) and with other existing and future positions taken by the Commission or its staff by rule, interpretive release, no-action letter, any release adopting any new rule, or any release adopting any amendments to any existing rule.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–13741 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2722]**

### Indiana (With Contiguous Counties in Illinois); Declaration of Disaster Loan Area

Tippecanoe and Vermillion Counties and the contiguous counties of Benton, Carroll, Clinton, Fountain, Montgomery, Parke, Vigo, Warren, and White in the State of Indiana and Edgar and Vermilion Counties in the State of Illinois constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding which occurred between April 12 and April 27, 1994. Applications for loans for physical damage may be filed until the close of business on July 25, 1994, and for economic injury until the close of business on February 27, 1995, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 7.125 |
| Homeowners Without Credit Available Elsewhere | 3.625 |
| Businesses With Credit Available Elsewhere | 7.125 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (including Non-Profit Organizations) With Credit Available Elsewhere | 7.125 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The numbers assigned to this disaster for the State of Indiana are 272206 for physical damage and 827400 for economic injury, and in Illinois the numbers are 272306 and 827500, respectively.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 26, 1994.

**Erskine B. Bowles,**

*Administrator.*

[FR Doc. 94–13791 Filed 6–6–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2713]

## Missouri; Declaration of Disaster Loan Area, Amendment Number 1

The above-numbered Declaration is hereby amended, effective May 18, 1994, to include Barry, Calloway, Clay, Morgan, Phelps, Pulaski, Reynolds, Shannon, Vernon, and Washington Counties in the State of Missouri as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding April 9 through May 5, 1994.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Audrain, Bates, Barton, Benton, Camden, Carter, Cedar, Clinton, Cooper, Dent, Howell, Iron, Jackson, Laclede, Lawrence, Maries, McDonald, Newton, Oregon, Pettis, Platte, Ray, St. Clair, Stone, Texas, and Wayne Counties in Missouri; Benton and Carroll Counties in Arkansas; and Bourbon, Crawford, Linn, and Wyandotte Counties in Kansas.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 21, 1994 and for economic injury the deadline is January 23, 1995.

The economic injury numbers are 824800 for Missouri; 826000 for Arkansas; and 827600 for Kansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 27, 1994.

**Bernard Kulik,**

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 94–13792 Filed 6–6–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2714]

## Oklahoma; Declaration of Disaster Loan Area; Correction

Amendment #1 to the above-numbered Declaration which published on May 19, 1994 (59 FR 26331) showed incorrect termination dates for the filing period.

The correct dates are as follows: the termination date for filing applications for physical damage is June 21, 1994 and for economic injury the deadline is January 23, 1995.

All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 20, 1994.

**Bernard Kulik,**

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 94–13793 Filed 6–6–94; 8:45 am]

BILLING CODE 8025–01–M]

## Canaan S.B.I.C., L.P. (Application No. 99000118); Notice of Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Canaan S.B.I.C., L.P., 105 Rowayton Avenue, Rowayton, Connecticut 06853, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et. seq.*), and the Rules and Regulations promulgated thereunder. In addition to its main office in Rowayton, Connecticut, the applicant will have a branch office at 2884 Sand Hill Road, Menlo Park, California 94025. Canaan S.B.I.C., L.P. is a Delaware limited partnership.

The general and limited partners of Canaan S.B.I.C., L.P., and the ownership interest of entities owning 10 percent or more of the applicant are as follows:

| Name | Type of partner | Ownership interest (percent) |
|---|---|---|
| Harry T. Rein | General | |
| James J. Fitzpatrick | General | |
| David C. Fries | General | |
| Stephen L. Green | General | |
| Gregory Kopchinsky | General | |
| Robert J. Migliorino | General | |
| Alan E. Salzman | General | |
| Eric A. Young | General | |
| Canaan Capital Limited Partnership, 105 Rowayton Avenue, Rowayton, Connecticut 06853. | Limited | 10.4 |
| Canaan Capital Offshore L.P., c/o ABN Bank Trust Company, Pietermaai 15, Willemstad, Curacao, The Netherlands Antilles. | Limited | 86.6 |

No individual, or entity other than those listed above, will beneficially own 10 percent or more of the applicant.

Canaan S.B.I.C., L.P. will be managed by its investment advisor, Canaan S.B.I.C., Inc., located at the same address as the applicant. The officers and directors of the investment advisor are:

| Name | Title |
|---|---|
| Harry T. Rein | President and Director. |
| James J. Fitzpatrick | Vice President. |
| David C. Fries | Vice President. |
| Stephen L. Green | Vice President. |
| Gregory Kopchinsky | Vice President. |
| Robert J. Migliorino | Vice Pres., Secretary, Treasurer. |
| Alan E. Salzman | Vice President. |
| Eric A. Young | Vice President. |
| Guy M. Russo | Controller. |

All these individuals are employees of the Canaan entities, and have business offices at the Towayton, Connecticut or Menlo Park, California addresses. Mr. Kopchinsky will manage the day to day operations of Canaan S.B.I.C., L.P.

The applicant has Regulatory Capital of $15.0 million. It will be a source of equity financings for qualified small business concerns, and will invest primarily in the Northeast and West Coast regions of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Rowayton, Connecticut.

(Catalog of Federal Domestic Assistance Programs No. 59.001, Small Business Investment Companies)

Dated: June 1, 1994.

**Robert D. Stillman,**

*Associate Administrator for Investment.*

[FR Doc. 94–13794 Filed 6–6–94; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Dockets 49483 and 49484]**

### Applications of Polar Air Cargo, Inc., for Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause (order 94–6–2).

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Polar Air Cargo, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and overseas scheduled air transportation of property and mail, and foreign scheduled air transportation of property and mail between points in the United States and Australia, Hong Kong, South Korea, Taiwan, and the United Kingdom.

**DATES:** Persons wishing to file objections should do so no later than June 16, 1994.

**ADDRESSES:** Objections and answers to objections should be filed in Dockets 49483 and 49484 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol A. Woods, Air Carrier Fitness Division (X–56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2340.

Dated: June 1, 1994.

**Patrick V. Murphy,**

*Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 94–13744 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[Delegation Order No. 236]**

### Delegation of Authority

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Delegation of authority.

**SUMMARY:** The Delegation Order is extended to rollover and recurring issue settlements effected by Appeals with respect to the same taxpayer in the previous or subsequent tax periods.

**EFFECTIVE DATE:** June 3, 1994.

**FOR FURTHER INFORMATION CONTACT:** Harry E. Lebedun, CP:EX:C:C, Room 2032 1111 Constitution Avenue NW., Washington, DC 20224, (202)–622–3373 (not a toll free number).

Order No. 236 (Rev. 1).

Effective Date: 6–3–94.

Settlement Authority for Examination Case Managers.

The authority vested in the Commissioner of the Internal Revenue by Treasury Order Nos. 150–04, 150–09 and 150–10 and the authority contained in 26 U.S.C. & 7121 is hereby delegated as follows:

1. All District Directors, Examination division chiefs, Examination branch chiefs, and Examination case managers are delegated discretionary authority under section 7121 of the Internal Revenue Code to accept settlement offers, regardless of the amount of liability sought to be compromised, with respect to rollover and recurring issues in Coordinated Examination Program cases where a settlement on the merits has been effected by Appeals with respect to the same taxpayer in a previous or subsequent tax period. Prior to finalization, the proposed settlement, together with any related closing agreement or Form 870AD, shall be substantively reviewed and approved by the appropriate branch chief within the Examination function.

2. For purposes of this delegation of limited settlement authority, the terms "rollover" and "recurring" issues are defined as follows:

(a) A "rollover" issue involves an adjustment arising from the same legal issue in the same transaction or taxable event and impacts more than one tax period. For example, the rate of amortization or depreciation of an asset, bad debt losses, basis and inventory adjustments and the like, when related to the same transaction and which affect future tax periods, would be susceptible to case manager settlement where a settlement on the merits has been reached in Appeals in a previous tax period with respect to the same taxpayer.

(b) A "recurring" issue involves an adjustment arising from the same legal issue in a separate transaction or a repeated taxable event in which the taxpayer advances the same legal position with respect to such similar transaction or repeated taxable event as advanced by such taxpayer in a prior tax period. For example, the method of depreciation with respect to similar assets, the use of the same accounting method with respect to similar transactions, the annual computation of such deductions as depletion, the computation of certain tax credits and the like, when advanced by the same taxpayer in later tax periods would be susceptible to case manager settlement where a settlement on the merits has been reached by Appeals in a previous tax period with respect to the same taxpayer.

3. No settlement shall be effected unless the following factors are present in the tax year currently under Examination jurisdiction:

(a) The facts surrounding a transaction or taxable event in the tax period under examination, including the relative amounts at issue, are substantially the same as the facts in the settled period.

(b) The underlying issue must have been settled on its merits independently of other issues in a previous or subsequent tax period by Appeals.

(c) The legal authority relating to such issue must have remained unchanged.

(d) The issue must have been settled in Appeals with respect to the same taxpayer (including consolidated and unconsolidated subsidiaries) in a previous tax period.

4. All District Directors, Examination division chiefs, Examination branch chiefs, and Examination case managers are delegated authority to execute closing agreements and the Form 870AD in order to effect any final settlement reached with respect to any rollover or recurring issue in a Coordinated Examination Program case.

5. The authority delegated in this Order may not be redelegated.

6. The authority contained in this Order is intended to supplement the authority contained in Delegation Order No. 97 (as amended).

Dated: May 21, 1994.

Approved:

**Michael P. Dolan,**

*Deputy Commissioner.*

[FR Doc. 94–13813 Filed 6–6–94; 8:45 am]

BILLING CODE 4830–01–U

# Sunshine Act Meetings

Federal Register
Vol. 59, No. 108
Tuesday, June 7, 1994

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).

BOARD FOR INTERNATIONAL BROADCASTING

**TIME AND PLACE:** 9:30 a.m., June 10, 1994.

**PLACE:** RFE/RL, Inc., C.D. Jackson Room, 67 Oettingenstrasse am Englischen Garten, Munich, Germany.

**OPEN MEETING:** The members of the Board for International Broadcasting (BIB) will meet in open session at 9:30 a.m. to discuss the following matters: (1) approval of the minutes of the most recent BIB meeting; (2) the Chairman's report; (3) RFE/RL Interim President's report; (4) new business; and (5) the date and place of the next meeting. The open session of the BIB meeting will be followed by a closed meeting of the Board of Directors of RFE/RL, Inc., a nonprofit private corporation.

**CONTACT PERSON FOR MORE INFORMATION:** Patricia Sowick, Program Officer, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, N.W., Washington, DC 20036. (Tel: 202–254–8040) Persons interested in attending the meeting should contact Patricia Schlueter to facilitate entering the RFE/RL, Inc., building in Munich. (Tel: 202–254–8040).

Dated: June 2, 1994.

**Richard W. McBride,**

*Executive Director.*

[FR Doc. 94–13957 Filed 6–3–94; 3:53 pm]

BILLING CODE 6155–01–M

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COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 10:30 a.m., Tuesday, June 28, 1994.

**PLACE:** 2033 K St., N.W., Washington, DC, 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. 94–13863 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 10:00 a.m., Tuesday, June 28, 1994.

**PLACE:** 2033 K St., NW., Washington, DC, Lower Level Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

—Risk disclosure by Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators and Commodity Trading Advisors to Customers; Bankruptcy Disclosure, final rules

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, Secretary of the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–13862 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 11:00 a.m., Friday, June 24, 1994.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–13861 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 11:00 a.m., Friday June 17, 1994.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–13860 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 10:30 a.m., Wednesday, June 15, 1994.

**PLACE:** 2033 K St., NW., Washington, DC, 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. 94–13858 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 10:00 a.m., Wednesday, June 15, 1994.

**PLACE:** 2033 K St., NW., Washington, DC, Lower Level Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

—Application for designation as a contract market in the Canadian Dollar Currency Forward, Deutsche Mark Currency Forward, Japanese Yen Currency Forward, Pound Sterling Currency Forward, and Swiss Franc Currency Forward futures contracts and options on those futures contracts/Chicago Mercantile Exchange

—Application for designation as a contract market for the International Edible Oils Index futures contract/Chicago Board of Trade.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, Secretary of the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–13858 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 11:00 a.m., Friday, June 10, 1994.

**PLACE:** 2033 K St., NW., Washington, DC 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–13857 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 11:00 a.m., Friday, June 3, 1994.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–13856 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

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**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 9, 1994, from 10:00 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. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

*B. Reports*

1. Chief Operating Officer's Quarterly Report

**Closed Session***

*A. New Business*

1. Enforcement Actions.

Dated: June 2, 1994.

**Curtis M. Anderson,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 94–13847 Filed 6–2–94; 5:11 pm]

BILLING CODE 6705–01–P

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**FARM CREDIT ADMINISTRATION**

Farm Credit Administration Board; Special Meeting

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the FCS Building Association.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

**DATE AND TIME:** The special meeting of the Board concerning the FCS Building Association will be held June 9, 1994 at the offices of the Farm Credit Administration in McLean, Virginia, immediately following the FCA Board's regular meeting at 10:00 a.m.

**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:** This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*A. Reports*

1. FCSBA Quarterly Report

*B. New Business*

1. Other

a. Preliminary 1995 FCSBA Budget Estimates.

Dated: June 2, 1994.

**Curtis M. Anderson,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 94–13848 Filed 6–2–94; 5:11 pm]

BILLING CODE 6705–01–P

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**FEDERAL COMMUNICATIONS COMMISSION**

FCC To Hold Open Commission Meeting Thursday, June 9, 1994

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 9, 1994, which is scheduled to commence at 9:30 a.m., in room 856, at 1919 M Street, NW., Washington, DC.

*Item No., Bureau, and Subject*

1—Office of Plans and Policy, Office of Engineering and Technology—Title: Amendment of the Commission's Rules to Establish New Personal Communications Services (GN Docket No. 90–314, RM 7140, 7175, and 7618). Summary: The Commission will consider petitions for reconsideration of the rules and policies governing broadband Personal Communications Services.

2—Common Carrier—Title: Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services. Summary: The Commission will consider initiating a proceeding to consider interconnection obligations of local exchange carriers with respect to commercial and private mobile radio service providers, and equal access and interconnection obligations of commercial mobile radio service providers.

3—Mass Media, Common Carrier—Title: Reorganization of MMDS (Multichannel Distribution Service/Multipoint Distribution Service) From Common Carrier Bureau to Mass Media Bureau. Summary: The Commission will consider the organization of its MMDS licensing functions.

4—Mass Media—Title: Amendment of Part 74 of the Commission's Rules Governing Use of the Frequencies in the Instructional Television Fixed Service (MM Docket No. 93–106). Summary: The Commission will consider the use of channel loading.

5—Mass Media—Title: Amendment of Part 74 of the Commission's Rules and Regard to the Instructional Television Fixed Service (MM Docket No. 93–24). Summary: The Commission will consider the revision of application processing procedures.

6—Office of Plans and Policy—Title: Implementation of section 26 of the Cable Television Consumer Protection and Competition Act of 1992—Inquiry into Sports Programming Migration (PP Docket No. 93–21). Summary: The Commission will consider information obtained in its inquiry into sports programming migration.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 418–0500.

Dated: June 2, 1994.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94–13872 Filed 6–3–94; 10:52 am]

BILLING CODE 6712–01–M

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**INTERSTATE COMMERCE COMMISSION**

Amended Notice of Commission Conference

**TIME AND DATE:** 10:00 a.m., Tuesday, June 14, 1994.

**PLACE:** Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

**STATUS:** The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted. This notice amends the time and date which appeared in our notice published in the ICC Register and served on May 31, 1994 and published at 59 Fed. Reg. 28,132 (1994).

**MATTERS TO BE DISCUSSED:**

Finance Docket No. 27590 (Sub-No. 2), *TTX Company et al.—Application for Approval of the Pooling of Car Service with Respect to Flat Cars.*

Finance Docket No. 32404, *Central Michigan Railway Company—Trackage*

*Rights Exemption—Detroit & Mackinac Railway Company.*

Finance Docket No. 30965 (Sub-No. 4), *Delaware and Hudson Company—Lease and Trackage Rights—Springfield Terminal Railway Company.*

**CONTACT PERSONS FOR MORE INFORMATION:** Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 94–13770 Filed 6–2–94; 11:17 am]

BILLING CODE 7035–01–P

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**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of June 6, 13, 20, and 27, 1994.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of June 6**

*Monday, June 6*

10:00 a.m.
Briefing by DOE on HLW Program (Public Meeting)
(Contact: Linda Desell, 202–586–1462)
1:00 p.m.
Briefing on Proposed Rule on Radiological Criteria for Decommissioning (Public Meeting)
(Contact: Chip Cameron, 301–504–1642)

*Wednesday, June 8*

10:00 a.m.
Briefing on Electricity Forecast from Energy Information Administration (EIA) Annual Energy Outlook (Public Meeting)
(Contact: Mary Hutzler, 202–586–2222)

*Thursday, June 9*

10:00 a.m.
Briefing on Review of Rulemaking Process (Public Meeting)
(Contact: William Olmstead, 301–504–1740)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Licensee Submittal of Data in Computer—Readable Form
(Contact: R. Gramann, 301–504–2456)
b. Advanced Medical Systems, Inc.—Appeal of LBP–90–17 (Suspension Order Proceeding)
(Contact: Stephen Burns, 301–504–2184)
c. Final Rule on "Timeliness in Decommissioning of Materials Facilities" (Tentative)
(Contact: Mary Thomas, 301–492–3886)
d. Intervention Petitions Challenging Proposed Fuel Shipments to Temelin Reactors in the Czech Republic (Tentative)
(Contact: Grace Kim, 301–504–3605)
2:00 p.m.
Briefing on Final Rule for Protection Against Malevolent Use of Vehicles at Nuclear Power Plants—Part 73 (Public Meeting)
(Contact: Phillip McKee, 301–504–2933)
3:30 p.m.
Update on Design Basis Threat (Closed—Ex. 1 and 3)

*Friday, June 10*

10:00 a.m.
Briefing on Proposed Rule for License Renewal—Part 54 (Public Meeting)
(Contact: William Travers, 301–504–1117)
2:00 p.m.
Briefing on Status on Nuclear Issues Concerning Russia (Closed—Ex. 1)

**Week of June 13—Tentative**

*Thursday, June 16*

10:30 a.m.
Discussion of Personnel Matters (Closed—Ex. 2 and 6)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of June 20—Tentative**

*Monday, June 20*

10:00 a.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

*Thursday, June 23*

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities
(Contact: Victor McCree, 301–504–1711)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of June 27—Tentative**

There are no meetings scheduled for the Week of June 27.

**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.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill, (301) 504–1661.

Dated: June 2, 1994.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 94–13865 Filed 6–3–94; 10:30 am]

BILLING CODE 7590–01–M

# Corrections

Federal Register
Vol. 59, No. 108
Tuesday, June 7, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Part 533

**[APD 2800.12A, CHGE 53]**

**RIN 3090-AE98**

### General Services Administration Acquisition Regulation; Implement Revision to General Services Administration Board of Contract Appeals Rules of Procedure

*Correction*

In rule document 94-10259 beginning on page 22520 in the issue of Monday, May 2, 1994, make the following correction:

**533.105 [Corrected]**

1. On page 22520, in the third column, in section 533.105(a)(4), in the fifth line, "has" should read "have".

2. On the same page, in the same column, in amendatory instruction 3, in the first line, "Section 553.7103-1" should read "Section 533.7103-1".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Final Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the General Statutory Funding Preference for Grants for Nurse Practitioner and Nurse-Midwifery Programs for Fiscal Year 1994

*Correction*

In notice document 94-12152 beginning on page 26247 in the issue of Thursday, May 19, 1994, make the following correction:

On page 26248, in the first column, in the sixth line from the top, following the word "facilities," insert ", long-term care facilities".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT-070-04-4210-04; MTM82124]**

### Realty Action: Exchange

*Correction*

In notice document 94-12232 beginning on page 26318, in the issue of Thursday, May 19, 1994, make the following corrections:

On page 26319, in the 1st column, under the heading **Montana Principal Meridian**, in the land description, in T.6 S, R. 2 W., "Sec. 12, SW¼NE¼, SW¼." should read "Sec. 12, SW¼NW¼, SW¼;"

On the same page, in the same column, in T.7 S, R.9 W., "Sec. 13, NW¼SW¼," should read "Sec. 13, NW¼SW¼, N½SW¼SW¼;".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent To Repatriate Cultural Items in the Possession of the Nebraska Historical Society

*Correction*

In notice document 94-13168 appearing on page 28104 in the issue of Tuesday, May 31, 1994, in the second column, beginning in the last line, "within [*45 days after publication of this notice*]." should read "on or before July 15, 1994.".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### 12 CFR Parts 563b and 575

**[No. 94-49]**

**RIN 1550-AA74**

### Conversions From Mutual to Stock Form; Mutual Savings and Loan Holding Companies

*Correction*

In proposed rule document 94-9980 beginning on page 22764 in the issue of Tuesday, May 3, 1994, make the following correction:

On page 22764, in the first column, under **DATES**, in the second line, "July 17, 1994" should read "June 17, 1994"

BILLING CODE 1505-01-D

Federal Register

Tuesday
June 7, 1994

Part II

# Department of the Treasury

Office of the Comptroller of the Currency
12 CFR Part 34

Office of Thrift Supervision
12 CFR Parts 545, 563, and 564

# Federal Reserve System

12 CFR Part 225

# Federal Deposit Insurance Corporation

12 CFR Part 323

Real Estate Appraisals; Rule

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 34**

**[Docket No. 94–10]**

**RIN 1557–AB34**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 225**

**[Regulation Y; Docket No. R–0803]**

**RIN 7100–AB20**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 323**

**RIN 3064–ABO5**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Parts 545, 563, 564**

**[Docket No. 94–47]**

**RIN 1550–AA64**

## Real Estate Appraisals

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively the agencies) are amending their regulations regarding appraisals of real estate. This final rule is adopted pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

The final rule increases to $250,000 the threshold at or below which appraisals are not required pursuant to Title XI, expands and clarifies existing exemptions to the Title XI appraisal requirement, identifies additional circumstances when appraisals are not required under Title XI, and specifies when exempt transactions nevertheless require appropriate evaluations. In addition, the final rule amends existing requirements governing appraisal content and the use of appraisals prepared by other financial services institutions.

The agencies are adopting this final rule to further federal financial and public policy interests by reducing regulatory burden, while requiring Title XI appraisals when necessary to protect the safety and soundness of financial institutions or otherwise advance public policy.

**EFFECTIVE DATE:** This final rule is effective on June 7, 1994.

**FOR FURTHER INFORMATION CONTACT:**

*Office of the Comptroller of the Currency (OCC)*

Thomas E. Watson, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874–5170; or Horace G. Sneed, Senior Attorney, or Stephen Freeland, Attorney, (202) 874–4460, Bank Operations and Assets Division; Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

*Board of Governors of the Federal Reserve System (Board)*

Roger T. Cole, Deputy Associate Director, (202) 452–2618, Rhoger H Pugh, Assistant Director, (202) 728–5883, Stanley B. Rediger, Supervisory Financial Analyst (202) 452–2629, or Virginia M. Gibbs, Supervisory Financial Analyst, (202) 452–2521, Division of Banking Supervision and Regulation; or Gregory A. Baer, Senior Attorney (202) 452–3236, Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

*Federal Deposit Insurance Corporation (FDIC)*

Robert F. Miailovich, Associate Director, (202) 898–6918, James D. Leitner, Examination Specialist, (202) 898–6790, Division of Supervision; or Walter P. Doyle, Counsel, (202) 898–3682, Legal Division; Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

*Office of Thrift Supervision (OTS)*

Robert Fishman, Senior Program Manager, Credit Risk, Supervision Policy, (202) 906–5672; Deirdre G. Kvartunas, Policy Analyst, Supervision Policy, (202) 906–7933; Ellen J. Sazzman, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, (202) 906–7133; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 3331 *et seq.*, directs each Federal banking agency to publish appraisal regulations for federally related transactions within its jurisdiction. The purpose of the legislation is to protect federal financial and public policy interests in real estate related transactions by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, and by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. See 12 U.S.C. 3331.

Section 1121(4) of FIRREA, 12 U.S.C. 3350(4), defines a federally related transaction as a real estate-related financial transaction that is regulated or engaged in by a federal financial institutions regulatory agency and requires the services of an appraiser. A real estate-related financial transaction is defined as any transaction that involves:

(i) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;

(ii) The refinancing of real property or interests in real property; and

(iii) The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities. See 12 U.S.C. 3350(5) (FIRREA section 1121(5)).

In their appraisal regulations, the agencies identify categories of real estate-related financial transactions that do not require the services of an appraiser in order to protect federal financial and public policy interests or to satisfy principles of safe and sound banking. These real estate-related financial transactions are not federally related transactions under the statutory and regulatory definitions. Accordingly, they are subject to neither Title XI of FIRREA nor those provisions of the agencies' regulations governing appraisals.

In December 1992, Congress confirmed that the agencies may set a threshold level below which the services of state certified or licensed appraisers are not required in connection with federally related transactions if the agencies determine in writing that the threshold does not represent a threat to the safety and soundness of financial institutions. See Housing and Community Development Act of 1992, Public Law 102–550, section 954 (amending 12 U.S.C. 3341).

The agencies jointly published a proposed rule to amend their appraisal regulations on June 4, 1993. See 58 FR

31878. The agencies published a notice of the availability of supplemental information concerning the proposed rule and invited further comments on November 10, 1993. See 58 FR 59688.

The agencies are issuing this joint final rule under their authority to issue rules to implement Title XI of FIRREA and each agency's authority to prescribe rules and regulations to carry out its responsibility to ensure that the institutions under its supervision conduct their activities in accordance with safe and sound banking principles. This final rule is intended to protect federal financial and public policy interests and the safety and soundness of financial institutions, while reducing duplication, costs and regulatory burden.

## II. Comments on the Proposed Rule

### *A. Overview of Comments*

Collectively, the agencies received over 19,000 comment letters on the proposed rule. In response to the June 4th Notice of Proposed Rulemaking, the agencies received comment letters from appraisers, bankers, and others as shown in Table A. Comment letters received in response to the November 10th Notice of Supplemental Information were distributed as shown in Table B.

TABLE A.—DISTRIBUTION OF COMMENTS RECEIVED IN RESPONSE TO JUNE 4, 1993 PROPOSED RULE

| Agency | Letters from appraisers | Letters from bankers | Letters from others | Total |
|---|---|---|---|---|
| OCC | 1660 | 161 | 168 | 1989 |
| Board | 1608 | 259 | 276 | 2143 |
| FDIC | 1574 | 376 | 149 | 2099 |
| OTS | 1298 | 40 (14 thrifts) | 134 | 1472 |

TABLE B.—DISTRIBUTION OF COMMENTS RECEIVED IN RESPONSE TO NOVEMBER 10, 1993 NOTICE OF SUPPLEMENTAL INFORMATION

| Agency | Letters from appraisers | Letters from bankers | Letters from others | Total |
|---|---|---|---|---|
| OCC | 1878 | 659 | 242 | 2779 |
| Board | 1994 | 519 | 528 | 3041 |
| FDIC | 1818 | 1142 | 467 | 3427 |
| OTS | 1644 | 57 (22 thrifts) | 502 | 2203 |

The agencies have reviewed and considered all comments concerning the proposed rule. The agencies discuss general comments immediately below. Responses to the agencies' specific requests for comment and comments concerning specific amendments to the appraisal regulation are discussed in the section-by-section analysis.

### *B. General Comments on the Proposed Rule*

Regulated institutions generally endorsed the proposed changes to the appraisal regulations, though a small number of savings associations, banks, and other commenters opposed changing the regulation. Appraisers almost unanimously opposed changing the threshold, and a large number of appraisers opposed the business loan exemption. However, appraisers commented favorably on other parts of the proposed rule.

A large number of appraisers commented that the proposed changes would lead to abuses that caused savings associations to fail in the mid-to-late 1980s and that the changes would violate the intent of Congress. In the experience of the agencies, and in the opinion of studies conducted on the failures of the 1980s, abuses were related to real estate acquisition or development projects and larger loans. The regulations issued today continue to require appraisals for these transactions. Moreover, the regulations fully comply with the intent of Congress by continuing to protect federal financial and public policy interests in real estate-related financial transactions as well as the safety and soundness of financial institutions.

Regulated institutions and appraisers have over three years experience with the appraisal regulations and have urged changes in the regulations to improve credit availability and reduce duplication, costs, and regulatory burden. Some commenters, focusing on the proposed threshold, opposed changing the regulations because they believed that additional time was needed to study the effect of the existing regulations. Delaying the issuance of the final rule would deny regulated institutions, appraisers, and borrowers the benefits of these changes. To the extent that subsequent events demonstrate that additional changes are needed, the agencies can further amend the regulations.

One appraisal organization suggested that several of the proposed exemptions should be replaced with guidelines regarding when to obtain Title XI appraisals. Because regulated institutions and appraisers can become liable for substantial penalties for violating the regulation, the agencies believe that it benefits regulated institutions, appraisers, and the public for the agencies to identify categories of exempt transactions in the regulation. However, the agencies intend to provide supplemental information about the appraisal and evaluation practices of regulated institutions in guidance.

Some commenters stated that they were denied an opportunity to comment on the supplemental information identified in the November 10th notice because the materials were available only in Washington, DC, and the comment period was 30 days. The agencies believe that the public procedures on the proposed amendments to the appraisal regulations fully complied with the requirements of the Administrative Procedure Act and accorded the public a full opportunity to participate in the rulemaking.

The November 10th notice explained that the supplemental materials were available from each of the agencies. In accordance with established procedures, all agencies mailed copies of those materials to any person requesting them, as well as having the documents available for review at each agency

The agencies also believe the 30-day comment period was appropriate for the second comment period on the proposed amendments. The notice of supplemental information requested comment on materials that dealt almost exclusively with the appraisal threshold. As shown in Table B above, more than 11,000 comment letters were received in response to the November 10th notice.

**III. Section-by-Section Analysis**

*§ ____.2 Definitions.*

(d) Business Loan

The agencies are adopting the proposed definition of "business loan" as a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship (including an individual engaged in farming), or other business entity. The definition is used in connection with the exemption for business loans of $1 million or less that are not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment.

Commenters suggested that the agencies amend the definition of business loan to include loans to individuals for business purposes and to permit use of the exemption when individuals lease real estate to a related business. Loans to individuals are included in the definition of business loan as loans to sole proprietorships and other business entities. This exemption does not apply to loans to individuals that are consumer or personal loans. Therefore, the agencies do not believe that it is necessary to amend the definition.

(h) Real Estate or Real Property

The Board is adding a definition of "real estate" and "real property" to § 225.62 of its regulation. The Board proposed this amendment to incorporate the definition of real estate and real property employed by the other agencies. That definition specifically excludes mineral rights, timber rights, growing crops, water rights, and similar interests.

Title XI of FIRREA does not define "real estate" or "real property" nor does the context in which these terms are used suggest that the terms are intended to have different technical meanings. See 55 FR 27762 (July 5, 1990).

The Board used "real property" and "real estate" interchangeably throughout its appraisal rule to mean interests in an identified parcel or tract of land and improvements. However, the Board did not intend these terms to include mineral rights, timber rights, or growing crops when they are considered separately from the parcel or tract of land. Valuation of such interests generally requires the services of a professional other than a real estate appraiser.

To clarify this distinction, the Board has amended its regulation to define "real property" and "real estate" for purposes of the appraisal regulation as an identified parcel or tract of land, including improvements, easements, rights of way, undivided or future interests and similar rights in a tract of land, but excluding mineral rights, timber rights, or growing crops.

Few commenters expressed an opinion on this proposed change. Those few commenters who opposed the definition stated that timber and growing crops should not be excluded from the definition of real estate in that the value of such items is tied to the value of the land. Comments opposing this definition were generally from appraisers who perform farm and timber appraisals.

In many states, minerals, timber, and growing crops that have not been severed from the land are considered interests in real estate or real property. Consequently, if mineral rights are collateral for a loan in one of those states, a question arises whether the institution must obtain a real estate appraisal of the parcel or tract of land to which the mineral rights are attached but in which the institution has no interest.

The Board's final rule clarifies that regulated institutions are not required to obtain appraisals of the parcel of land to which mineral rights, or similar severable interests in real estate are attached, if the transaction only involves the severable interest rather than the parcel or tract of land. Where mineral rights, timber rights, or growing crops, *and* the associated parcel or tract of land, are the subject of a real estate-related financial transaction, the services of a licensed or certified appraiser would be required unless the transaction is otherwise exempt.

In addition, the contribution of relevant mineral rights, timber rights, or growing crops should be included when appraising a parcel of land which possesses any of these features. However, valuation of these interests would not be required if they are not part of the transaction or if they are not relevant to the analyses which the appraiser needs to perform to arrive at an estimate of value for the parcel or tract of land.

*§ ____.3(a) Appraisals required*

(1) Threshold

The agencies proposed an increase from $100,000 to $250,000 in the threshold at or below which a Title XI appraisal is not required, and specifically asked commenters whether a $250,000 or some other threshold would be appropriate. In addition, the agencies requested information on loss experience of depository institutions for loans greater than $250,000 and loans of $250,000 or less. On November 10, 1993, the agencies made available supplemental information on the proposed rule and extended the comment period for 30 days in order to allow commenters to consider and comment on the information. The supplemental information related primarily to the proposed increase in the threshold.

A majority of the commenters addressed the threshold issue. Almost all of the commenters opposed to the increase were appraisers, while almost all of the commenters in favor of the increase were depository institutions.

Most of those opposed stated as the basis for their opposition that an increase in the threshold would cause substantial losses for depository institutions, and thereby for the deposit insurance funds. To support this view, commenters generally cited the thrift failures of the 1980s and asserted that an increase in the threshold would lead to the same result.

A total of 74 comment letters provided data on loss experience. The institutions providing the data varied in size, and included large regional multi-bank holding companies, as well as small banks. This data is discussed below.

For the reasons set forth below, the agencies have decided to raise the threshold from $100,000 to $250,000. Such an increase will benefit consumers and lenders and will not threaten the safety and soundness of financial institutions, particularly as an evaluation will be required for all loans exempt under the threshold.

*Benefits for Consumers and Lenders of an Increase in the Threshold.* Many commenters stated that an increase in the threshold would benefit consumers and lenders. Numerous bank and thrift commenters pointed to the cost and time needed in order to obtain an appraisal as an impediment to lending. The appraisal was cited by several commenters as the most important factor causing delay in small business lending, and the cost of the appraisal was described as high, especially for commercial borrowers. Commenters

reported that appraisal fees for commercial transactions between $100,000 and $250,000 could cost 5 percent of the loan amount to the borrower. Banks and thrifts also commented that increasing the threshold would reduce regulatory burden associated with making loans below $250,000. Many appraisers, however, commented that appraisal costs have remained relatively steady.

Many appraisers also stated that appraisals by certified or licensed appraisers are necessary to protect the consumer. The agencies believe that this assertion mischaracterizes the role of the institution's determination of collateral value in a typical consumer transaction. The regulated institution obtains the appraisal or evaluation as part of its loan underwriting process in order to make certain that it is adequately secured. Any appraisal ordered by a financial institution is not designed, and generally comes too late, to assist the consumer in negotiating a contract price. In a purchase of real estate, the purchase offer is generally made before financing is sought and the financial institution orders an appraisal. Therefore, the appraisal represents an after-the-fact cost. Further, even when a Title XI appraisal is not required, nothing prevents a consumer from independently obtaining an appraisal by a licensed or certified appraiser for the consumer's own use in the negotiating process. Moreover, the agencies' rules require an institution to obtain an appropriate evaluation of the real property collateral for transactions below the threshold, and that evaluation would be available to the consumer.

The agencies believe that many of the concerns about consumer protection are addressed under statutory and regulatory programs other than Title XI of FIRREA, which focuses on bank and thrift safety and soundness.

The Real Estate Settlement Procedures Act (RESPA) establishes procedures for lenders to disclose to consumers the charges for a variety of settlement services, including appraisals and evaluations. To comply with the letter and intent of the Board's Regulation B (implementing the Equal Credit Opportunity Act), regulated institutions must either disclose to the borrower the right to receive a copy of the documents the lender uses to value the collateral in an application for a loan secured by a dwelling, regardless of whether the documents constitute a Title XI appraisal or evaluation, or, as a matter of course provide the borrower with the appraisal or evaluation. Thus, to the extent that a borrower benefits from knowing the value the lender places on the property the borrower has contracted to purchase or pledged as collateral, the borrower should be able to benefit from that knowledge whether it is in the form of a Title XI appraisal or an evaluation.

Furthermore, although such a disclosure is not required by RESPA, Regulation B, or Title XI, the agencies believe that a regulated institution should advise consumers whether the institution intends to have a licensed or certified appraiser prepare the estimate of value. This should be done early enough in the loan application process to allow the consumer to make an informed decision that the intended method of estimating the real estate's value meets his or her needs.

*Effects on Safety and Soundness of Financial Institutions.* The agencies have concluded that a $250,000 threshold would not threaten the safety and soundness of financial institutions.

Benefits to Safety and Soundness. The agencies believe that the increase in the threshold will have affirmative benefits for safety and soundness. A decrease in appraisal requirements should relieve regulatory burden for banks and thrifts and thereby improve their competitiveness with non-regulated lenders. Appraisal costs represent a significant expense for certain small loans, making such lending less attractive to a potential borrower or less profitable for the lender. Numerous comments from lenders supported this conclusion. The problem is particularly troubling for lenders in small towns, who must pay a premium for a licensed or certified appraiser to visit the town. A GAO survey of bankers in connection with a study of small business lending revealed that the minimum cost to perform the necessary appraisal on commercial real estate property used as collateral for small business loans was approximately $3,000.[1] See GAO Report GGD–93–121, Bank Regulation: Regulatory Impediments to Small Business Lending Should Be Removed (September 1993).

Experience with the $100,000 Threshold. The Board has had a $100,000 threshold in place since August 1990, and the other agencies have had a $100,000 threshold since March or April 1992. The experience of the agencies has demonstrated that the $100,000 threshold has posed no risk to safety and soundness.

A survey by each of the agencies of its senior examination staff indicates that over a period of many years, with a few possible exceptions,[2] no bank or thrift has failed or suffered significant losses as a result of appraisal problems with loans under $100,000 or even up to $250,000. Each of the regional representatives of the Board, the FDIC, and the OCC supported adoption of the $250,000 threshold as consistent with safety and soundness. Representatives of the OTS suggested that the threshold should only apply to healthier thrifts. As described below, this concern has been addressed by the agencies in the final regulation.

The $250,000 threshold was also supported by the Conference of State Bank Supervisors (CSBS), the professional association for state officials who supervise and regulate state-chartered commercial and savings banks. The CSBS concluded that the increased threshold would reduce unnecessary costs and would not represent a threat to the safety and soundness of financial institutions.

Numerous bank and thrift commenters also reported that their experience with the $100,000 threshold had been good. Moreover, commenters opposed to the increased threshold did not identify institutions that had failed or suffered significant losses because of the existence of the $100,000 threshold.

The agencies believe that low loss experience with a $100,000 threshold provides justification for an increase in the threshold to $250,000.

Data Indicate Similarities Between the $100,000 Threshold and $250,000 Threshold. A substantial body of evidence provides strong reasons to believe that exempting loans between $100,000 and $250,000 from the Title XI appraisal requirement will not present materially greater risk than the prior exemption for loans under $100,000.

Data from the commercial bank Consolidated Reports of Condition and Income (Call Reports) for year-end 1992 show that approximately 53 percent of the dollar volume of all real estate-secured loans of all sizes in the commercial banking industry are loans secured by 1-to-4 family residential

[1] The GAO noted that a survey performed by the American Bankers Association reflected a lower average cost.

[2] The Central Region of the OTS was the only OTS respondent to identify failures attributable to inadequate appraisal practices. The Central Region identified fewer than six failures over the previous twelve years where appraisal issues for loans under $250,000 were a major contributing factor to a thrift's failure. The Central Region noted that in those failures where inadequate appraisal practices were a problem, other areas of loan underwriting were usually found to be equally deficient.

One OCC survey respondent reported that one institution had failed because of residential and commercial loans between $100,000 and $500,000. The respondent noted that the problems occurred before 1987, when the OCC issued guidelines that would have prevented the institution's real estate valuation problems.

properties. Data from the Thrift Financial Reports (TFR) for year-end 1992 show that the number is 77 percent in the thrift industry.

Data on loan size are not reported for residential loans on the Call Report or TFR. However, information from the National Association of Realtors, the Census Bureau, and the Department of Housing and Urban Development (HUD) indicate that approximately 29 percent of the dollar volume of 1-to-4 family real estate loans to purchase new homes, and 33 percent of the dollar volume of loans to finance the purchase of existing homes, fell below the prior $100,000 threshold. Approximately 56 percent of the dollar volume for new 1-to-4 family homes and 49 percent of the dollar volume for existing homes fell between $100,000 and $250,000. In sum, 85 percent of the dollar volume of mortgages financing new homes and 82 percent of the volume of mortgages financing purchases of existing homes will fall below the $250,000 threshold.

Thus, increasing the threshold from $100,000 to $250,000 is likely to more than double the amount of lending for 1-to-4 family residential real estate loans exempt from the Title XI appraisal requirement. Inasmuch as a solid majority of total real estate lending is composed of 1-to-4 family loans, the agencies believe that 1-to-4 family loans will be the largest block of loans exempted by the increase in the threshold.

The increase in 1-to-4 family residential real estate loans exempted by the $250,000 threshold will not affect safety and soundness, as these loans are traditionally the safest in a lending institution's portfolio. In 1992, the net loan charge-off rate [3] for all commercial bank loans secured by 1-to-4 family real estate was 0.23 percent; for thrifts, the net charge-off rate for loans secured by 1-to-4 family residential real estate was 0.22 percent. Low loss rates for 1-to-4 family residential real estate loans predate enactment of Title XI; for example, in 1991, when the great majority of 1-to-4 family loans had been originated prior to implementation of Title XI in August 1990, the charge-off rate for 1-to-4 family loans was 0.20 percent for commercial banks and 0.11 percent for thrifts. See FDIC Quarterly Banking Profile (4th Quarter 1991) and Thrift Financial Reports (1991).

Beginning June 30, 1993, commercial banks and thrifts are required to report annually the number and dollar amount of non-farm non-residential real estate loans, which basically constitute business loans secured by real estate. They are also required to report the number and dollar amount of all agricultural loans.

The data from the June 1993 Call Reports show that 12 percent of the dollar volume of real estate-secured business loans was below the $100,000 threshold. Also by dollar volume, only 11 percent of outstanding real estate-secured business loans fell between $100,000 and $250,000. For thrifts, the TFRs show that 10 percent of the dollar volume of all real-estate secured business loans was below $100,000, and 9 percent between $100,000 and $250,000.

These findings are consistent with data compiled in the 1989 National Survey of Small Business Finances, which surveyed firms with fewer than 500 employees. See National Survey of Small Business Finances (1989) (cosponsored by the Federal Reserve Board and Small Business Administration). According to that survey, of the commercial mortgages to small businesses by depository institutions, 6 percent of the dollar volume of these loans was in loans of less than $100,000, and 12 percent was in loans between $100,000 and $250,000.

As noted in the regional examiner surveys, the $100,000 threshold has not resulted in significant losses, even though that threshold captures 12 percent of the dollar volume of small business loans. The agencies do not believe that an increase in the threshold that exempts another 11 percent of business loans will significantly increase such losses.

Call Report data also show that 63 percent of the dollar volume of agricultural real estate loans fell below the $100,000 threshold, and that 15 percent fell between $100,000 and $250,000. For thrifts, TFR data show that 46 percent of farm loans fell below $100,000, and 36 percent between $100,000 and $250,000. Farm loans represented approximately one-half of one percent (.58%) of non-residential mortgages held by thrifts. Thus, in the area of farm loans, only a relatively small amount of additional loans will be exempted by the raised threshold.

Although the increase in the threshold will increase the dollar volume of exempt transactions, the agencies believe that the quality of loans and lending practices of banks and thrifts will not change for these transactions. Moreover, an institution must obtain evaluations for these exempt transactions when it does not obtain appraisals.

In addition, there is evidence that the loss rates on loans below the $250,000 threshold will be low. For 1992, the commercial bank loss rate for farm loans was .23 percent (approximately the same loss rate as for 1-to-4 family loans). These loss rates on residential and farm loans are significantly lower than the loss rates for the types of real estate loans that are much less likely to fall below the $250,000 threshold—construction loans (3.54% loss rate for commercial banks) and multifamily loans (1.68% loss rate for commercial banks). Loss rates for non-farm non-residential real estate loans at commercial banks were 1.55 percent, higher than residential or farm loans, but still below the loss rates experienced for loans for construction or multifamily housing.

Finally, in addition to the relatively lower risk of the portfolio of real estate related loans between $100,000 and $250,000, the fact remains that the dollar amount of each credit is relatively small. In the experience of the agencies, banks and thrifts generally do not fail because of real estate-related financial transactions under $250,000. It is generally large construction and development loans that have created safety and soundness problems. For example, much of the thrift losses of the 1980s were caused by losses in large, speculative real estate development projects, such as construction of offices, condominiums, and apartments. See, *e.g.*, GAO Report AFMD 89–62, Thrift Failures: Costly Failures Resulted from Regulatory Violations and Unsafe Practices. Such projects generally involve loans in much greater amounts than $250,000. The experience of the agencies continues to be that larger development and construction loans are most likely to cause significant losses.

Although many commenters suggested that raising the threshold would result in losses similar to those of the thrift failures of the 1980s, they did not offer analysis to support those statements. The agencies do not believe that inadequate appraisals on loans under $250,000 were a significant cause of those failures.

Additional Protections. Significant protections exist so that loans under $250,000 will not create a safety and soundness problem once the $250,000 threshold is in place.

First, each agency will, during each required full-scope, on-site examination, analyze the prudence of each institution's credit underwriting practices, including appraisal and evaluation practices, as appropriate to

[3] The net loan charge-off rate is determined by taking the dollar amount of gross losses, subtracting the amount recovered, and dividing the result by the average of outstanding loans.

the institution's size and nature of its real estate-related activities. If an institution is doing a poor job of evaluating real estate for transactions under $250,000, then the appropriate agency may order the institution to obtain appraisals for certain loans or for all loans above a certain amount that are not subject to another exemption.[4]

Second, even though a bank or thrift will not generally be required to obtain a Title XI appraisal for real estate-secured loans under $250,000, the institution must determine the value of the real estate before making the loan. Under the appraisal regulations, banks and thrifts must support any transaction below the threshold with an evaluation that is consistent with the agencies' guidelines. Evaluations will be performed by persons who are capable of rendering an appropriate estimate of value of real estate as a result of their real estate-related experience or training.

As several commenters noted, a $250,000 threshold will have its greatest effect in smaller communities where property values are lower. However, as many community bank commenters pointed out, local lenders in small communities tend to be extremely knowledgeable of property values. Also, collateral for loans of this size do not typically represent complex problems of analysis or valuation.

Third, a $250,000 threshold does not prevent the use of appraisals when needed. Banks and thrifts may obtain appraisals prepared by licensed or certified appraisers whenever the institutions believe it is prudent, and customer may independently obtain such appraisals. If, as some commenters contend, history demonstrates that such appraisals are important to the decision to lend and the failure to obtain such an appraisal will lead to higher loss rates, then banks and thrifts would presumably have a strong incentive to use appraisals. As several commenters noted, institutions will obtain appraisals when their underwriting criteria warrant one, regardless of whether regulations require it.

Fourth, in many cases involving residential real estate, banks and thrifts will be required to obtain the equivalent of a Title XI appraisal in order to make the loan eligible for sale in the secondary market. According to HUD data, in 1992, secondary mortgage market purchasers, such as the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), purchased approximately 63 percent of all 1-to-4 family mortgages originated in the United States. In addition to the 63 percent that were purchased by major secondary mortgage market entities, other loans were originated so as to be eligible for sale to such entities. The agencies have concluded that the appraisal requirements of these government sponsored agencies should protect federal financial and public policy interests in the loans that are eligible to be purchased by them. The agencies also believe that compliance with these appraisal requirements will protect the safety and soundness of regulated financial institutions.

*Data Submitted by Commenters.* The notice of proposed rulemaking asked commenters to submit loan loss data for different categories of real estate-secured loans above and below $250,000. Many depository institution commenters noted that they do not maintain loss data by loan size and that this information is not reasonably accessible. Only a small number of depository institutions submitted such data. The agencies do not believe that this response is sufficiently large to base any conclusions about industry-wide conditions. Nonetheless, the agencies note that the information provided by commenters is consistent with the low loss rates for real estate lending indicated by other sources. The responses that the agencies received are summarized in the following table.

| Real estate-secured loans | Size of loans | Number of loans | Outstanding principal amount of loans[1] (12/31/92) | Loss on loans[1] (annual net charge-offs)[2] (12/31/92) | Loss rate[3] (calculated) (percent) |
|---|---|---|---|---|---|
| Loans secured by 1-to-4 family residential real estate. | Loans greater than $250,000 | 7,151 | 3,169,918 | 4,129 | 0.13 |
| | Loans of $250,000 or less | 524,137 | 22,240,821 | 23,773 | .11 |
| Loans secured by commercial real estate. | Loans greater than $250,000 | 25,344 | 28,315,961 | 372,706 | 1.32 |
| | Loans of $250,000 or less | 67,469 | 5,131,866 | 36,751 | 0.72 |

[1] Dollars rounded to thousands.
[2] Annual net charge-offs are determined by taking the dollar amount of gross losses and subtracting the amount recovered.
[3] The agencies have calculated the loss rate for each of the categories of real estate-secured loans about which the agencies requested data by dividing total annual net charge-offs by the total outstanding principal balance.

*Additional Comments on the $250,000 Threshold*—OMB Study. Several commenters opposing an increase in the threshold pointed to an August 1992 study by the Office of Management and Budget (OMB) entitled Report to Congress: De Minimis Levels for Commercial Real Estate Appraisals. The OMB study did not oppose an increase in the threshold level but instead stated, "OMB does not recommend—at this time—a *de minimis* level higher than $100,000. . . ." OMB study at i.

The agencies believe that the major concerns identified by the OMB in urging delay have been addressed with the passage of time. Most importantly, each of the agencies now has an additional year's experience with the $100,000 threshold. Furthermore, OMB noted that FIRREA's appraisal requirements had not been implemented in all states, but such implementation has now occurred.

Rulemaking Process. Several commenters stated that the agencies had failed to justify increasing the threshold from $100,000 to $250,000 because the agencies had not produced a definitive study showing that doing so would not increase loss rates.

[4] As noted below, the agencies may require an appraisal for loans between $100,000 and $250,000 (not otherwise subject to an exemption) when an institution is in troubled condition, and that troubled condition is attributable to underwriting problems in the institution's real estate loan portfolio.

Congress granted the agencies explicit authority to establish a threshold consistent with safety and soundness. The delegation of authority was broad, and no requirement for quantitative analysis was included. Nor is it reasonably feasible for the agencies to conduct a definitive quantitative analysis that isolates the effect of obtaining Title XI appraisals on institutions' losses on real estate-secured loans given the many variables, including changing market conditions and varying loan underwriting practices, that may affect institutions' ultimate loss experience. For the same reason, the agencies did not conduct a random sampling of the experience of financial institutions, as suggested by one commenter. This does not mean, however, that the final rule fails to rely on objective data. Moreover, that data was analyzed in light of the agencies' experience and expertise.

As part of this rulemaking, the agencies reviewed the data the agencies currently collect from financial institutions and sought out data that would enable the agencies to analyze the effect of the threshold on regulated institutions. Consistent with statutory requirements, the agencies have carefully considered the effect of raising the threshold and determined that a $250,000 threshold level does not represent a threat to the safety and soundness of financial institutions based on the agencies' judgment, expertise, and experience. In making this determination, the agencies have, as described above, analyzed the available data, the comments received during the rulemaking, and relevant work of other governmental agencies.

Appraiser Employment. Many commenters from the appraisal industry objected to the proposed increase in the threshold on the grounds that it would decrease their business and employment in the appraisal industry.

In the event that an appraisal is not required because the transaction falls below $250,000, the appraisal regulation nonetheless requires that an evaluation of the property be conducted. The agencies' appraisal rules do not impede licensed and certified appraisers from performing these evaluations.

GAO Study. Several commenters suggested that the agencies delay action on any rulemaking pending completion of General Accounting Office (GAO) studies of the threshold scheduled for completion in April 1994 and October 1995. Congress delegated authority to the agencies to establish a threshold in the same legislation that directed the GAO to conduct two studies of the appraisal threshold. Congress clearly did not require the agencies to withhold action on the threshold pending completion of the GAO studies; nor did it make agency action contingent on the outcome of the GAO studies or any other studies. Also, in the Interagency Policy Statement on Credit Availability issued March 10, 1993, the agencies identified a need to reexamine their existing appraisal rules to make certain that thresholds below which formal appraisals are not needed are reasonable. Therefore, the agencies believe that it is appropriate to proceed with the rulemaking. The agencies are cooperating with the GAO by providing information that it may use in preparing its studies.

Private Mortgage Insurance Industry Experience. A trade association representing the private mortgage insurance industry opposed increasing the threshold level to $250,000, citing substantial losses on loans under $100,000. However, it also noted that for loans originated in 1984, loans above $250,000 had a relative claim rate more than 50 percent higher than the claim rate for loans originated under $100,000. Information provided by this commenter also showed that the relative claim rates on loans below $100,000 and loans between $100,000 and $250,000 were close for most years, while the relative claim rate for loans above $250,000 exceeded the claim rates for loans below $250,000 in all years except one. The commenter did not provide actual claim rates nor dollar amounts of claims. Nor did the commenter disclose the average loan-to-value ratios for those mortgages, a factor that could affect the loss experience.

Although the trade association stated its belief that a significant amount of the claims experienced by its members were related to inadequate appraisals, bank and thrift commenters stated that losses on foreclosed properties were more directly related to deterioration in the local real estate market, damage to the property, or actions or inaction by the borrower.

*Application of $100,000 Threshold to Certain Troubled Institutions.* As described in more detail below, the agencies are adopting substantially as proposed a separate amendment stating that each agency continues to reserve the right to require a regulated institution to obtain a Title XI appraisal whenever the agency believes that an appraisal is necessary to address safety and soundness concerns. This authority may involve the agency requiring an institution to obtain an appraisal for a particular extension of credit or an entire group of credits.

Whether an institution will be required, pursuant to this provision or existing safety and soundness authority, to obtain an individual appraisal or group of appraisals may depend on the condition of that institution. If an institution's troubled condition is attributable to real estate loan underwriting problems, then the appropriate agency may require appraisals for all new real estate-related transactions of more than $100,000 that are not subject to an exemption.

Since thrift industry assets are concentrated in real estate loans, OTS believes that problem thrifts or thrifts in troubled condition[5] generally will have real estate-related asset quality problems. As a matter of policy, OTS intends to require thrifts in troubled condition to adhere to a $100,000 threshold.

*Reassessment of Threshold.* Finally, just as the agencies have reviewed their experience with the $100,000 threshold in determining whether a higher (or lower) threshold was appropriate, so too will the agencies review their experience with the $250,000 threshold. If the agencies should determine that the increased threshold is causing safety and soundness problems, then the agencies will reassess that threshold.

(2) The "Abundance of Caution" Exemption

The agencies are amending their regulations to clarify and expand the scope of the exemption for real estate liens taken in an "abundance of caution." Under the amended rule, regulated institutions will be able to apply the abundance of caution exemption to a broader range of transactions in which real estate is taken as additional collateral for an extension of credit that is well supported by income or other collateral of the borrower.

Prior to adoption of this amendment, the abundance of caution exemption was available only for transactions in which a lien on real estate had been taken as collateral solely through an abundance of caution and where the terms of the transaction as a consequence had not been made more

[5] A "problem" association is defined as an association that: (1) Has a composite MACRO rating of 4 or 5; (2) is undercapitalized under prompt corrective action standards; (3) is subject to a capital directive or a cease and desist order, a consent order, or a formal written agreement, relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or (4) has been notified in writing by the OTS that is has been designated a problem association or an association in troubled condition. (See Regulatory Bulletin 27a, Executive Compensation.)

favorable than they would have been in the absence of a lien. In the agencies' experience, however, this standard was being interpreted too narrowly. As a result, regulated institutions obtained appraisals even though they were unnecessary to protect federal financial and public policy interests in the transaction or bank and thrift safety and soundness. Further, a transaction would not qualify for the exemption if the regulated institution made the terms more favorable to the borrower because of the real estate collateral. Therefore, bankers believed they were unable to use this exemption when common business practices would call for a lower interest rate on a secured loan than an unsecured loan.

To qualify for the amended exemption, the regulated institution's decision to enter into the transaction must be well supported by the borrower's income or collateral other than real estate. The following examples from the proposed rule help to explain how this standard is applied.

*Example 1:* A business with an established cash flow seeks a loan from a regulated institution to purchase an adjacent property for expansion. As a common business practice, the institution takes a lien against real estate whenever available for greater comfort. However, the institution's analysis determines that the current income from the business and personal property available as collateral support the decision to extend credit without knowing the real estate's market value. During loan negotiations, the institution offers to make the loan on slightly better terms for the borrower if it receives a lien on real estate. The borrower accepts the offer and provides the real estate as additional collateral.

The regulated institution may reasonably conclude that the lien on the real estate was taken in an abundance of caution because the current income from the business and personal property taken as collateral support the decision to extend credit. Therefore, no appraisal would be required.

*Example 2:* The owner of a shop seeks a term loan from a regulated institution for modernization of its facilities. The institution determines that other sources of repayment and collateral do not sufficiently support the decision to extend credit without taking a lien on the real estate and knowing the real estate's market value. Therefore, in order to extend credit to the borrower prudently, the institution needs an appraisal.

The regulated institution should conclude that the real estate lien has *not* been taken in an abundance of caution because the other sources of repayment and collateral do not support the decision to extend credit without knowing the real estate's market value. This transaction would not qualify for the abundance of caution exemption.

Regulated institutions generally supported the proposed amendment. Some commenters representing appraisers agreed that the abundance of caution exemption had been too narrowly interpreted and supported the proposal to extend the scope of the exemption.

Other appraisers commented that the agencies should require an appraisal, limited scope appraisal, or evaluation any time a regulated institution takes real estate as collateral. Some regulated institutions noted that the prior rule caused them to forgo liens on real estate collateral in order to avoid the expense of an appraisal, thus potentially increasing their exposure unnecessarily.

The agencies are not requiring appraisals for these transactions because an estimate of the real estate collateral's value generally would not assist the regulated institution to make its lending decision. Therefore, an appraisal generally would not further the purposes of Title XI of FIRREA nor significantly improve the safety and soundness of financial institutions.

(3) Loans Not Secured by Real Estate

The agencies are adopting a uniform exemption for transactions that are not secured by real estate. The exemption makes clear that a regulated institution is not required to obtain a Title XI real estate appraisal in connection with a loan used to acquire or invest in real estate if the institution does not take a security interest in real estate.

The prior appraisal regulations of the OCC, FDIC and OTS exempted these transactions, and the amendment does not result in any substantive change in regulatory requirements for these agencies. The amendment eliminates minor differences between the text of the rules adopted by the OCC and OTS and the text of the FDIC's rule. Prior to adoption of the amendment, the Board's appraisal regulation did not specifically exempt these transactions.

Although a few appraisers stated that Title XI appraisals should be obtained for these transactions, other commenters, including appraisers, supported this exemption. Several commenters stated that Title XI was never intended to reach transactions that were not secured by real estate.

In transactions covered by this exemption, the value of the real estate has no direct effect on the regulated institution's decision to extend credit because the institution has no security interest in the real estate. The agencies conclude that federal financial and public policy interests would not be served by requiring lenders and borrowers to incur the cost of obtaining Title XI appraisals in connection with these transactions.

(4) Liens for Purposes Other Than the Real Estate's Value

The agencies are adopting a new exemption for transactions in which a regulated institution takes a lien on real estate for a purpose other than the value of the real estate. This amendment will permit regulated institutions to take liens against real estate to protect rights to, or control over, collateral other than the real estate without obtaining an appraisal.

Regulated institutions frequently take real estate liens to protect legal rights to other collateral and not because of the value of the real estate as an individual asset. For example, in lending associated with logging operations, a regulated institution typically takes a lien against the real estate upon which the timber stands to ensure its access to the timber in the event of default. Similarly, where the collateral for a loan is a business or manufacturing facility, a regulated institution may take a lien against the land and improvements in order to be able to sell the entire business or facility as a going concern if the borrower defaults.

A Title XI appraisal contains an opinion of the market value of real estate. When the market value of the real estate as an individual asset is not needed to support the regulated institution's decision to lend, no purpose is served by requiring the institution to obtain a Title XI appraisal.

Commenters generally favored adopting an exemption addressing these circumstances, agreeing that Title XI appraisals did not enhance the safety and soundness of these transactions because the lenders were basing their decision to extend credit on the value of collateral other than real estate.

Some commenters suggested that this exemption could be combined with the abundance of caution exemption. Although there are situations in which the two exemptions overlap, the agencies believe that both exemptions are necessary because there will be transactions that qualify for one exemption, but not the other.

(5) Real Estate-Secured Business Loans of $1 Million or Less

The agencies are adopting a new exemption for business loans with a value of $1 million or less where the sale of, or rental income derived from, real estate is not the primary source of repayment. The agencies also are adopting the proposed definition of "business loan" as a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship (including an individual engaged in farming), or other business entity. This provision allows a regulated institution to take real estate as security in connection with a loan to a small- or medium-sized business when the primary source of repayment for the

loan does not depend on sale of, or rental income derived from, real estate.

The final rule differs in two respects from the proposed rule. First, the exemption is available for business loans of $1 million or less. The proposed rule would have exempted business loans less than $1 million. The change was adopted to reduce confusion by making this provision consistent with the way other limits are treated in the rule. The change affects the scope of the exemption very slightly.

Second, under the final rule, the exemption is available for business loans that do not depend on real estate sales and rental income as the primary source of repayment for the loan. The proposed rule would have exempted business loans that were not dependent on sale of, or rental income derived from, the real estate taken as collateral as the primary source of repayment. The change narrows the scope of the exemption by preventing a borrower from qualifying for the exemption by showing that the primary source of repayment for the loan is income from real estate sales and rentals involving real estate other than the real estate in which the lender has a security interest. This means, for example, that a real estate developer cannot qualify for the exemption by showing that a real estate-secured loan for one project, in which the lender has taken a security interest, will be repaid with income from real estate sales or rentals from other real estate projects, in which the lender does not have a security interest.

The following examples illustrate the application of this exemption.

*Example 1:* The owner of a shop seeks a term loan for $1 million or less from a regulated institution. The loan will be repaid with income derived from operations. The regulated institution would not extend credit to the borrower without a lien against the real estate.

However, because the loan is for $1 million or less and the sale of, or rental income derived from, real estate is not the primary source of repayment, a Title XI appraisal would not be required for this transaction under this exemption.

*Example 2:* A company acquires an adjacent parcel of land to construct an office building. The company seeks a loan of $1 million or less from a regulated institution to provide construction financing and a permanent mortgage for the office building. The company intends to lease part of the building and will use the rental income to help repay the loan. The lender estimates that operations of the business would contribute approximately 45 percent of the funds necessary to repay the loan and rental income approximately 55 percent.

The regulated institution should conclude that rental income derived from real estate serves as the primary source of repayment for the loan. Therefore, assuming no other exemption is applicable to the transaction, a Title XI appraisal would be required.

*Increased Lending to Small- and Medium-Sized Businesses.* In the experience of the agencies, the appraisal requirement may have adversely affected the ability of small- and medium-sized businesses to obtain credit. In particular, there are indications that the cost of an appraisal may impede small- and medium-sized businesses from receiving working capital, operating loans, and other business-related credits that otherwise would be consistent with prudent banking practice.

The majority of financial institutions and financial institution trade associations that responded to the agencies' request for comment on the effect of the business loan exemption on credit availability stated that the proposed exemption would increase credit availability by reducing the cost and time to make real estate-secured business loans. These commenters generally stated that the changes would have the most significant effect on credit availability for small- and medium-sized businesses. Some appraisers also stated that the proposed changes would increase credit availability.

A large number of commenters responding to the specific request for comment thought that the changes would have no effect on credit availability. These commenters included appraisers and appraiser trade associations, a small number of financial institutions, and other commenters. Some of these commenters stated that the ability of financial institutions to earn a reasonable return by making relatively risk-free investments in U.S. government securities was the cause of credit availability problems.

The agencies believe that the final rule may reduce the cost of real estate-secured loans to small- and medium-sized businesses and increase the availability of loans to these borrowers.

*Effect on Safety and Soundness.* Some commenters stated that this exemption would eliminate the requirement to obtain Title XI appraisals for a large portion of the real estate-secured business loans in their communities. Others stated that this exemption raised safety and soundness concerns because the only tangible collateral for many businesses is real estate. Though real estate may be an important asset of many small- and medium-sized businesses, the agencies have concluded that this exemption for certain business loans that do not rely on real estate as the primary source of repayment will not threaten the safety and soundness of regulated institutions nor pose a threat to federal financial and public policy interests.

Although the agencies are not requiring Title XI appraisals in connection with these business loans, the agencies are requiring regulated institutions to obtain appropriate evaluations of the real estate collateral. The evaluation should provide the institution with sufficient information on the value of the real estate to satisfy principles of safe and sound banking. In addition, during each required full-scope, on-site examination, each agency will analyze the prudence of each institution's credit underwriting practices, including appraisal and evaluation practices, as appropriate to the institution's size and nature of its real estate-related activities.

Shortly after the agencies issued the proposed rule, the GAO completed its report entitled *Regulatory Impediments to Small Business Lending Should Be Removed* (September 1993). In the report's summary, the GAO stated: "Specifically, we believe that real estate appraisal requirements can be safely modified when applied to collateral taken as supplementary support for traditional small business loans. Therefore, we agree with those aspects of the rule changes recently proposed by the banking regulators to expand the exemptions from mandatory appraisals as they pertain to such loans." The GAO noted that the report and its comment on the proposed appraisal regulations were limited "to situations in which real estate collateral is used to support loans to small businesses for such purposes as working capital and equipment purchases." This exemption is intended to reach these loans, as well as loans for other business purposes where sale of, or rental income derived from, real estate is not the primary source of repayment.

The conclusion that exempting these transactions will not threaten the safety and soundness of financial institutions is supported by responses to a 1993 OCC survey of its senior examining staff. The survey asked for information on the effect of the proposed business loan exemption on bank safety and soundness, as well as information on the significance, by loan size, of losses on loans secured by 1-to-4 family residential real estate and other categories of real estate.

Eighteen of the 20 respondents to the OCC survey stated that the proposed exemption for business loans would not threaten the safety and soundness of financial institutions, although some respondents noted that the exemption

could present more serious risks for small financial institutions. Respondents to the survey identified loans above $1 million secured by non-residential real estate as the category of transactions that had the most significant losses attributable to inadequate appraisals, followed by loans secured by non-residential real estate in the ranges $750,000 to $1 million and $500,000 to $750,000.

In general, respondents noted that where real estate serves as only a secondary source of repayment for a business loan, an evaluation of the collateral would be sufficient to address safety and soundness issues. Although the other bank regulatory agencies' surveys did not include the specific questions posed in the OCC survey, the results of the other bank regulatory agencies' surveys also generally support the business loan exemption.

In addition to the survey responses, the data from the 1992 commercial bank Call Reports and savings associations' TFR indicate that the exposure to the banking system from these transactions is limited. All commercial loans secured by non-farm non-residential real estate in the range between $250,000 and $1 million (this includes both non-exempt and exempt transactions) represent less than 4 percent of all loans for commercial banks and less than 3 percent of all loans for savings associations. Furthermore, these loans represent less than 27 percent of commercial loans secured by non-farm non-residential real estate at commercial banks and less than 36 percent of commercial loans secured by such real estate at savings associations. This generally agrees with the National Survey of Small Business Finances (1989), cosponsored by the Federal Reserve Board and Small Business Administration. The results of the survey (adjusted to 1992 dollars) show that 22 percent of all commercial mortgages were for amounts between $250,000 and $1 million.

The agencies requested specific comment on loss experience for real estate-secured business loans. Only a small number of banks and no thrifts submitted the requested data. Although the agencies do not believe the response is large enough to reach conclusions about industry-wide loss experience, the data submitted is consistent with the conclusion that regulated institutions are not suffering high levels of losses in connection with real estate-secured business loans of $1 million or less that do not depend on real estate sales or rental income as the primary source of repayment. The responses that the agencies received are summarized in the following table.

| Real estate-secured loans [1] | Number of loans (12/31/92) | Outstanding principal amount of loans [2] (12/31/92) | Loss on loans [2] (annual net charge-offs) [3] (12/31/92) | Loss rate [4] (calculated) (percent) |
|---|---|---|---|---|
| All real estate-secured business loans | 90,410 | 17,488,561 | 178,237 | 1.02 |
| Real estate-secured business loans less than $1 million that are not dependent on the sale of, or rental income derived from, the real estate taken as collateral as the primary source of repayment for the loan | 59,595 | 8,008,422 | 32,680 | 0.41 |

[1] None of the comment letters received by OTS included data on these loans.
[2] Dollars rounded to thousands.
[3] Annual net-charges are determined by taking the dollar amount of gross losses and subtracting the amount recovered.
[4] The agencies have calculated the loss rate for both categories of real estate-secured loans about which the agencies required data by dividing total annual net charge-offs by the total outstanding principal balance.

*Limited to Business Loans of $1 Million or Less.* The exemption applies only to transactions involving business loans with a value of $1 million or less. Capping the exemption at $1 million serves two purposes. It helps to ensure that the transactions involve small- and medium-sized businesses. It also limits the overall exposure of the banking system to transactions exempt under this provision.

Some commenters stated that a $1 million limit may be too high for small institutions and suggested that the limit be set at a percentage of the institution's capital. Others stated that the exemption should cover business loans of any size.

Regulated institutions typically are subject to capital-based lending limits that restrict the amount of credit they can extend to any one borrower. While a $1 million business loan may be much more significant to a smaller institution, the agencies believe that a second capital-based limit in the appraisal regulation is inappropriate because it can place smaller institutions at a competitive disadvantage to larger institutions. In addition, the agencies regularly examine the lending practices of all regulated institutions and can address problems with individual institutions if they arise. The agencies believe it is appropriate, however, to place a limit on the size of loan that can qualify for this exemption. Many commenters agreed that a $1 million dollar limit was appropriate.

*Primary Source of Repayment.* Some commenters suggested that the exemption should be available only if the borrower could repay the loan entirely from sources other than sale of, or rental income derived from, real estate. Commenters also suggested specific percentage limits on the contribution of real estate to repayment of the loan ranging from 10 to 50 percent. Other commenters stated that the exemption should allow a regulated institution to determine whether a business loan requires an appraisal, regardless of the contribution of real estate sales or rental income to the borrower's repayment of the loan.

The exemption is intended to improve the ability of small- and medium-sized businesses to obtain real estate-secured loans for business purposes. As the contribution of real estate sales and rentals to the borrower's sources for repaying the loan increases, repayment becomes more dependent on the performance of the real estate market. Therefore, in deciding whether a transaction qualifies for this exemption, regulated institutions should be guided by the importance of the real estate-related sources of income to the borrower's repayment of the loan, rather than applying a universal numerical cap. In no case, however, may a business loan qualify for this exemption if real estate-related sources of income contribute more toward repayment of the loan than non-real estate sources of income.

Exempting these business loans will reduce the adverse effects on small- and medium-sized business lending associated with the requirement to obtain a Title XI appraisal. Moreover, since repayment of these loans generally

will not depend primarily on the performance of the real estate markets, allowing lenders to make these business loans on the basis of evaluations of the real estate collateral does not threaten the safety and soundness of financial institutions.

*Agricultural Lending.* The agencies received comment letters from appraisers in rural areas who stated that the exemption should not apply to agricultural production loans because use of the real estate generates the income for repayment of the loan. For any transaction exempt under this provision, the regulated institution is responsible for documenting that the borrower's sources of income are not primarily dependent upon the sale of, or rental income derived from, real estate. The agencies do not view the sale of growing crops as the sale of real estate, nor as providing rental income derived from real estate. The agencies have concluded that transactions involving agricultural operations present no greater risk than other types of business operations, provided the primary source of repayment for the loan is not sale of, or rental income derived from, real estate.

(6) Leases

The agencies did not propose changes to the existing exemption for leases. Under this exemption, regulated institutions are not required to obtain appraisals of leases that are not the economic equivalent of the purchase or sale of real estate.

Even though the agencies did not propose changes to this exemption, some commenters suggested that Title XI appraisals should be required if a regulated institution takes any security interest in a real estate lease. The distinction between operating leases and capital leases is well recognized in accounting practice. Consistent with the distinction in accounting for operating and capital leases, the agencies have concluded that, in general, operating leases, which are not equivalent to the purchase or sale of the leased property, should not require Title XI appraisals given the limited real estate interest such leases represent.

In transactions that involve capital leases (leases that are the economic equivalent of purchasing or selling real estate), the given real estate interest is of sufficient magnitude to be counted as an asset of the lessee under accounting practices. Generally, the agencies will continue to require regulated institutions to obtain appraisals in connection with transactions that involve capital leases.

(7) Renewals, Refinancings, and Other Subsequent Transactions

The agencies are adopting a modified version of the proposed exemption for renewals, refinancings, and other subsequent transactions at the lending institution to simplify the conditions under which the exemption applies. Under the final rule, regulated institutions will be permitted to renew or refinance existing extensions of credit without first obtaining a Title XI appraisal for two general classes of transactions.

First, a subsequent transaction is exempt provided there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new funds. This modification to the proposed rule is intended to emphasize that an institution must consider the effect of changes in market conditions and physical aspects of the property on its collateral protection when it advances funds in excess of reasonable closing costs as part of a renewal, refinancing, or other subsequent transaction.

Second, a subsequent transaction is exempt provided that no new monies are advanced other than funds necessary to cover reasonable closing costs. The proposed rule did not explicitly address this class of transactions.

The agencies note that this exemption would not be applicable if a borrower refinances a mortgage with a new lender.

Prior to the adoption of this amendment, the agencies did not require a Title XI appraisal for a subsequent transaction that resulted from a maturing extension of credit if:

(i) The borrower had performed satisfactorily according to the original terms;

(ii) No new monies were advanced other than as previously agreed;

(iii) The credit standing of the borrower had not deteriorated; and

(iv) There had been no obvious and material deterioration in market conditions or physical aspects of the property which would threaten the institution's collateral protection.

In the agencies' experience, the original exemption may not have provided sufficient flexibility to regulated institutions and borrowers when a transaction was refinanced before its maturity. This is particularly true for refinancings to reduce a loan's interest rate. Further, bankers questioned whether a Title XI appraisal would be required for a refinancing where the borrower's payment history is sound and future repayment prospects are good, but the borrower's collateral has declined in value as a result of a general market decline. The agencies believe that not requiring a Title XI appraisal in such refinancings is consistent with safe and sound banking practices because the amount of the loan (except for the addition of reasonable closing costs) and the lender's collateral remain the same, and the lower loan payments may improve the ability of the borrower to repay the loan without adversely affecting the likelihood that the lender will be repaid.

If a subsequent transaction that includes the advancement of additional funds does not result in the level of collateral protection being threatened, despite a change in the market conditions or physical aspects of the property, a Title XI appraisal need not be obtained. For example, a loan originally extended with a low loan-to-value ratio could be renewed and additional funds advanced above closing costs without a Title XI appraisal, even though market conditions have deteriorated, if the regulated institution, after verifying the value of the collateral, concludes that the new loan-to-value ratio will provide adequate protection.

Similarly, if a borrower is refinancing a loan where the real estate collateral is located in a market that has experienced significant appreciation, the institution should ensure that the advancement of any new monies is based on substantiated appreciation in value. An institution can advance funds against an appreciated property whose future use is consistent with the use described in the original appraisal. If an institution makes a substantial advance that could possibly threaten the institution's collateral protection, it should consider the need to obtain a new Title XI appraisal. This exemption would not be available if a material change in the use of the property produces the reported appreciation, such as when property is rezoned for a different use.

While a Title XI appraisal is not required for transactions that qualify for this exemption, regulated institutions are required to obtain an appropriate evaluation of the collateral in accordance with the agencies' guidelines. The level of analysis and information included in the evaluation should be more detailed as the institution's exposure in the transaction increases.

Several commenters raised questions about the applicability of this exemption to loan restructurings and workouts. In such situations, the

commenters contended that requiring a Title XI appraisal may impede an institution's ability to obtain additional real estate collateral to shore-up its position or to advance new funds to protect its existing collateral position. The agencies acknowledge that the time and cost of obtaining a Title XI appraisal may present barriers to institutions in their negotiations with borrowers in a loan restructuring or workout. The agencies believe that this situation has been addressed in the regulation and the agencies' guidance, such as the November 7, 1991 Interagency Policy Statement on the Review and Classification of Commercial Real Estate Loans. It is the agencies' policy to encourage lenders to work constructively with their borrowers when restructuring existing loans that have credible support for repayment.

(8) Transactions Involving Real Estate Notes

The agencies are adopting a modified version of the proposed exemption for transactions involving real estate-secured loans, loan participations, pooled loans, interests in real property, and mortgage-backed securities. The amendment clarifies when regulated institutions may engage in secondary mortgage market transactions involving real estate loans and other interests in real estate without obtaining a new Title XI appraisal.

The exemption adopted by the agencies clarifies and allows regulated institutions to purchase, sell, invest in, exchange, or extend credit secured by, real estate-secured notes or interests in real estate without obtaining a new Title XI appraisal if each note or real estate interest is supported by an appraisal that met the regulatory appraisal requirements for the institution at the time the real estate-secured note was originated. The prior exemption referred to purchases of these interests only. In addition, the agencies have changed the text of the final rule to more clearly state the appraisal requirements that the underlying notes must meet.

The exemption serves federal public policy interests by helping to ensure that the appraisal regulation does not unnecessarily inhibit secondary mortgage market transactions that involve these real estate-secured loans and real estate interests. The exemption makes clear that a regulated institution need not obtain new Title XI appraisals for loans originated before the effective date of the agencies' regulations in order to buy or sell them in the secondary mortgage market.

The agencies have concluded that the transactions exempted by this provision do not require new Title XI appraisals to protect federal financial and public policy interests or the safety and soundness of financial institutions. Principles of safe and sound banking practice require regulated institutions to determine the suitability of purchasing or investing in existing real estate-secured loans and real estate interests. Typically, these transactions will have a history of performance or will have been originated according to secondary mortgage market standards. The additional information from these sources, when coupled with the original documentation, permits regulated institutions to make appropriate decisions regarding these transactions.

Some commenters stated that this exemption raised safety and soundness concerns because exempt transactions may have appraisals performed before Title XI appraisal requirements went into effect. Because regulated institutions will have other sources of information about the performance of these seasoned loans, the agencies believe that new Title XI appraisals are not necessary to ensure the safety and soundness of these exempt transactions.

Some commenters urged the agencies to expand the proposed exemption, or adopt new exemptions, to eliminate the Title XI appraisal requirement for all mortgage-backed securities. In addition, commenters suggested that the agencies exempt residential mortgage warehousing loans (loans to residential mortgage lenders who ultimately sell the mortgages to the secondary mortgage market), transactions with credit ratings by established rating agencies, or transactions that were not subject to the agencies' jurisdiction at origination.

The agencies believe that to protect federal financial and public policy interests, the underlying loans or real estate interests should have appraisals that meet the requirements that were applicable to regulated institutions when the underlying transactions were originated. For this reason, the agencies are not adopting the suggestions for exempting additional categories of transactions under this provision.

Commenters also suggested that the agencies should permit a regulated institution that purchases a pool of loans, invests in mortgage-backed securities, or secures a mortgage warehousing loan with real estate notes, to confirm that the loans have appropriate appraisals without reviewing the appraisal for each underlying loan. The agencies agree that it should not be necessary to review the appraisal for each underlying loan in all cases. The agencies believe that regulated institutions may use sampling and audit procedures to determine whether appraisals for the underlying loans in a loan pool satisfy the regulation's requirements and to verify the seller's representations and warranties.

The agencies also believe that a regulated institution may presume that the underlying loans in an investment-grade, marketable, mortgage-backed security satisfy the requirements of the appraisal regulation whenever an issuer makes a public statement, such as in a prospectus, that the appraisals comply with the agencies' regulations. To be considered investment grade, a security must be rated in one of the top four rating classifications of at least one nationally recognized statistical rating service. A marketable security is one that may be sold with reasonable promptness at a price that corresponds to its fair value.

For mortgage warehousing loans, sale to Fannie Mae or Freddie Mac of the mortgages that secure the mortgage warehouse loan may be used to demonstrate that the underlying loans complied with the appraisal requirements of the agencies' regulations. The institution, however, must continue to monitor its borrower's performance in selling loans to the secondary market and take appropriate steps, such as increased sampling and auditing of the loans and their documentation, if the borrower experiences more than a minimal rejection rate.

(9) Transactions Insured or Guaranteed by a U.S. Government Agency or U.S. Government Sponsored Agency

The agencies are adopting a uniform exemption for transactions that are wholly or partially insured or guaranteed by a United States government agency or government sponsored agency because these loans pose little risk to insured institutions. This exemption will eliminate the confusion among regulated institutions who may believe that two separate appraisals are required—one meeting the banking agencies' regulations and another meeting the federal loan programs' standards.

The prior regulations of the OCC, FDIC, and OTS exempted many of these transactions. However, they previously required that these transactions be supported by an appraisal that conformed to the requirements of the insuring or guaranteeing agency. Prior to adoption of this amendment, the Board's appraisal regulation did not specifically exempt these transactions.

Federally insured or guaranteed transactions must meet all the

underwriting requirements of the federal insurer or guarantor, including real estate appraisal requirements, in order to receive the insurance or guarantee. The agencies believe that the standards of these loan programs are sufficient to protect the safety and soundness of regulated financial institutions. Therefore, it is unnecessary to require that these transactions also meet the overlapping requirements of the banking and thrift agencies' appraisal regulations.

Some commenters suggested that the agencies should limit the application of this exemption to federal loan programs with appraisal requirements that conform to the Uniform Standards of Professional Appraisal Practice (USPAP) and require the use of licensed or certified appraisers. In addition, commenters raised concerns that some loan programs may not have appraisal standards and asked the agencies to list those loan programs to which this exemption applies.

OMB has directed federal agencies with government guaranteed or insured loan programs to conduct real estate appraisal programs in a manner to reduce default risks to the federal government. Specifically, these federal agencies are required to ensure that all real estate credit transactions over $100,000 have an appraisal performed by a state licensed or certified appraiser and that the appraisal be conducted under appraisal standards that are consistent with the USPAP.[6]

The agencies believe that the authority of OMB to ensure that federal agencies adopt appropriate real estate appraisal standards eliminates the need to list specific loan programs for which this exemption applies. Moreover, OMB is monitoring the implementation of those appraisal programs and has required any federal agency not having appraisal standards and practices in place to submit an implementation plan and schedule to OMB. If the agencies later determine that a particular federal loan program poses a threat to the safety and soundness of regulated institutions, the agencies have retained the authority to require appraisals in such situations.

This exemption also applies to certain other real estate-related financial transactions involving government agencies or government sponsored agencies. For example, the U.S. Postal Service typically contracts with a developer to erect and lease a special purpose building for the Postal Service's use. Applicable contract procedures normally require only cost estimates when determining who is awarded the contract. The Postal Service also enters into a lease with the developer. The lease payments, which are assigned to the lender, are sufficient to repay the loan. Because the developer is complying with applicable contract procedures, which require only cost estimates, it would be an unnecessary burden for the developer or the lender to also obtain a Title XI appraisal.

(10) Transactions That Meet the Qualifications for Sale to a United States Government Agency or Government Sponsored Agency

The agencies are adopting a modified version of the proposed exemption for transactions that meet the qualifications for sale to any U.S. government agency or government sponsored agency. By referring to any U.S. government agency or sponsored agency, the exemption includes not only loans sold to federal agencies, but also any transaction that meets the qualifications for sale to agencies established or chartered by the federal government to serve public purposes specified by the U.S. Congress. These government sponsored agencies are:

- Banks for Cooperatives.
- Federal Agricultural Mortgage Corporation (Farmer Mac).
- Federal Farm Credit Banks.
- Federal Home Loan Banks (FHLBs).
- Federal Home Loan Mortgage Corporation (Freddie Mac).
- Federal National Mortgage Association (Fannie Mae).
- Student Loan Marketing Association (Sallie Mae).
- Tennessee Valley Authority (TVA).

This exemption permits regulated institutions to originate, hold, buy, or sell transactions that meet the qualifications for sale to any U.S. government agency and the above listed government sponsored agencies without obtaining a separate appraisal conforming to the agencies' regulations.

The exemption contains a modification to the original proposal that permits regulated institutions to accept appraisals performed in accordance with the appraisal standards of Fannie Mae and Freddie Mac for any residential real estate transaction, both single family and multifamily, regardless of whether the loan is eligible to be purchased by Fannie Mae or Freddie Mac. This modification clarifies that a regulated institution's "jumbo" or other residential real estate loans that do not conform to all the underwriting standards of Fannie Mae or Freddie Mac, but that are supported by an appraisal that meets the appraisal standards of these agencies, will qualify for this exemption.

This exemption expands the prior exception to the regulations of the OCC, FDIC, and OTS for transactions involving 1-to-4 family residential properties that had appraisals conforming to the appraisal standards of Fannie Mae and Freddie Mac. In addition, the OTS exception applied to existing multifamily properties. These transactions were not required to comply with the additional supervisory standards set forth in the prior regulations. The Board did not have a similar exception in its prior regulation.

Some commenters requested that the agencies continue the prior exception allowing the use of Fannie Mae or Freddie Mac standards for any loans involving 1-to-4 family residential real estate. Other commenters stated that the proposed exemption should not be adopted because the agencies would not be meeting their statutory obligation to set appraisal standards for transactions within their jurisdiction.

The agencies believe the appraisal standards of the U.S. government agencies or sponsored agencies established to maintain a secondary market in various types of loans are appropriate for these exempt transactions. Recently, Fannie Mae and Freddie Mac revised their 1-to-4 family residential appraisal standards and report forms to incorporate the USPAP as the minimum appraisal standards. Further, the appraisal standards and forms of Fannie Mae and Freddie Mac are recognized as the appraisal industry's standard for residential real estate appraisals. The agencies have concluded that those appraisal standards should protect federal financial and public policy interests in the loans that are eligible for purchase by U.S. government agencies or sponsored agencies. The agencies also believe that compliance with these standards will protect the safety and soundness of regulated financial institutions.

The agencies believe that permitting regulated institutions to follow these standardized appraisal requirements, without the necessity of obtaining a separate appraisal or an appraisal supplement for conformance with the banking agencies' regulations, will reduce regulatory burden and increase an institution's ability to buy and sell these types of loans, improving the institution's liquidity.

(11) Transactions by Regulated Institutions as Fiduciaries

The agencies are adopting a new exemption for transactions in which a

[6] OMB Circular A-129, "Policy for Federal Programs and Non-Tax Receivables," revised January 1993.

regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law. The amendment clarifies that regulated institutions acting as fiduciaries are not required to obtain appraisals under the agencies' appraisal regulations if no appraisal is required under other law governing their fiduciary responsibilities in connection with those transactions.

Prior to adoption of this amendment, it was unclear whether the agencies' appraisal regulations required appraisals for all real estate-related financial transactions in which regulated institutions participated as fiduciaries. For example, other law may not require an appraisal in connection with the sale of a parcel of real estate to a beneficiary of a trust on terms specified in the trust instrument.

While financial institutions were in general agreement with the proposed exemption, some of these commenters stated that a fiduciary should be exempt from meeting Title XI appraisal requirements regardless of whether other laws require an appraisal. Commenters opposing this exemption believe that fiduciaries should be required to obtain a Title XI appraisal for all their real estate-related transactions.

The agencies have concluded that a Title XI appraisal should not be required when regulated institutions engage in real estate-related financial transactions as fiduciaries and no other law (including state common law establishing the responsibilities of fiduciaries) requires appraisals for those transactions. Losses as a result of these transactions would not, absent some negligence by the institution, be incurred by the institution. Therefore, exempting these transactions from the Title XI appraisal requirement should not adversely affect the safety and soundness of financial institutions.

When a fiduciary transaction requires an appraisal under other law, that appraisal should conform to the requirements of the agencies' regulations.

(12) Appraisals Not Necessary To Protect Federal Financial and Public Policy Interests or the Safety and Soundness of Financial Institutions

This provision was added to the rule to make clear that the agencies retain the authority to determine in a given case when the services of an appraiser are not required.

Only a few commenters addressed this issue. One commenter expressed the concern that the agencies are granting themselves the authority to create new exemptions without the benefit of public comment.

The agencies have the authority to implement and interpret regulations under their jurisdiction. The specific exemptions of the regulation describe the major categories of transactions that would not require appraisals. As a result of their experience in implementing their regulations, however, the agencies recognized that it is impossible to identify all types of transactions for which the services of an appraiser should not be required under Title XI of FIRREA and proposed this exemption to confirm their authority to determine that individual transactions do not require the services of an appraiser. The agencies will adopt any new exemptions covering broad categories of transactions in accordance with notice and comment rulemaking procedures.

*§ ____.3(b) Evaluations Required*

The agencies are adopting a modified version of the proposed amendment concerning evaluations.

The final rule requires regulated institutions to obtain evaluations for real estate-related financial transactions that do not require Title XI appraisals because they: (i) Are below the threshold level; (ii) qualify for the exemption for business loans of $1 million or less where income from real estate is not the primary source of repayment; or (iii) qualify for the exemption for subsequent transactions resulting from an existing extension of credit. The agencies changed the text of this amendment to make clear that institutions must still obtain evaluations for these exempt transactions. The regulation does not require the institution to have an evaluation if the transaction qualifies for an exemption other than these three exemptions.

An evaluation provides a general estimate of the value of real estate and need not meet the detailed requirements of a Title XI appraisal. An evaluation must provide appropriate information to enable the institution to make a prudent decision regarding the transaction. Because institutions must tailor evaluations to provide appropriate information for different types of transactions, the content and form of evaluations will vary for different transactions.

In their prior regulations, the OCC, Board and OTS required evaluations for all real estate-related financial transactions that do not require appraisals. The FDIC's prior regulation stated that supervisory guidelines, general banking practices or other prudent standards may require an appropriate valuation of real property collateral when a Title XI appraisal is not required. For some institutions, the effect of these provisions may have been to require evaluations in cases where they did not assist in protecting the institutions' safety and soundness. The agencies are amending their regulations to require regulated institutions to have evaluations only for those real estate-related financial transactions where an understanding of the real estate's value is generally needed to assist the institution in deciding whether to enter into the transaction.

Some commenters stated that evaluations should not be required for any exempt transactions and that the decision to obtain an evaluation should be left to the institution. Commenters suggested that the agencies should require appraisals for any transaction that requires an evaluation and raised questions about the qualifications and independence of persons performing evaluations. Some commenters stated that only licensed or certified appraisers were qualified to perform evaluations.

The agencies believe that safety and soundness principles require institutions to obtain an understanding of, and document, the value of the real estate involved in transactions that: (i) Are below the threshold level; (ii) qualify for the exemption for business loans of $1 million or less where income from real estate is not the primary source of repayment; or (iii) involve an existing extension of credit. In these cases, while a Title XI appraisal is not required to determine the value of the real estate, the agencies have concluded that regulated institutions must have an estimate of the real estate's value as a matter of safe and sound banking practice. For this reason, the agencies have decided that institutions should not have the discretion to decide whether they will obtain evaluations for these transactions. However, institutions will have discretion, within the limits of safe and sound banking practice as indicated in agency guidance, to determine the content and form of the evaluation.

While licensed or certified appraisers may be qualified to perform evaluations, the agencies do not believe these appraisers are the only persons that can render a competent estimate of the value of real estate for exempt transactions. Requiring institutions to procure the services of a licensed or certified appraiser to prepare evaluations or Title XI appraisals for exempt transactions could impose significant additional costs on lenders and borrowers without significantly increasing the safety and soundness of the transactions. However, the agencies' regulations do not, as

suggested by some commenters, prohibit regulated institutions from using licensed or certified appraisers to prepare evaluations. Nor do the regulations prevent regulated institutions from obtaining Title XI appraisals for exempt transactions.

The agencies also believe that regulated institutions can take steps to ensure that the individuals performing evaluations are capable of providing an unbiased estimate of value. Institutions would generally be expected to check that persons who prepare evaluations are subject to adequate safeguards and controls to assure the integrity of the evaluation they perform. The agencies intend that regulated institutions have some flexibility in the safeguards they erect to ensure the independence of the person performing the evaluation.

The agencies' experience with transactions exempt under their prior appraisal requirements indicates that employees of a regulated institution generally can provide an unbiased and competent evaluation of real estate collateral for exempt transactions.

If there are deficiencies in an individual institution's evaluation procedures, including its procedures for determining whether to order Title XI appraisals for exempt transactions, the agencies can take appropriate steps to have the institution correct the problem. This can include requiring the institution to obtain appraisals for exempt transactions to address safety and soundness problems.

Several commenters requested that the agencies provide additional information on what is required in evaluations and who may perform them. The agencies intend to revise their existing guidance on real estate appraisal and evaluation programs for regulated institutions to further address these issues.

*§ ____.3(c) Appraisals To Address Safety and Soundness Concerns*

The agencies are adopting substantially as proposed an amendment stating that each agency continues to reserve the right to require a regulated institution to obtain a Title XI appraisal whenever the agency believes that an appraisal is necessary to address safety and soundness concerns. This authority may involve the agency requiring an institution to obtain an appraisal for a particular extension of credit or an entire group of credits.

Some commenters raised the concern that the agencies' authority to require a Title XI appraisal for safety and soundness purposes should be exercised only on a prospective basis. Further, several commenters noted that the agencies' authority to determine on a case-by-case basis whether an appraisal is required may lead to inconsistencies among the agencies.

Whether an institution will be required, pursuant to this provision or existing safety and soundness authority, to obtain an appraisal for a particular extension of credit, or an entire group of credits, may depend on the condition of that institution. If an institution is in troubled condition, and that troubled condition is attributable to underwriting problems in the institution's real estate loan portfolio, then the agencies may require such an institution to obtain an appraisal for all new real estate-related financial transactions below the threshold that are not subject to another exemption. Thus, for example, a troubled institution whose problems are attributable to trading losses, investment losses, or a defalcation might be allowed to continue to operate under the $250,000 threshold, whereas an institution whose problems are attributable to poor underwriting of real estate loans may be subjected to a lower threshold.

However, regardless of an institution's condition, an examiner may determine that a particular real estate-related financial transaction requires a Title XI appraisal. This provision confirms that the agencies have the authority to require appraisals for a particular transaction to address safety and soundness concerns.

A determination that a particular institution will have to obtain appraisals below the threshold will be made by the appropriate agency's supervisory office. Although this provision is intended to be applied on a case-by-case basis to address the problems of a particular institution, the agencies will work to maintain consistency.

As previously stated in the discussion of the appraisal threshold, as a matter of policy, OTS intends to require problem institutions or institutions in troubled condition to continue to obtain Title XI appraisals for loans over $100,000. Given the overall concentration of real estate-related transactions in the thrift industry, OTS believes that a problem thrift or a thrift in troubled condition will, in general, have real estate-related asset quality problems.

*§ ____.4(a) Minimum Appraisal Standards*

The agencies are adopting five minimum appraisal standards in place of the 14 standards in the prior rule. The final rule includes four modifications to the proposed rule concerning minimum appraisal standards. The final rule requires all appraisals for federally related transactions to:

(i) Conform to generally accepted appraisal standards as evidenced by the USPAP unless principles of safe and sound banking require compliance with stricter standards;

(ii) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(iii) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(iv) Be based upon the definition of market value as set forth in the regulation; and

(v) Be performed by State licensed or certified appraisers.

Adoption of these standards will simplify compliance with the appraisal regulation without affecting the usefulness of the Title XI appraisals prepared for federally related transactions. The amendment allows institutions to make use of the USPAP Departure Provision and eliminates several regulatory standards that parallel existing USPAP standards.

The agencies proposed three alternatives for meeting the statutory requirement to use the USPAP in setting minimum appraisal standards for federally related transactions. Under the first two alternatives, the agencies would have published the USPAP as part of their regulations (either as an appendix to their rules or through incorporation by reference). The agencies have chosen to adopt the third alternative that generally references USPAP, but does not make USPAP a part of the agencies' regulations. The agencies agree with many commenters who believed that Alternative III was the most workable approach because the agencies would not have to republish changes to the USPAP adopted by the Appraisal Standards Board, and references to USPAP in the regulation could be assumed to always refer to the most current USPAP edition. The agencies believe that Alternative III minimizes potential conflicts between an institution's duty to follow the agencies' appraisal requirements and an appraiser's professional obligation to follow the latest USPAP version.

Since the agencies are adopting Alternative III, USPAP provisions applicable to federally related transactions will no longer be published as Appendix A to the agencies' appraisal regulations. Therefore, each agency has deleted Appendix A from its appraisal regulation.

Because application of present or future USPAP standards to federally related transactions may be inconsistent with maintaining the safety and soundness of financial institutions, the agencies have modified the standard on compliance with the USPAP. This modification makes clear that principles of safe and sound banking may require institutions to comply with stricter standards than the USPAP. Although the institution has the primary responsibility for obtaining a Title XI appraisal that meets its needs, the agencies may by regulation or guidance identify USPAP standards that are inappropriate for federally related transactions. For example, the USPAP allows an appraiser to appraise property even though the appraiser may have a direct or indirect interest in the property, if the appraiser discloses this fact in the appraisal report. The agencies believe, however, that federal financial and public policy interests are better served by requiring that an appraiser for a federally related transaction not have any direct or indirect interest, financial or otherwise, in the transaction or the property. The agencies have included this requirement in the section of the regulation that deals with appraiser independence.

The minimum standards also permit regulated institutions to use appraisals prepared in accordance with the USPAP Departure Provision for federally related transactions. The Departure Provision permits limited exceptions to specific guidelines in the USPAP. Appraisers preparing appraisals using the Departure Provision still must comply with all binding requirements of the USPAP and must be sure that the resulting appraisal will not be misleading.

The agencies believe that regulated institutions should be allowed to determine, with the assistance of the appraiser, whether an appraisal to be prepared in accordance with the Departure Provision is appropriate for a particular transaction and consistent with principles of safe and sound banking practice.

The agencies are adopting a modified version of the proposed standard that requires appraisals for federally related transactions to be written. The modification makes clear that the written appraisal must contain sufficient information and analysis to support the institution's decision to engage in the transaction. The modification puts regulated institutions on notice of their responsibility to have appraisals that are appropriate for the particular federally related transaction. The agencies are aware that the Appraisal Standards Board of the Appraisal Foundation has proposed changing the USPAP to expand the types of appraisal reports that appraisers may prepare. The agencies believe that the standard on written appraisals permits regulated institutions to take advantage of additional flexibility that may be available if the USPAP is amended, as long as the appraisal report contains information and analysis to support the institution's decision.

The agencies are retaining from the prior rule the standard regarding deductions and discounts. The USPAP provision on this subject requires the appraiser to include a discussion of deductions and discounts only when it is necessary to prevent an appraisal from being misleading. Although commenters were divided over the need to retain this regulatory standard, the agencies have decided that it is appropriate to emphasize the need to include an appropriate discussion of deductions and discounts applicable to the estimate of value in Title XI appraisals for federally related transactions.

For example, in order to properly underwrite a loan, a regulated institution may need to know a prospective value of a property, in addition to the market value as of the date of the appraisal. A prospective value of a property is based upon events yet to occur, such as completion of construction or renovation, reaching a stabilized occupancy level, or some other event to be determined. Thus, more than one value may be reported in an appraisal, as long as all values are clearly described and reflect the projected dates when future events could occur.

The standard on deductions and discounts is intended to make clear that appraisers must analyze, apply, and report appropriate discounts and deductions when providing values based on future events. In financing the purchase of an existing home, there typically would be no need to apply any discounts or deductions to arrive at the market value of the property since the institution's financing of the project does not depend on events such as further development of the property or the sale of units in a tract development.

In place of the proposed standard on market value, the agencies are retaining the prior standard that required the appraisal to be based on the definition of market value contained in the agencies' rules. Use of the standard from the prior rule is intended to emphasize that the agencies are not changing the definition of market value or the manner in which that definition is applied.

The agencies are eliminating regulatory standards that parallel or duplicate requirements of the USPAP. The regulatory standards originally were put in place because of uncertainty about the content of the USPAP and its interpretation. Based on their experience with the USPAP, the agencies believe that the additional standards may be eliminated. Commenters generally agreed. The majority of commenters responded to three specific questions on the need for additional regulatory standards by indicating that it was unnecessary to adopt separate standards on: (i) Analysis of revenues, expenses and vacancies; (ii) valuation of personal property; and (iii) reconciliation of the three approaches to value. The elimination of regulatory standards that parallel USPAP standards should simplify the preparation of appraisals for federally related transactions and reduce regulatory burden.

As proposed, the agencies are adding a new provision to make clear that all appraisals for federally related transactions must be prepared by licensed or certified appraisers. This requirement is mandated by Title XI of FIRREA and repeated in other parts of the appraisal regulation.

*§ ____.4(b/c) Unavailability of Information [Removed]*

The agencies are removing the provision that required appraisers to disclose and explain when information necessary to the completion of an appraisal is unavailable. The USPAP currently requires appraisers to disclose and explain the absence of information necessary to completion of an appraisal that is not misleading. See USPAP Standard Rule 2–2(k). Moreover, when information that may materially affect the estimate of value is unavailable, the agencies believe that generally accepted appraisal standards require appraisers to explain the absence of that information and its effect on the reliability of the appraisal. Therefore, eliminating this provision does not result in a substantive change in the requirements applicable to appraisals for federally related transactions.

*§ ____.4(c/d) Additional Standards [Removed]*

The agencies are removing a provision that merely confirmed the authority of regulated institutions to require appraisers they use to comply with additional standards. The regulation's minimum appraisal standards for federally related transactions do not prevent a regulated institution from requiring an appraiser to follow

additional standards or provide additional information to satisfy the institution's business needs and it is unnecessary to restate this fact in the appraisal regulation.

*§ ____.5(b) Appraiser Independence*

The agencies are adopting the proposed amendment concerning the use of appraisals prepared for financial services institutions other than institutions subject to Title XI of FIRREA. The agencies' prior appraisal regulations provided that fee appraisers must be engaged by the regulated institution or its agent. An exception to this requirement was permitted if the appraiser was directly engaged by another institution that is subject to Title XI of FIRREA.

The agencies concluded that the prior provision on the use of appraisals prepared for other institutions was too restrictive. It required a regulated institution to obtain a new appraisal if the borrower originally sought a loan from an institution that was not subject to Title XI of FIRREA and was not an agent of that regulated institution. There also was uncertainty about the meaning of agent in these cases.

The amended provision permits a regulated institution to use an appraisal that was prepared for any financial services institution, including mortgage bankers, if certain conditions are met. The appraiser must be engaged directly by the financial services institution and must not have a direct interest, financial or otherwise, in the property or the transaction. In addition, the regulated institution must ensure that the appraisal conforms to the requirements of the regulation and is otherwise acceptable. The prohibition on the institution using an appraisal prepared for the borrower remains in effect.

The majority of comments concerning this provision favored the proposed change. One commenter requested that the agencies define financial services institutions and include mortgage brokers within that definition. Other commenters requested clarification of the circumstances under which a non-regulated institution can be an agent of a regulated institution and whether agents are prohibited from receiving a commission on each transaction.

The agencies have decided not to adopt a specific definition of financial services institution. This term is intended to describe entities that provide services in connection with real estate lending transactions on an ongoing basis.

The agencies do not intend to limit the arrangements that regulated institutions have with their agents, provided those arrangements do not place the agent in a conflict of interest that prevents the agent from representing the interests of the regulated institution. For example, the agencies do not require that there be a written agreement between the regulated institution and the agent, and the agent may represent the regulated institution solely with respect to ordering appraisals. In addition, the agencies' regulations do not prohibit agents from receiving a commission for transactions on which they order appraisals.

Some commenters opposed the amendment because of their concern that it would increase the pressure on appraisers to render an estimate of value that favors the interests of the borrower. However, regulated institutions are not required to accept appraisals that are prepared for other financial services institutions. Therefore, the institution always retains complete control over the process of ordering real estate appraisals. In addition, institutions must determine that the appraisal ordered by the financial services institution complies with the requirements of the agencies' regulations and is otherwise acceptable. This should include obtaining assurance that the financial services institution has an independent appraisal.

Other suggested changes to reduce the burden on secondary market transactions involving real estate notes, particularly for mortgage warehousing loans, are addressed in the exemption for transactions in real estate notes.

## IV. Waiver of Delayed Effective Date

This final rule is effective on June 7, 1994. The 30-day delayed effective date required under the Administrative Procedure Act (APA) is waived pursuant to 5 U.S.C. 553(d)(1), which provides for waiver when a substantive rule grants or recognizes an exemption or relieves a restriction. The amendments adopted in this final rule exempt additional transactions from the appraisal regulation, reduce appraisal standards, and provide other modifications that have the effect of relieving perceived restrictions. Consequently, all amendments in this final rule meet the requirements for waiver set forth in the APA.

## V. Paperwork Reduction Act

*OCC Paperwork Reduction Act*

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1557–0190. The estimated annual burden per recordkeeper ranges from 0 hours to in excess of 100 hours, depending on individual circumstances, with an estimated average of 34.5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Comptroller of the Currency, Legislative, Regulatory, and International Activities, Attention: 1557–0190, 250 E Street SW., Washington, DC 20219, and to the Office of Management and Budget, Paperwork Reduction Project (1557–0190), Washington, DC 20503.

*Board Paperwork Reduction Act*

The Board is adopting revisions to Regulation Y in this rulemaking that relate to recordkeeping requirements under authority delegated to it by the Office of Management and Budget, in accordance with section 3507 of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35, and part 1320 of title 5, Code of Federal Regulations, 5 CFR part 1320. In developing these revisions, the Board has consulted with the OCC, the FDIC, and the OTS.

The collection of information in this regulation is in 12 CFR part 225. This information is required by the Federal Reserve System to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. State member banks will use this information in determining whether and on what terms to enter into federally related transactions, such as making loans secured by real estate. The Federal Reserve System will use this information in its examination of State member banks and bank holding companies to ensure that they undertake real estate-related financial transactions in accordance with safe and sound banking principles.

The likely recordkeepers are for-profit institutions.

The estimated annual burden per recordkeeper varies from 0 hours to in excess of 100 hours, depending on individual circumstances, with an estimated average of 25.1 hours. Estimated number of recordkeepers: 1573.

*FDIC Paperwork Reduction Act*

The collection of information contained in this final rule has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be

sent to the Assistant Executive Secretary (Administration), room F–400, 550 17th Street, NW., Washington, DC 20429, with a copy to the Office of Management and Budget, Paperwork Reduction Project 3064–0103, Washington, DC 20503.

The collection of information in this final rule is in 12 CFR part 323. This information is required by the FDIC to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. State nonmember banks will use this information in determining whether and on what terms to enter into federally related transactions, such as making loans secured by real estate. The FDIC will use this information in its examination of State nonmember banks to ensure that they undertake real estate-related financial transactions in accordance with safe and sound banking principles.

The likely recordkeepers are for-profit institutions.

The estimated annual burden per recordkeeper varies from 0 hours to in excess of 100 hours, depending on individual circumstances, with an estimated average of 20.0 hours. Estimated number of recordkeepers: 7,310.

*OTS Paperwork Reduction Act*

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1550. The estimated annual burden per recordkeeper ranges from 0 hours to in excess of 100 hours, depending on individual circumstances, with an estimated average of 59 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**VI. OCC and OTS Executive Order 12866 Determination**

It has been determined that this final rule is not a "Significant Regulatory Action" under Executive Order 12866.

**List of Subjects**

*12 CFR Part 34*

Mortgages, National banks, Real estate appraisals, Real estate lending standards, Reporting and recordkeeping requirements.

*12 CFR Part 225*

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 323*

Banks, banking, Mortgages, Real estate appraisals, Reporting and recordkeeping requirements, State nonmember insured banks.

*12 CFR Part 545*

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

*12 CFR Part 563*

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

*12 CFR Part 564*

Appraisals, Real estate appraisals, Reporting and recordkeeping requirements, Savings associations.

## COMPTROLLER OF THE CURRENCY

### 12 CFR Chapter I

**Authority and Issuance**

For the reasons set out in the joint preamble, part 34 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

## PART 34—REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 93a, 371, 1701j-3, 1828(o), and 3331 et seq.

2. In § 34.42, existing paragraphs (d) through (l) are redesignated as paragraphs (e) through (m), respectively, and a new paragraph (d) is added to read as follows:

**§ 34.42 Definitions.**

* * * * *

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

* * * * *

3. In § 34.43, paragraph (a) is revised, paragraphs (b) through (d) are redesignated as paragraphs (d) through (f), respectively, and new paragraphs (b) and (c) are added to read as follows:

**§ 34.43 Appraisals required; transactions requiring a State certified or licensed appraiser.**

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of $1 million or less; and

(ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction involves an existing extension of credit at the lending institution, provided that:

(i) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or

(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met OCC regulatory requirements for appraisals at the time of origination;

(9) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The OCC determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraph (a)(1), (a)(5) or (a)(7) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

(c) *Appraisals to address safety and soundness concerns.* The OCC reserves the right to require an appraisal under this subpart whenever the agency believes it is necessary to address safety and soundness concerns.

* * * * *

4. Section 34.44 is revised to read as follows:

**§ 34.44 Minimum appraisal standards.**

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005, unless principles of safe and sound banking require compliance with stricter standards;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in this subpart; and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this subpart.

5. In § 34.45, paragraph (b) is revised to read as follows:

**§ 34.45 Appraiser independence.**

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this subpart and is otherwise acceptable.

**Appendix A to Subpart C [Removed]**

6. Appendix A to subpart C, part 34, is removed.

Dated: March 31, 1994.

**Eugene A. Ludwig,**

*Comptroller of the Currency.*

## FEDERAL RESERVE SYSTEM

### 12 CFR Chapter II

For the reasons set forth in the common preamble, the Board amends 12 CFR part 225 as set forth below:

## PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Section 225.62 is amended by redesignating paragraphs (d) through (f) and paragraphs (g) through (k) as paragraphs (e) through (g) and paragraphs (i) through (m), respectively, and adding new paragraphs (d) and (h) to read as follows:

**§ 225.62 Definitions.**

* * * * *

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

* * * * *

(h) *Real estate* or *real property* means an identified parcel or tract of land, with improvements, and includes easements, rights of way, undivided or future interests, or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights, or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

* * * * *

3. Section 225.63 is amended by revising the section heading, revising paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (d) and (e) and adding new paragraphs (b) and (c) to read as follows:

**§ 225.63 Appraisals required; transactions requiring a State certified or licensed appraiser.**

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of $1 million or less; and

(ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction involves an existing extension of credit at the lending institution, provided that:

(i) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or

(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met Board regulatory requirements for appraisals at the time of origination;

(9) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National

Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The Board determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraph (a)(1), (a)(5) or (a)(7) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

(c) *Appraisals to address safety and soundness concerns.* The Board reserves the right to require an appraisal under this subpart whenever the agency believes it is necessary to address safety and soundness concerns.

* * * * *

4. Section 225.64 is revised to read as follows:

**§ 225.64 Minimum appraisal standards.**

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005, unless principles of safe and sound banking require compliance with stricter standards;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in this subpart; and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this subpart.

5. Section 225.65 is amended by revising paragraph (b) to read as follows:

**§ 225.65 Appraiser independence.**

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this subpart and is otherwise acceptable.

**Appendix A to Subpart G [Removed]**

6. Appendix A to subpart G, part 225, is removed.

Dated: May 25, 1994.

**William W. Wiles,**

*Secretary of the Board.*

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Chapter III

### Authority and Issuance

For the reasons set out in the joint preamble, part 323 of subchapter B of chapter III of title 12 of the Code of Federal Regulations is amended as set forth below:

## PART 323–APPRAISALS

1. The authority citation for part 323 is revised to read as follows:

**Authority:** 12 U.S.C. 1818, 1819 ["Seventh" and "Tenth"], and 3331–3352.

2. Section 323.2 is amended by redesignating paragraphs (d) through (l) as paragraphs (e) through (m), respectively, and adding a new paragraph (d) to read as follows:

**§ 323.2 Definitions.**

* * * * *

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

* * * * *

3. Section 323.3 is amended by revising the section heading and paragraph (a), revising the phrase in paragraph (d) "paragraphs (b) and (c) of this section" to read "this section", redesignating paragraphs (b) through (d) as paragraphs (d) through (f), respectively, and adding new paragraphs (b) and (c) to read as follows:

**§ 323.3 Appraisals required; transactions requiring a State certified or licensed appraiser.**

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of $1 million or less; and

(ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction involves an existing extension of credit at the lending institution, provided that:

(i) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or

(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met FDIC regulatory requirements for appraisals at the time of origination;

(9) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The FDIC determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraph (a)(1), (a)(5) or (a)(7) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

(c) *Appraisals to address safety and soundness concerns.* The FDIC reserves the right to require an appraisal under this part whenever the agency believes it is necessary to address safety and soundness concerns.

* * * * *

4. Section 323.4 is revised to read as follows:

**§ 323.4 Minimum appraisal standards.**

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005, unless principles of safe and sound banking require compliance with stricter standards;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in this part; and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this part.

5. Section 323.5 is amended by revising paragraph (b) to read as follows:

**§ 323.5 Appraiser independence.**

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this part and is otherwise acceptable.

**Appendix IX [Removed]**

6. Appendix A to Part 323 is removed.

By order of the Board of Directors.

Dated at Washington, DC, this 3rd day of May 1994.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Acting Executive Secretary.*

## OFFICE OF THRIFT SUPERVISION

### 12 CFR Chapter V

### Authority and Issuance

Accordingly, for the reasons set forth in the joint preamble, the Office of Thrift Supervision hereby amends chapter V, title 12 of the Code of Federal Regulations, as set forth below:

**Subchapter C—Regulations for Federal Savings Associations**

## PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1828.

2. Section 545.32 is amended by revising the first sentence of paragraph (b)(2) to read as follows:

**§ 545.32 Real estate loans.**

* * * * *

(b) * * *

(2) *Appraisals.* A Federal savings association may make a real estate loan only after an appraiser has submitted a signed appraisal of the security property consistent with the requirements of part 564 of this chapter. * * *

* * * * *

3. Section 545.103 is amended by revising the second sentence of paragraph (b) to read as follows:

**§ 545.103 Suretyship.**

* * * * *

(b) * * * If real estate, the value must be established by a signed appraisal consistent with the requirements of part 564 of this chapter. * * *

* * * * *

**Subchapter D—Regulations Applicable to All Savings Associations**

## PART 563—OPERATIONS

4. The authority citation for part 563 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1468, 1817, 1818, 3806; 42 U.S.C. 4106; Pub. L. 102–242, sec. 306, 105 Stat. 2236, 2335 (1991).

5. Section 563.170 is amended by revising paragraph (c)(1)(iv) to read as follows:

**§ 563.170 Examinations and audits; appraisals; establishment and maintenance of records.**

* * * * *

(c) * * *

(1) * * *

(iv) One or more written appraisal reports, prepared at the request of the lender or its agent and for the lender's use, and signed prior to the approval of such application (except in the case of an approval conditioned upon obtaining an appraisal) that satisfies the requirements of part 564 of this chapter: *Provided, however,* That nothing in this paragraph (c)(1)(iv) shall apply to property improvement loans, as that term is used in 24 CFR 200.167, insured by the Federal Housing Administration for which that agency does not require an appraisal or certification of valuation;

* * * * *

## PART 564—APPRAISALS

6. The authority citation for part 564 is revised to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1828(m), 3331 *et seq.*

7. Section 564.2 is amended by redesignating paragraphs (d) through (l) as paragraphs (e) through (m), respectively, and by adding a new paragraph (d) to read as follows:

**§ 564.2 Definitions.**

* * * * *

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

* * * * *

8. Section 564.3 is amended by revising paragraph (a), redesignating paragraphs (b) through (d) as paragraphs (d) through (f), and adding new paragraphs (b) and (c) to read as follows:

**§ 564.3 Appraisals required; transactions requiring a State certified or licensed appraiser.**

(a) *Appraisals required.* An appraisal performed by a State certified or

licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of $1 million or less; and

(ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction involves an existing extension of credit at the lending institution, provided that:

(i) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or

(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met OTS regulatory requirements for appraisals at the time of origination;

(9) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The OTS determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraph (a)(1), (a)(5) or (a)(7) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

(c) *Appraisals to address safety and soundness concerns.* The OTS reserves the right to require an appraisal under this part whenever the agency believes it is necessary to address safety and soundness concerns.

* * * * *

9. Section 564.4 is revised to read as follows:

**§ 564.4 Minimum appraisal standards.**

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005, unless principles of safe and sound banking require compliance with stricter standards;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in this part; and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this part.

10. Section 564.5 is amended by revising paragraph (b) to read as follows:

**§ 564.5 Appraiser independence.**

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this part and is otherwise acceptable.

**§ 564.8 [Amended]**

11. Section 564.8 is amended by removing paragraph (d)(1), by removing the colon following the introductory text of paragraph (d), by revising the word "Appraisals" to read "appraisals" in paragraph (d)(2), and by removing the paragraph designation (d)(2).

**Appendix A [Removed]**

12. Appendix A to Part 564 is removed.

Dated: April 6, 1994.

By the Office of Thrift Supervision.

**Jonathan L. Fiechter,**

*Acting Director.*

[FR Doc. 94–13312 Filed 6–6–94; 8:45 am]

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June 7, 1994

Part III

# Department of Housing and Urban Development

24 CFR Part 291

Single Family Property Disposition; Lease and Sale of HUD-Acquired Properties; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 291

[Docket No. R–94–1720; FR–3399–F–02]

RIN 2502–AF96

# Single Family Property Disposition; Lease and Sale of HUD-Acquired Single Family Properties for the Homeless

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

ACTION: Final rule.

SUMMARY: This final rule amends the Department's regulations governing the Single Family Property Disposition program for the lease and sale of HUD-acquired properties for the homeless by implementing section 1407 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), with regard to notifying eligible applicants of available properties in their areas.

EFFECTIVE DATE: July 7, 1994.

FOR FURTHER INFORMATION CONTACT: David H. Patton, Acting Director, Single Family Property Disposition, room 9170, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1832; (TDD number for the hearing- and speech-impaired (202) 708–4594). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

## I. Background

The Single Family Property Disposition program (24 CFR part 291), which disposes of one-to-four family properties acquired by HUD or otherwise held by HUD, includes an initiative by the Department for the lease and sale of properties to governmental entities, tribes, and private nonprofit organizations for use by homeless persons (subpart E of part 291).

Under the current regulations, applicants that have been preapproved by HUD are notified of the availability of properties for a 10-day consideration and inspection period before the properties are offered for sale to the general public. (See 24 CFR 291.410(d).) Properties are leased or sold to applicants on a first come-first served basis. No more than 10 percent of the total inventory, as of October 1, may be leased under the program; there is no limitation on the sale of properties.

Applicants may purchase properties, at a discount, either through a direct sale or by submitting a competitive bid. Applicants that choose to lease properties may purchase them at any time during the leasehold. Leases are for a one-year term, renewable for up to four additional one-year terms, for $1 a year. Lessees are responsible for all utilities, taxes, and other costs associated with operating the property. Under 24 CFR 291.415(d), lessees are required to establish an escrow account, with HUD as a co-signer, and make monthly deposits to the account in an amount sufficient to reimburse HUD for any taxes on the property.

## II. Amendments by the Housing and Community Development Act of 1992

Section 1407 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved Oct. 28, 1992; hereafter referred to as "1992 HCD Act") directs the Secretary to make several amendments to this discretionary program. Subsection 1407(a) prohibits the Secretary from making a property available for lease under the homeless initiative program unless the property has first been listed and made generally available for sale to the public for at least 30 days.

Subsection 1407(b) of the 1992 HCD Act provides an exception to subsection 1407(a) with respect to any area in which the Secretary determines that there will not be a sufficient quantity of decent, safe, and sanitary affordable housing available for use under the program if properties located in the area are first made generally available to the public. In such exception cases, the Secretary will make available to preapproved applicants up to 10 percent of the total number of properties in the HUD inventory for the area before offering those properties to the general public. The Secretary is also directed to consult with the unit of general local government for the area in determining which properties should be reserved.

The 1992 HCD Act, in subsection 1407(c), also directs the Secretary to identify and describe, upon request by an applicant or lessee, any exemptions or reductions related to the payment of property taxes under State or local laws that may be applicable to lessees or to the leased properties. Finally, subsection 1407(c) of the 1992 HCD Act also provides that the Secretary may not require the lessee to make deposits for the payment of taxes into an escrow account, where such an exemption or reduction is provided.

## III. Final Rule

On August 11, 1993, the Department published a proposed rule (58 FR 42707) which would implement the changes required by section 1407 of the 1992 HCD Act, as well as some additional conforming changes. This final rule implements those proposed changes as described below.

*30-day Marketing Period and Exception*

In accordance with subsection 1407(a), this final rule amends 24 CFR 291.400(c) to reflect the statutory requirement that HUD make property available for sale to the general public for at least 30 days before HUD makes the property available for lease under the program. In addition, this final rule also requires that the property be vacant, and not under contract or committed to another program for availability under the lease program.

This final rule also adds conforming changes to § 291.410(d) regarding notification to applicants of available properties. After the public sale period, the HUD Field Office will notify applicants of eligible properties available in the ZIP Code areas previously designated by them. Specific properties selected by an applicant will be held off the market for a 10-day consideration and inspection period, which will begin to run upon written notification by the applicant to the Field Office. (The Department encourages applicants to notify Field Offices by Facsimile (FAX).) Only those properties in which an applicant has submitted a written expression of interest will be held off the market. If no further communication from the applicant is received by the end of the 10-day consideration and inspection period, the Field Office will resume offering the properties for sale to the public.

In accordance with section 1407(b) of the 1992 HCD Act, the final rule provides an exception to the 30-day listing for general sale in Field Offices having 200, or fewer, total properties in inventory as of October 1 of each year. HUD has determined that these offices are less likely to have properties available for applicants after 30 days on the market. HUD will select these "exception" field offices based upon the number of properties held in inventory as of October 1, of each year (initially October 1, 1993), the number of properties the Department anticipates acquiring over the ensuing 12-month period and the speed with which such properties are selling. In "exception" Field Offices, if homeless providers have requested to lease properties, properties will be offered to them for a

10-day consideration and inspection period before the properties are listed for sale to the general public. Field Offices subject to this exception will notify applicants of properties in designated ZIP Code areas prior to public listing until such time as 10 percent of their total inventory, as of October 1, has been leased. The Assistant Secretary for Housing-Federal Housing Commissioner will supply a list of the exception Field Offices to the Assistant Secretary for Community Planning and Development and all field offices on an annual basis.

The final rule also provides that, in those Field Offices subject to the exception, HUD will consult with units of general local government to identify areas where there is a need for units for homeless persons and will make this information available to applicants. However, local governments will not have veto-power over where properties used by the homeless are located.

*Exception From or Reduction of State and Local Property Taxes*

The final rule also amends 24 CFR 291.415(d) to describe HUD's duty under subsection 1407(c) of the 1992 HCD Act to provide information to applicants or lessees regarding any exemption from or reduction of property taxes under State and local laws. Under this final rule, where State or local law grants such an exemption or reduction, HUD will not require that the applicant establish an escrow account for that portion of the payment of property taxes.

While the amendment necessitated by subsection 1407(c) is included in the final rule, the Department previously determined that this provision is effective as of October 28, 1992, the date of enactment of the 1992 HCD Act. HUD Field Offices were instructed to provide this information upon the request of an applicant or lessee.

*Miscellaneous Changes*

This final rule also amends part 291 to reflect changes to the Department's Supportive Housing program. The 1992 HCD Act terminated the Supportive Housing Demonstration (formerly implemented in 24 CFR parts 577 and 578), and replaced it with a new Supportive Housing program. An interim rule for that program was published on March 15, 1993 (58 FR 13870), and is codified at 24 CFR part 583.

*Changes to the Proposed Rule*

Finally, the Department has made several changes to the proposed rule in this final rule. Those changes are as follows:

A. This final rule requires that applicants submit a certification of compliance with fair housing laws, as well as other nondiscrimination and equal opportunity requirements, as part of the preapproval process.

B. In § 291.410(d), the references to a 45-day period have been changed to 30-day period. The 45-day reference was inadvertently put in the proposed rule, and this change reflects a technical correction.

C. In § 291.410(d), and with regard to re-offering a property to an applicant, the rule is changed to provide that an unsold property will be re-offered to an applicant if no offer from the public has been *accepted* by HUD, rather than just *received* by HUD.

D. Section 291.410(d) is further modified to show that written notification of interest in a particular property by the applicant may be sent via facsimile, and the Department encourages applicants to use this method of notification. Signed leases may also be transmitted in this manner, followed by submission of the original.

E. Section 291.410(e) has been deleted from the final rule. The Department believes that this provision was redundant since § 291.110, as published on October 20, 1993, in an interim rule amending the Single Family Property Disposition program, sets forth the same notification procedures. In the interest of simplification and readability, the Department has removed this provision.

F. Paragraphs (b) and (c) of § 291.425 have been changed to indicate that the sales price of any HUD-owned property acquired under this program will be discounted in an amount determined appropriate by the Secretary, but not less than 10 percent. This change will make the rule governing the homeless initiative consistent with an amendment to § 291.110(a) in the October 20, 1993 interim rule for the Single Family Property Disposition program.

## IV. Discussion of Public Comments From Interim Rule

The Department received 38 public comments in response to the proposed rule published on August 11, 1993. The following discussion summarizes the comments and provides HUD's responses to those comments. Every comment was reviewed and considered, although it may not be specifically addressed in this preamble.

*30-day Public Listing Period: § 291.400(c)(1)*

*Comment:* The Department received twenty-one comments objecting to the regulatory change which requires that HUD offer properties for sale to the public for 30 days prior to making them available for leasing to homeless providers. These commenters were generally concerned that only the least desirable properties would remain in the inventory after the 30-day public listing period for a variety of reasons: (a) The increased costs associated with repairing the least desirable properties; (b) the unsuitability of leasing remainder properties because of problems with accessibility to supportive services; and (c) the location of remainder properties often being in crime ridden areas.

*HUD's response:* Section 1407(a) of the 1992 HCD Act requires that HUD first offer properties to the general public for at least 30 days before HUD makes such properties available for leasing to homeless providers. However, HUD believes that homeless providers will have a sufficient number of acceptable properties available for their programs in most housing markets when the 30 day marketing priority takes effect. This belief is based upon the number of single family properties currently in the Department's inventory and the number of new acquisitions projected throughout any given year. In addition, the Department will administer the exception provision of the law with attention to valid concerns of the participating homeless providers, and if in general a sufficient number of acceptable properties are not available to applicants after the public listing period, the Department will revisit the exception provision in the future.

*Exception to Public Listing Period and Consultation With Units of Local Government: § 291.400(c)(2)*

*Comment:* Three commenters objected to the 200-unit exception to the 30-day public listing period requirement. One commenter suggested that exceptions be determined based upon the current level of usage of the homeless leasing program in an area, and input from each field office as to where and whether the exception should apply. One commenter recommended that the exception to the 30-day public listing period should apply whenever the inventory in a field office is less than 500 units. One commenter recommended that the Community Planning and Development Division in each field office work with Property Disposition staff to determine whether the exception to the 30-day listing period requirement should apply.

*HUD's response:* The 200 property threshold, which will determine what field offices must offer their inventory to

homeless providers on a priority basis, is based on HUD's experience administering the Homeless Initiative Program nationwide. The Department believes this is a reasonable benchmark which will ensure adequate property availability for homeless providers; however, if future program experience demonstrates a need for modification of this criterion to determine exception areas, the Department will respond appropriately.

*Comment:* Section 1407(b) of the Housing and Community Development Act of 1992 requires that HUD consult with units of local government in determining the area in which properties should be reserved for disposition under the exception to the 30-day public listing period. Several commenters recommended that HUD give local governments more input into the program. Eight commenters objected to HUD's exclusion of local communities from reviewing and approving of properties for the homeless on a case-by-case basis. Eight commenters suggested that HUD require that the program be consistent with the local CHAS.

*HUD's response:* HUD has no control over which properties enter its inventory or where they will be located; therefore, there is no guarantee of property availability in areas designated by the locality for providing services to the homeless. However, in areas subject to section 1407(b), HUD will consult with local officials on an annual basis to determine which neighborhoods are targeted by the locality for provision of adequate supportive services necessary to conduct homeless programs. This consultation will be carried out in a manner to minimize any delay in making HUD owned properties available to homeless providers. While the language in section 1407(b) of the 1992 HCD Act provides for consultation on "which properties should be reserved," HUD believes that Congress intended that the Department seek input from local governments on the specific geographic areas in these communities where the homeless population could best be served rather than seeking input on a property-by-property basis. Such a process would be administratively burdensome for both HUD and the unit of local government. HUD will make every effort to work with local governments and applicants; however, the decision on which properties are available is ultimately determined by the location of properties coming into inventory.

*Notification by ZIP Codes: § 291.410*

*Comment:* Several commenters objected to the exclusive use of ZIP codes in § 291.410 for identifying areas of interest by homeless providers for leasing properties, and notifying the providers of available properties since many communities share the same ZIP codes, but not the same housing patterns.

*HUD's response:* Property listings must be based upon some generally recognized geographic designation that is part of HUD's existing data base. The Department currently tracks its property acquisitions by ZIP code. Moreover, the Department is not aware of a better method for tracking and identifying properties. Finally, the Department has not experienced any difficulties using this approach in the past, nor has it had any complaints regarding this method from program participants.

*Fair Housing Requirements*

*Comment:* Several commenters objected to the absence of fair housing requirements in the rule. These commenters recommended that HUD require that the homeless providers submit a fair housing action plan and an affirmative marketing plan. One commenter suggested that the Department require that homeless providers submit a certification of compliance with fair housing laws.

*HUD's response:* Since the Department cannot control which properties or what geographic areas are represented in its inventory, a requirement that participating agencies submit a fair housing action plan and an affirmative marketing plan is not appropriate. However, the Department requires that all of its programs be administered in a non-discriminatory manner, and § 291.435 expressly makes applicants subject to the Fair Housing Act, as well as other nondiscrimination and equal opportunity requirements. The Department agrees that applicants should submit a certification of compliance with applicable fair housing laws. Accordingly, this final rule amends § 291.410(c) to require that applicants submit a certification of compliance with fair housing laws, as well as other nondiscrimination and equal opportunity requirements, as part of the preapproval process.

*Miscellaneous Comments*

*Comment:* Several commenters recommended that HUD change the rule to require that HUD notify local municipalities of all property disposition properties.

*HUD's response:* On request, HUD does notify local officials of all properties which become available for purchase within their jurisdiction.

*Comment:* Several commenters suggested that HUD give local municipalities an opportunity to purchase homes on a more competitive basis. A few commenters recommended that HUD offer substantial discounts for bulk purchases.

*HUD's response:* The Department believes that the current pricing structure is appropriate. HUD offers to public agencies and nonprofits wishing to purchase a HUD-owned property the following discounts: a 10 percent discount off the list price on single purchases, a 15 percent discount off the list price on the purchase of five or more properties, and a 30 percent discount off the list price for properties located in certain designated "revitalization areas."

*Comment:* Several commenters suggested that HUD change the leasing program to place a greater emphasis on supportive services, and require that providers set up a reserve account for participants to assist the participants in moving toward independence.

*HUD's response:* The Department agrees that it is important to place a greater emphasis on the availability of appropriate supportive services in order to maximize the long term benefits of the Homeless Initiative program; however, requiring that homeless providers establish reserve accounts to help move tenants towards independence seems overly burdensome to homeless providers participating in the program at this time.

*Comment:* Section 291.400(f) currently provides that, to the extent practical and possible, HUD will avoid excessive concentration in a single neighborhood of properties leased or sold under this program. Although the Department did not propose to change this provision in the proposed rule, a number of commenters recommended that the Department define "excessive concentration" in the final rule.

*HUD's response:* The Department previously addressed this issue in the final rule published September 16, 1991, where we stated that "HUD believes that the need to avoid excessive concentration in a single neighborhood is important to the goal of integrating former homeless persons into the community. However, rigid standards * * * would be counterproductive, and do not recognize the diversity of communities and needs. The need for flexibility outweighs the need to establish strict standards to ease delivery of supportive services." Based upon past experience in this program, the Department continues to believe that

a rigid definition would be counterproductive. Accordingly, the rule is unchanged on this issue. However, if in the future, this proves to be a problem, the Department will revisit the issue at that time.

*Comment:* One commenter objected to the single family property disposition homeless initiative program in general, arguing that it is incompatible with local municipal housing patterns, and that leasing PD properties to homeless providers causes declining property values.

*HUD's response:* There is no evidence that leasing PD properties to homeless providers has caused values to decline. However, in most housing markets, HUD properties will now be offered first to the general public before being made available for lease to homeless providers. This should enhance homeownership opportunities, as well as provide greater stability in residential neighborhoods.

*Comment:* Three commenters supported the proposal that HUD limit the number of properties held off market for any applicant at any one time based upon the applicant's financial capacity and past performance.

*HUD's response:* HUD believes that the number of properties held off the market for an applicant should relate to that applicant's prior housing experience and demonstrated capacity to administer the program. Field offices currently have the discretion to determine the appropriate number of properties for any applicant.

*Comment:* Two commenters recommended that HUD grant the field offices more discretion in the program's administration.

*HUD's response:* On November 2, 1993 (58 FR 58560), the FHA Commissioner redelegated to field offices the authority to waive handbooks, notices, directives and other issuances for Housing programs unless a regulatory or statutory provision is involved. As a result of this redelegation of authority, field offices now have more flexibility in program administration of the single family property disposition homeless initiative program.

*Comment:* Two commenters recommended that HUD change the way it administers the ten percent cap on leasing property to homeless providers. These commenters believe that leased properties are counted toward the annual ten percent cap each time their annual lease is renewed.

*HUD's response:* Properties leased to homeless providers are counted only once against the ten percent of annual inventory cap. Renewal of a lease does not mean that an individual property is counted twice in one year towards the limitation on the number of properties which may be leased for this purpose. Moreover, in the past, the Department as a whole has never leased ten percent of the nationwide inventory to homeless providers, so that individual field offices exceeding their own ten percent threshold may request reallocation of authority to lease from other areas.

## V. Other Matters

*A. Executive Order 12866*

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review. Any changes made in this rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC.

*B. Environmental Impact*

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 for the proposed rule published on August 11, 1993. The Department has determined that the Finding is not affected by the changes in this final rule. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC.

*C. Executive Order 12612, Federalism*

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under that Order.

*D. Executive Order 12606, the Family*

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that the Single Family Property Disposition Homeless Initiative, generally, has a positive and beneficial impact on the formation, maintenance, and general well-being of homeless families, and the amendments made by this rule will not significantly change the overall impact of the rule on families. Therefore, the rule is not subject to review under that Order.

*E. 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 will not have a significant economic impact on a substantial number of small entities. Specifically, the rule modifies the procedures under which HUD makes properties available for lease to governmental entities and private nonprofit organizations for use by homeless persons.

*F. Paperwork*

The amendments made to 24 CFR part 291 by this final rule will not add any additional information collection burden to that already approved by the Office of Management and Burden under the Paperwork Reduction Act and assigned OMB approval numbers 2502–0412 and 2502–0306.

*G. Regulatory Agenda*

This rule was listed as Sequence No. 1606 in the Department's Semiannual Agenda of Regulations published at 59 FR 20424, 20452 on April 25, 1994, under Executive Order 12866 and the Regulatory Flexibility Act.

**List of Subjects in 24 CFR Part 291**

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, for the reasons stated in the preamble, part 291, subpart E, of title 24 of the Code of Federal Regulations is amended as follows:

## PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for 24 CFR part 291 is revised to read as follows:

**Authority:** 12 U.S.C. 1709 and 1715b; 42 U.S.C. 1441, 1441a, and 3535(d).

2. In § 291.400, paragraph (b) is amended by removing the word "Demonstration"; and paragraphs (c), (d), and (e) are revised to read as follows:

**§ 291.400 Purpose and scope.**

* * * * *

(c) *Property available for lease with option to purchase.* (1) HUD will make available up to 10 percent of its total inventory of properties as of October 1, 1993. Thereafter, on October 1 of each year, the 10 percent figure will be adjusted upward or downward to reflect increases or decreases in the total inventory. Property will be available for lease under the terms and conditions described in § 291.415, in accordance with the following criteria:

(i) The property has been listed for sale for at least 30 days, except as provided in paragraph (c)(2) of this section;

(ii) The property is vacant; and

(iii) A sales contract has not been accepted for the property, or the property has not been committed to another program.

(2) Where a Field Office has 200, or fewer, total properties in inventory on October 1 of each year, and where applicants have requested to lease properties in certain designated areas, such properties will be offered first to applicants for lease before being listed for sale to the general public until 10 percent of the total inventory of the Field Office has been leased. HUD will also take into consideration the number of properties that the Department anticipates acquiring over the next 12-month period and the speed with which acquired properties are selling in the area. HUD will consult, on an annual basis, with units of general local government in the area on parts of the area where there is a need for housing for homeless persons.

(d) *Property available under a McKinney Act Supportive Housing program lease-option agreement.* Eligible properties will be available under a lease-option to purchase agreement, under the terms and conditions described in § 291.420, to Supportive Housing program applicants for acquisition grants under 24 CFR part 583.

(e) *Properties available for sale.* Eligible properties will be available for competitive sale or direct sale for fair market value, less a discount determined appropriate by the Secretary but not less than 10 percent, under the terms and conditions described in § 291.425.

* * * * *

**§ 291.405 [Amended]**

3. In § 291.405, the definition of "Applicant" is amended by removing the word "Demonstration", and by removing the words "24 CFR 577.5 or 578.5" and replacing them with "24 CFR part 583" in the last sentence; the definition of "Eligible properties" is amended by adding the word "vacant" before "single family properties"; and the definition of "Supportive Housing Demonstration" is removed.

4. Section 291.410 is amended by revising paragraph (c) introductory text, adding paragraph (c)(6), and revising paragraph (d), to read as follows:

**§ 291.410 Applicant preapproval; notification of eligible properties.**

* * * * *

(c) *Applicant data and certification.* To obtain preapproval, applicants must provide the appropriate HUD Field Office with the following data and certification:

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) * * *

(6) A certification of the applicant's intent to comply with the requirements of the nondiscrimination and equal opportunity requirements set forth in § 291.435.

(d) *Notification of eligible properties available for lease.* (1) Applicants, preapproved by HUD as described in paragraph (a) of this section, must designate geographic areas of interest by ZIP Code to the appropriate HUD Field Office(s), and must indicate their intention to lease properties in those areas.

(2)(i) Upon request, and after properties have been listed for sale to the general public for at least 30 days, except as provided in paragraph (d)(2)(ii) of this section, Field Offices will notify applicants, in writing, of available eligible properties in the ZIP Code areas previously designated by the applicant. Specific properties selected by the applicant will be held off the market for a 10-day consideration and inspection period beginning to run upon notification by the applicant to the Field Office. (Where notification is by mail, the 10-day period will begin to run five days after mailing.) Only those properties in which the applicant has expressed an interest will be held off the market. If a signed lease is not received from the applicant by the end of the 10-day consideration and inspection period, the Field Office will resume offering the properties for sale. (Facsimile (FAX) transmissions are acceptable.)

(ii) Where properties are made available to applicants before being listed for sale to the public, as described in § 291.400(c)(2), upon request, Field Offices will notify applicants, in writing, when eligible properties become available in the ZIP Code areas previously designated by the applicant. Those properties will remain available for a 10-day consideration and inspection period before being listed for sale to the public. The 10-day period will begin to run upon notification of the applicant by the Field Office. (Where notification is by mail, the consideration period will begin to run five days after mailing.) Applicants must submit a signed lease to the Field Office by the end of the 10-day period. (Facsimile (FAX) transmissions are acceptable.) If a signed lease is not received by the end of the 10-day period, the Field Office will offer the properties for sale to the general public. After the initial 10-day consideration and inspection period, a property will not be available to applicants for lease again until it has been offered to the public for 30 days. If an applicant expresses an interest in leasing a property during or after the 30-day public sale period, the Field Office will offer the property to the applicant for 10 days after the public sale period, provided the property is unsold, no offer from the public has been accepted, and the property is not in a public bid-offering period or committed to another purpose or program.

(iii) In notifying applicants of available properties, Field Offices will coordinate the dissemination of the information to ensure that where more than one applicant designates a specific area, those applicants receive the list of properties at the same time, based on intervals agreed upon between HUD and the applicants. Properties will be leased or sold to applicants on a first come-first served basis.

(iv) HUD may limit the number of properties held off the market for an applicant at any one time, based upon the applicant's financial capacity and past performance as determined by HUD from information provided in the preapproval process and observations made during monitoring of a program in progress.

5. Section 291.415 is amended by redesignating paragraph (d)(1) as paragraph (d)(1)(i), by adding paragraph (d)(1)(ii), and by revising the first sentence of paragraph (f)(1), to read as follows:

**§ 291.415 Lease with option to purchase properties for use by the homeless.**

* * * * *

(d) *Property operating costs and insurance.*

(1)(i) * * *

(ii) Upon request by an applicant or lessee, HUD will identify and describe any exemptions or reductions relating to payment of property taxes under State or local laws, for the jurisdiction requested by the applicant or lessee, that may be applicable to lessees or to properties leased under this subpart. If a lessee of a property under this subpart is provided an exemption from any requirement to pay State or local property taxes, or a reduction in the amount of any such taxes, the lessee will be required to establish an escrow account to cover only the amount of taxes owed.

* * * * *

(f) *Purchase of leased properties.* (1) Lessees that desire to purchase leased properties during the lease term will be offered the properties at the lower of the fair market value established at the time of the initiation of the lease or at the time of the sale, less a discount determined appropriate by the Secretary but not less than 10 percent, provided lessees agree to use the properties either to house low-income tenants for a period of not less than 10 years or to resell the properties to low-income buyers. * * *

* * * * *

6. Section 291.420 is amended by revising the section heading and paragraphs (a) (1) and (3), and by removing the word "Demonstration" from the first sentence of paragraph (b), to read as follows:

**§ 291.420 Supportive Housing program lease-option to purchase properties.**

(a) *Lease-option for Supportive Housing program applicants.* (1) Eligible properties will be available under a lease-option agreement to applicants for acquisition grants under the Supportive Housing program, as described in 24 CFR part 583. An applicant may enter into a lease-option agreement with HUD for up to six months while its application for Supportive Housing assistance is being reviewed by HUD.

* * * * *

(3) The applicant may purchase the property for fair market value, less a discount determined appropriate by the Secretary but not less than 10 percent, at any time during the lease period in accordance with the terms of § 291.415(f).

* * * * *

7. Section 291.425 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 291.425 Sale of properties for use by the homeless.**

* * * * *

(b) *Direct sales.* In accordance with § 291.110(a), the purchase price for the property will be at the fair market value established for the property in the approved disposition program, less a discount determined appropriate by the Secretary but not less than 10 percent.

(c) *Competitive sales.* As an alternative to direct sales, an applicant, whether or not preapproved, may submit a competitive bid on any property listed for sale to the general public, as described in § 291.105. If the HUD Field Office accepts the bid, the net amount due HUD will be reduced by a discount determined appropriate by the Secretary but not less than 10 percent.

* * * * *

8. Section 291.435(a)(1) is amended by replacing the period at the end of the paragraph with a semi-colon, and by adding the following language after the final semi-colon:

**§ 291.435 Applicability of other Federal requirements.**

* * * * *

(a) *Nondiscrimination and equal opportunity.* * * * and, where applicable, the Americans with Disabilities Act (42 U.S.C. 12131) and implementing regulations at 28 CFR parts 35 and 36.

* * * * *

Dated: April 5, 1994.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 94–13729 Filed 6–6–94; 8:45 am]

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Part IV

# Department of Housing and Urban Development

## Office of the Secretary

**Proprietary Information Submitted by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

[Docket No. N–94–3786; FR–3734–N–01]

### Proprietary Information Submitted by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation

**AGENCY:** Office of the Secretary, Housing and Urban Development.

**ACTION:** Notice of temporary order.

**SUMMARY:** This Notice sets forth the Order of the Secretary of Housing and Urban Development that certain information submitted by the Federal National Mortgage Association ("Fannie Mae", "Government-Sponsored Enterprise", or "GSE") and the Federal Home Loan Mortgage Corporation ("Freddie Mac", "Government-Sponsored Enterprise", or "GSE") to the Department of Housing and Urban Development ("HUD") is proprietary and shall not be disclosed to the public at this time.

**EFFECTIVE DATE OF THE ORDER:** May 31, 1994.

**COMMENTS:** Interested persons are invited to submit comments regarding this Notice of Temporary Order to the Rules Docket Clerk, room 10276, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Comments will be considered in developing any subsequent order and regulations implementing the Secretary's regulatory authority respecting Fannie Mae and Freddie Mac to be proposed this summer. While no deadline has been set for comments to be considered in developing the regulations, comments must be received prior to the deadline date established in the proposed regulations.

Communications should refer to the above docket number and title. Facsimilie (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

**FOR FURTHER INFORMATION CONTACT:** Harold L. Bunce, Acting Director, Financial Institutions Regulation Staff, telephone (202) 708–1464 or Kenneth A. Markison, Assistant General Counsel for Government-Sponsored Enterprises/RESPA, telephone (202) 708–3137; Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. A telecommunications device (TDD) for hearing- or speech-impaired persons (TDD) is available at (202) 708–0770. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:**

#### The Temporary Order

By the authority vested in me as Secretary of Housing and Urban Development, under sections 1323 and 1326 of the Federal Housing Enterprise Financial Safety and Soundness Act, 12 U.S.C. 4543 and 4546, I have determined that certain information, identified in the attached Exhibit A, contained in the loan-level data files which were submitted by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to the Department of Housing and Urban Development, as required under the Interim Housing Goals, should be deemed proprietary information. Accordingly, under the authority of section 1326 of the Act, I hereby order that this information be withheld from public disclosure at this time. The basis and terms of this Temporary Order are set forth fully below.

#### Background

The Federal Housing Enterprise Financial Safety and Soundness Act of 1992, enacted as Title XIII of the Housing and Community Development Act of 1992, (Pub. L. 102–550, approved October 28, 1992), codified generally at 12 U.S.C. 4501–4561 ("the Act"),[1] requires the Secretary to establish and monitor the performance of Fannie Mae and Freddie Mac in meeting annual goals for mortgage purchases on housing for low- and moderate-income families, housing located in central cities, and special affordable housing, *i.e.*, housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families. On October 13, 1993, the Secretary published the housing goals and requirements for the GSEs' mortgage purchases for the 1993–94 transition period in Notices of Interim Housing Goals ("the Notices"). 58 FR 53047–53096.

Under the Notices, the Secretary required the GSEs to submit certain data on their mortgage purchases by March 1, 1994. This information is to assist the Secretary in monitoring the GSEs' performance under the goals and to satisfy the requirements of subsections 309(m)–(n) of the Federal National Mortgage Association Charter Act, 12 U.S.C. 1723a(m)–(n), and subsections 307(e)–(f) of the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1456(e)–(f). Sections 309(m) and 307(e) under these Acts mandate that the GSEs collect, maintain and provide to the Secretary data relating to their mortgages on single family and multifamily housing and sections 309(n) and 307(f) require that the GSEs report aggregate information on their mortgages to Congress.

Under the Notices, the Secretary required each GSE to provide information in two forms—loan-level data files that provide detailed information on each mortgage loan purchased by the GSE, and data reports that aggregate data on mortgage loans in various ways. In addition, the Secretary required each GSE to provide a written report discussing its performance under the housing goals. The information required in the loan-level data files includes detailed information on individual loans purchased by the GSEs including: The borrower(s') annual income, race, and gender; census tract; other geographic identifiers; loan-to-value ratio; number of units; owner-occupancy status; and other details on the mortgage, the property, and the borrower(s). The information required for the data reports includes aggregate data concerning: The amount of mortgage purchases that qualify towards each housing goal, classified by number of units and dollar volume; mortgagors' income; race; location of property; and various other categories.

#### Legal Requirements Regarding Proprietary Information

Section 1323 of the Act, 12 U.S.C. 4543, provides that the Secretary shall make available to the public the data submitted by the GSEs in the reports required under section 309(m) of the Federal National Mortgage Association Charter Act and section 307(e) of the Federal Home Loan Mortgage Corporation Act *except* the data that the Secretary determines by regulation or order pursuant to section 1326, 12 U.S.C. 4546, is proprietary. Section 1323(b)(2) of the Act, 12 U.S.C. 4543(b)(2), specifically provides that the Secretary may not restrict access to data consisting of income, census tract location, race, and gender of mortgagors of single family properties. Section 1326 provides that the Secretary may by regulation or order provide that certain information shall be treated as proprietary and, pending the issuance of

[1] Unless otherwise specified, all section cites herein are cites to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Sections 1331–1336 of that Act are codified at 12 U.S.C. 4561–66.

a final decision on the matter, the material may not be disclosed.

The Freedom of Information Act (FOIA) under Exemption 4, 5 U.S.C. 552(b)(4), allows confidential business information to be protected from disclosure, and the Trade Secrets Act, 18 U.S.C. 1905, forbids Government officers and employees from releasing trade secret and other confidential business information. Executive Order No. 12,600, 3 CFR at 235 (1988), requires that agencies notify submitters of confidential business information of requests under FOIA for such information and that agencies afford submitters an opportunity to comment on release of the requested information. If an agency determines to release notwithstanding a submitted objection, the Executive Order requires that the agency notify the submitter reasonably prior to release. The President of the United States, by memorandum, dated October 4, 1993, to Heads of Departments and Agencies, emphasized the importance of public disclosures under FOIA and an implementing memorandum from the Attorney General, attached to the President's memorandum, instructed agencies to disclose information unless disclosure would harm an interest protected by a FOIA exemption. The President's and the Attorney General's memoranda do not alter Executive Order No. 12,600.

In addition to the legal requirements respecting proprietary information, the Privacy Act of 1974, 5 U.S.C. 552a, and FOIA Exemption 6, 5 U.S.C. 552(b)(6), pertain to the disclosure of information on individuals. Accordingly, even if information is not withheld as proprietary, it still may be withheld pursuant to the Privacy Act or Exemption 6..

**Information Regarded as Proprietary by the GSEs**

Prior to March 1, 1994, Departmental staff met separately with staff of each GSE to discuss the subject of proprietary information in view of the impending deadline for receipt of materials by HUD in accordance with the Notices. Fannie Mae staff advised that, notwithstanding that it considered most of the information submitted under the Notice to be proprietary, Fannie Mae sought for HUD to withhold only certain data from the loan-level data files because, if released, such data would cause substantial competitive harm to Fannie Mae.

Both GSEs pointed out that, because the Act requires the Secretary to release information on census tract location of properties, releasing other details on specific loans such as unpaid principal balance (UPB), date of mortgage note, loan type, loan-to-value ratio (LTV), and similar terms would cause competitive harm by permitting the other GSE or other market competitors to gain competitive advantage from the information. For example the GSEs argue that: Releasing loan-level information on each properties' UPB and census tract location will reveal what size loans a GSE is willing to buy in a particular area, at what prices and on what terms, and that such information will assist competitors in the same market and other markets. Likewise, customers will use the information to obtain insight into each GSEs' pricing and marketing strategies.

Correspondence from the GSEs details the GSEs' objections to release of items in the loan-level data files. This correspondence, attached to and incorporated in this Notice of Temporary Order, includes: Exhibit B—a letter from Anthony F. Marra, Senior Vice President and Deputy General Counsel of Fannie Mae, to Kenneth A. Markison, Assistant General Counsel for Administrative Law, dated March 11, 1994; and Exhibit C—a letter from Allan G. Ratner, Vice President and Deputy General Counsel of Freddie Mac, to Mr. Markison, dated May 9, 1994. This correspondence lists the particular data items that each GSE requested be withheld.

Freddie Mac requested the withholding of more items than Fannie Mae. Both GSEs requested that the Secretary treat the GSEs' information the same so that any information deemed proprietary for one GSE is deemed proprietary for the other GSE. Accordingly, where only one GSE requested proprietary treatment for a particular category of information, this Temporary Order provides that such information is treated as proprietary for both GSEs. Exhibit A identifies the items requested to be withheld as proprietary: Solely by Freddie Mac (marked with an "*"); solely by Fannie Mae (marked with "**"); and by both Freddie Mac and Fannie Mae (unmarked).

**Conclusion**

The Department will comply fully with the requirements of the Act and will make available to the public data submitted to HUD by the GSEs, consisting of income, census tract location, race, and gender of mortgagors of single family properties. However, having considered the views of the GSEs concerning the disclosure of the remainder of the data and the statutory requirements concerning withholding proprietary information, it is concluded that a Temporary Order is necessary to protect other information submitted by the GSEs, not in the foregoing categories, which the GSEs regard as proprietary.

The legislative history of the Act characterizes the lack of information on the GSEs' performance as "an information vacuum." S. Rep. No. 102–282, 102d Cong., 2d Sess. 39 (1992). The legislative history notes that "public access and disclosure of information is a key tool for permitting appropriate public scrutiny and oversight of the activities of the [GSEs] and in evaluating possible improvements in housing finance markets." *ID.* at 44. On the other hand, the Act also protects proprietary information from release. Based on the submissions of both GSEs, the information in the attached Exhibit A shall be deemed proprietary. The Secretary further concludes, however, that: This Order should be temporary; the public should be accorded full opportunity to comment during the regulatory process; and this Temporary Order should expire no later than the date regulations fully addressing this subject are effective.

This Temporary Order does not extend to aggregated data information in the data reports and the written reports submitted by Fannie Mae and Freddie Mac. Such data are not regarded as causing substantial competitive harm by the GSEs and, at such time as this information is requested by the public, it will be released. Even though loan-level information is not deemed proprietary under this Temporary Order, other statutes, including the Privacy Act of 1974 and Exemption 6 of FOIA, may pertain and result in withholding of information.

**Expiration and Modification of This Temporary Order**

This Temporary Order shall be effective until such time as it is determined necessary and/or appropriate to withdraw or modify it. Final GSE regulations will fully address the disclosure and withholding of information under the Act and this Temporary Order will, in any event, expire when the final regulations are published. Pending final regulations, the Department will work with the GSEs to narrow the list of items withheld and develop ways that information deemed proprietary under this Temporary Order may be released without disclosing proprietary information. This Temporary Order may be modified if it is determined that additional information should be made available to the public. Any such determination will be conducted in accordance with the

Act. In any event, in responding to FOIA requests, the Department will follow the procedures in Executive Order 12,600, as applicable.

**Release in Response to Requests on Behalf of Congressional Committee or Subcommittee, the Comptroller General, a Subpoena or Other Legal Process**

If the Department receives a request on behalf of a Congressional Committee or Subcommittee, the Comptroller General, a subpoena from a court of competent jurisdiction, or is otherwise compelled by law to release information determined to be proprietary under this Temporary Order, the Department will provide the information in accordance with the request without regard to the provisions of this Temporary Order. In releasing requested information under this paragraph, the Department will include a statement with the information to the effect that the Secretary has determined that the information is subject to this Temporary Order, the GSEs' regard the information as proprietary, and public disclosure of the information may cause competitive harm to the GSEs. To the extent practical, the Department will provide notice to the GSEs after a request under this paragraph is received and before the information is provided in response to the request.

Dated: May 31, 1994.

**Henry G. Cisneros,**

*Secretary.*

**Exhibit A**

LIST OF PROPRIETARY INFORMATION CONTAINED IN LOAN LEVEL DATA FILES SUBMITTED BY FREDDIE MAC AND FANNIE MAE

| Field description | Field position |
|---|---|
| Single Family: | |
| Acquisition UPB* | 80–85 |
| Loan-to-Value Ratio at Origination | 86–88 |
| Date of Mortgage Note* | 89–94 |
| Date of Acquisition* | 95–100 |
| Purpose of Loan** | 101 |
| Cooperative Unit Mortgage | 102 |
| Refinancing Loan From Own Portfolio | 103 |
| Special Affordable, Seasoned Loan Proceeds Recycled* | 104 |
| Product Type | 105–106 |
| RTC/FDIC | 108 |
| Term of Mortgage at Origination* | 109–111 |
| Amortization Term* | 112–114 |
| Seller Institution | 115 |
| Mortgage Purchased Under GSE's Community Lending Program | 118 |
| Acquisition Type | 119 |
| GSE Real Estate Owned* | 120 |
| Public Subsidy Program | 121 |
| Occupancy Code | 132 |
| Number of Units | 133 |
| Unit 1 Number of Bedrooms (if property has 2–4 units)* | 134 |
| Unit 1 Owner-Occupied (if property has 2–4 units)* | 135 |
| Unit 1 Affordability Category (if property has 2–4 units)* | 136 |
| Unit 1 Reported Rent Level (if property has 2–4 units)* | 137–141 |
| Unit 1 Reported Rent Plus Utilities (if property has 2–4 units)* | 142–146 |
| Unit 2 Number of Bedrooms* | 147 |
| Unit 2 Owner-Occupied* | 148 |
| Unit 2 Affordability Category* | 149 |
| Unit 2 Reported Rent Level* | 150–154 |
| Unit 2 Reported Rent Plus Utilities* | 155–159 |
| Unit 3 Number of Bedrooms* | 160 |
| Unit 3 Owner-Occupied* | 161 |
| Unit 3 Affordability Category* | 162 |
| Unit 3 Reported Rent Level* | 163–167 |
| Unit 3 Reported Rent Plus Utilities* | 168–172 |
| Unit 4 Number of Bedrooms* | 173 |
| Unit 4 Owner-Occupied* | 174 |
| Unit 4 Affordability Category* | 175 |
| Unit 4 Reported Rent Level* | 176–180 |
| Unit 4 Reported Rent Plus Utilities* | 181–185 |
| Multifamily: | |
| U.S. Postal Zip Code | 13–17 |
| Affordability Category* | 70 |
| Acquisition UPB | 71–76 |
| Participation Percent* | 77–80 |
| Date of Mortgage Note | 81–86 |
| Date of Acquisition* | 87–92 |
| Purpose of Loan** | 93 |
| Cooperative Project Loan | 94 |
| Refinancing Loan From Own Portfolio* | 95 |
| Special Affordable, Seasoned Loans: Are Proceeds Recycled?* | 96 |
| Mortgagor Type* | 97 |

LIST OF PROPRIETARY INFORMATION CONTAINED IN LOAN LEVEL DATA FILES SUBMITTED BY FREDDIE MAC AND FANNIE MAE—Continued

| Field description | Field position |
|---|---|
| Term of Mortgage at Origination | 98–100 |
| Loan Type | 101 |
| Amortization Term* | 102–104 |
| Seller Institution* | 105 |
| Acquisition Type | 107 |
| GSE Real Estate Owned* | 108 |
| Public Subsidy Program* | 109 |
| Total Number of Units | 110–114 |
| Special Affordable—45 percent* | 115–123 |
| Special Affordable—55 percent* | 124–132 |
| Unit Type XX—Number of Bedroom(s)* | 133 |
| Unit Type XX—Number of Units* | ### |
| Unit Type XX—Average Reported Rent Level | ###–### |
| Unit Type XX—Average Reported Rent Plus Utilities | ###–### |
| Unit Type XX—Affordability Level* | ###–### |

*Only Freddie Mac asserted that this data was proprietary.
**Only Fannie Mae asserted that this data was proprietary.

**Exhibit B**

March 11, 1994.

Mr. Kenneth A. Markison, Assistant General Counsel for Administrative Law, Department of Housing and Urban Development, Room 10252, 451 Seventh St. SW., Washington, DC 20410.

Re: Supplemental Information Regarding Confidentiality of Certain Data Submitted March 1, 1994 by Fannie Mae.

Dear Mr. Markison: This letter summarizes Fannie Mae's views on the issue of proprietary information contained in its March 1 submission to the Secretary of Housing and Urban Development, which contained tapes of loan level detail relating to our purchase of single-family and multifamily mortgages.

We believe that all the information contained in the tapes submitted on March 1 is entitled to receive confidential treatment, because it is the product of a substantial investment by Fannie Mae. Such information is not available publicly and is treated as extremely confidential information and closely held within the corporation.

However, in the spirit of providing HUD our fullest cooperation as it administers the new public disclosure provisions of 12 U.S.C. 4543, Fannie Mae is requesting "proprietary" and "confidential" designations for only the elements in the database that would advantage competitors or customers at our expense. These elements (only 23 of the 108 we are providing) would, if disclosed, compromise our efficiency and competitive position in the market where we compete day-to-day throughout the country with both Freddie Mac and highly innovative Wall Street firms. Disclosure of such information would also hurt our bargaining position with companies with whom we conduct business. The specific elements for which confidentiality is requested are listed and discussed in detail below.

We also request that HUD extend proprietary treatment reciprocally both to Fannie Mae and Freddie Mac, so that any element specifically deemed proprietary or confidential for one corporation would be deemed proprietary or confidential also for the other, regardless of whether both firms specifically requested such treatment.

Pursuant to 12 U.S.C. 4546(c), governing disclosure of proprietary information, we believe that HUD is required to issue a final written decision regarding classification of our data submission as "proprietary" prior to releasing any such information. This decision requirement is an express predicate for data disclosure under 12 U.S.C. 4543. We believe that it also should govern any release under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, by virtue of the enactment of 12 U.S.C. 4546 after FOIA, its greater specificity, and Congress' decision not to establish any exception regarding FOIA requests.

Further, it is our understanding that independent of its obligations under 12 U.S.C. 4546, HUD will observe the provisions of Executive Order No. 12,600 (52 FR 23,781 (1987)) for all data that Fannie Mae classifies as proprietary and confidential commercial or financial information. That Order recognizes the procedural rights of submitters of confidential commercial data to the government, and mandates that a recipient agency provide notice and a reasonable response time whenever the agency determines that it may be required to disclose the requested data. The Order further mandates that if an agency overrules a submitter's objection, it must notify the submitter in writing and provide an explanation of its decision. The agency must provide such an explanation a reasonable number of days prior to a specified disclosure date, to afford the submitter an opportunity to seek judicial relief if necessary.

Adherence to the procedures set forth in Executive Order No. 12,600 accords with existing arrangements between HUD and Fannie Mae for treatment of confidential business information submitted by Fannie Mae as required by HUD regulations (see letter dated February 15, 1979 from Irving Margulies, Acting HUD Deputy General Counsel, to Bernard Carl, Fannie Mae's outside counsel). These arrangements have been in place for over 15 years and have provided a reasonable framework for us to submit very sensitive business information to HUD. Last year, in response to a FOIA request, HUD had the opportunity to implement the agreed-upon procedures for notification, and we were able to provide HUD with the reasons that certain of the business information previously provided to HUD should continue to remain confidential.

Finally, we request that HUD observe certain additional safeguards for requests from Congress regarding data identified by Fannie Mae to be proprietary or confidential commercial information. In such cases, we request that HUD also provide Fannie Mae with notice upon receipt of a congressional request for proprietary or confidential data, as well as notice prior to HUD's delivery of requested data to Congress, to give us the opportunity to explain to Congress the need to protect such data. We also request that HUD provide requested confidential data only when accompanied by a legend stating that HUD has determined that the material is proprietary and exempt from public disclosure under both 5 U.S.C. 552 and 12 U.S.C. 4546, and that public disclosure would result in substantial competitive harm.

*Basis for Non-Disclosure to Public*

We have listed below specific data elements contained in the Fannie Mae Multifamily Acquisitions, Multifamily Units, and Single-Family Acquisitions Files that have been submitted to HUD. We are requesting HUD's designation of these data elements as both "proprietary" within the meaning of 12 U.S.C. 4543, 4546,[1] and confidential commercial or financial information pursuant to Exemption 4 of FOIA, 5 U.S.C. 552(b)(4). Specifically, the following data elements are entitled to such designation:

*Multifamily Acquisitions*

1. Zip code (Ref. 3)
2. Acquisition UPB (Ref. 17)
3. Date of mortgage note (Ref. 19)
4. Coop flag (Ref. 22)

[1] Sections 1323 and 1326 of Pub. L. 102–550 (1992).

5. Term at origination (Ref. 26)
6. Loan type (more properly amortization) (Ref. 27)
7. Acquisition type (Ref. 31)
8. Total number of units (Ref. 34)
9. Purpose of loan (Ref. 21)

*Multifamily Units*

1. Average reported rent per bedroom type (Ref. 4)
2. Average reported rent plus utilities per bedroom type (Ref. 5)

*Single-Family Acquisitions*

1. Loan-to-value LTV ratio at origination (Ref. 19)
2. Product Type (Ref. 26)
3. Seller Institutions (Ref. 31)
4. Purpose of Loan (Ref. 22)
5. Occupancy Code (Ref. 44)
6. Number of Units (Ref. 45)
7. Cooperative Unit Mortgage (Ref. 23)
8. RTC/FDIC (Ref. 28)
9. Public Subsidy Program (Ref. 37)
10. Refinancing from Own Portfolio (Ref. 24)
11. Acquisition Type (Ref. 35)
12. Community Lending Mortgage (Ref. 34)

The basis for our request derives from the major precedents interpreting the FOIA's Exemption 4. The leading case in determining whether information provided to the government is "privileged and confidential" and therefore entitled to be withheld under Exemption 4 is *National Parks & Conservation Association* v. *Morton*, 498 F. 2d 765 (D.C. Cir. 1974). In *National Parks*, the DC Circuit Court of Appeals held that the test for confidentiality is an objective one that could be determined by a two prong test:

To summarize, commercial or financial matter is "confidential" for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) To impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770.

The second prong of *National Parks* is applicable to each of the referenced items because, when combined with each other and with information on unpaid principal balance ("UPB"), income, and precise geographic markers, disclosure would cause us substantial competitive harm.

*Single-Family Data Elements*

Public disclosure of the entire Single-Family Acquisitions database would provide customers and competitors with the elements described above at loan level detail, in combination with loan amount, race, income, gender, zip code, and census tract. Precise details on such factors as loan-to-value ratios, when combined with other basic loan level detail, would likely cause substantial competitive injury to Fannie Mae by providing competitors and customers with valuable insights about our business plans, risk assessments and marketing strategies. These insights could lead to changes in pricing or negotiating tactics detrimental to the company.

*Multifamily Data Elements*

The multifamily elements (contained in the Multifamily Acquisitions and Multifamily Units Files) that Fannie Mae is classifying as proprietary and confidential are: Acquisition UPB; date of mortgage note; coop status; term at origination; loan type (more properly, amortization); acquisition type; total number of units; average reported rent per bedroom type; average reported rent plus utilities per bedroom type; purpose of loan, and zip code. Public disclosure of this data would reveal key factors in our business strategies and successes to our competitors and companies with whom we do business. This would subsidize such firms at our expense by providing them information they otherwise could acquire only at great expense.

*Conclusion*

Disclosing the referenced data for both single-family and multifamily elements would harm us by subsidizing the competitors' acquisition of valuable market information, increasing their efficiency at Fannie Mae's expense. Such consequences are precisely the type that courts have held justify non-disclosure of information under Exemption 4. See, *e.g.*, *Gulf & Western Indus.* v. *United States*, 615 F.2d 527, 530 (D.C. Cir. 1980); *Braintree Electric Light Dept.* v. *Department of Energy*, 494 F. Supp. 287, 289 (D.D.C. 1980); *National Parks & Conservation Association* v. *Kleppe*, 547 F.2d 673, 684 (DC Cir. 1976); and *Westinghouse Elec. Corp.* v. *Schlesinger* 392 F. Supp. 1246, 1249 (E.D. Va. 1974).

Specifically, case law establishes that Exemption 4 is designed to protect a "mosaic" of data, to shield information that might not cause competitive harm on a stand-alone basis, but would be harmful in combination with other information available to the requester. See *e.g.*, *Timken Co.* v. *United States Customs Serv.*, 491 F. Supp. 557, 559 (D.D.C. 1980). Under the precedents, information also must be deemed proprietary and confidential if public disclosure would displace a submitter from a level competitive playing field—by forcing it to divulge sensitive business information which competitors may access freely without incurring any parallel disclosure obligation to the submitter of the information.

The courts thus will direct "close attention" to proposed agency disclosures that benefit competitors at the expense of submitters, and have disfavored disclosure that affords a potential windfall to competitors by providing them data at bargain rates rather than the considerable funds that otherwise would be expended in private research and development. *Worthington Compressors, Inc.* v. *Castle*, 662 F.2d 45, 51 (D.C. Cir. 1981); supplemental opinion sub. nom. *Worthington Compressors, Inc.* v. *Gorsuch*, 668 F.2d 1371 (DC Cir. 1981). See also *Allnet Communication Servs., Inc.* v. *FCC*, 800 F. Supp. 984, 988–89 (D.D.C. 1992); *SMS Data Prods. Group, Inc.* v. *United States Dept. of Air Force*, 1989 U.S. Dist. LEXIS 3156, 35 Cont. Cas. Fed. (CCH) P 75644 (D.D.C. 1989) (noting that release would allow competitors access to information that they would have to spend "considerable funds" to develop on their own).

No competitor of Fannie Mae is subject to data disclosure requirements of the breadth and detail included in the data elements we have submitted to HUD. The information contained in our 1993 annual report on housing goals, the accompanying tables and the proprietary information in the database, as to which we have not requested confidential treatment, provide an unprecedented view of our business. We have limited our request for confidential treatment to only those parts of the database having the likelihood, if released, to cause us substantial competitive harm. As a result, our request is limited to only approximately 21 percent of the elements in the database. Because release of the information, for which we have asked for confidentiality, would have clearly adverse commercial consequences for us, we request that HUD designate the referenced items as "proprietary pursuant to 12 U.S.C. 4546 and invoke Exemption 4 to withhold release of such information.

I hope this discussion and information is helpful to you in evaluating our confidentiality request.

Sincerely,

Anthony F. Marra,

*AFM/pab.*

**Exhibit C**

May 9, 1994.

Kenneth Markison, Esquire, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

Dear Mr. Markison: The Federal Home Loan Mortgage Corporation ("Freddie Mac") has submitted to the U.S. Department of Housing and Urban Development ("HUD") computer tapes that contain single-family and multifamily loan registries for the mortgages that Freddie Mac acquired during 1993. Freddie Mac requests that HUD accord proprietary treatment to certain data elements of those loan registries because they contain confidential, proprietary Freddie Mac information.

In support of our request, I enclose a memorandum that discusses the reasons those data elements must be accorded proprietary treatment and an attachment that identifies the individual data elements that contain confidential, proprietary Freddie Mac information. We would have no objection to your publishing the letter, memorandum and attachment in the **Federal Register** should you find it appropriate to do so.

Please feel free to contact me if you wish to discuss this matter or if there is anything further we can provide.

Sincerely,

Allan G. Ratner,

*Vice President and Deputy General Counsel.*

Enclosure

**The Federal Home Loan Mortgage Corporation's Request for Proprietary Treatment of Certain Loan-Registry Data Elements**

The U.S. Department of Housing and Urban Development ("HUD") has required the Federal Home Loan Mortgage Corporation

("Freddie Mac") to provide HUD with extensive information on the mortgages that Freddie Mac acquired in 1993. HUD identified the general types of data required, in its Notice of Interim Housing Goals, 58 FR 53,047–53,096 (Oct. 13, 1993), and specified the form in which Freddie Mac was to submit the data, in a letter dated January 14, 1994. As so directed, Freddie Mac submitted the required information to HUD in the form of two sets of computer tapes and 19 tables.

The computer tapes contain loan-level information for every mortgage that Freddie Mac acquired during 1993. One set of tapes includes information on Freddie Mac's 1993 single-family mortgages, and it includes from 51 to 66 required data elements for each loan, depending on the number of units in the property. The other set of tapes contains comparable information for Freddie Mac's 1993 multifamily mortgages, and it includes a minimum of 42 elements for each loan, with additional sets of elements for each additional "unit type" in the property. These two sets of tapes are referred to as the "loan registries."

Freddie Mac requests that HUD accord proprietary treatment to certain of the data elements contained in the loan registries because they contain confidential, proprietary Freddie Mac information. Freddie Mac does not, however, object to the public release of the 19 tables submitted on March 31, 1994, which contain much of the categories of information that Freddie Mac seeks to protect from public disclosure—but which disclose the information in an aggregated form that is both useful and less likely to reveal confidential, proprietary Freddie Mac information.

We discuss below the reasons that certain loan-registry data elements must be treated as proprietary information, and we designate the specific data elements affected in an attachment to this request. Freddie Mac also requests that any confidential treatment accorded to Fannie Mae data apply equally to data submitted by Freddie Mac, and vice-versa, so that the same data elements will be treated equally for both enterprises.

*I. Proprietary Information Generally*

A. The Proprietary-Information Balance

HUD requested the loan registries under section 307(e) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e)). While HUD is generally authorized to make such section 307(e) loan-registry data available to the public (section 1323 of the Federal Housing Enterprises Safety and Soundness Act of 1992 ("FHEFSSA"), 12 U.S.C. 4543), HUD is expressly not permitted to make proprietary loan-registry data available to the public (FHEFSSA 1326, 12 U.S.C. 4546). In fact, FHEFSSA provides that no such information is to be made available to the public unless and until a final decision has been made that the data are *not* proprietary (FHEFSSA 1326(c), 12 U.S.C. 4546(c)).

In effect, FHEFSSA recognizes the inherent tension between (1) the provision that directs HUD to make available data that might be useful for housing-related research and (2) the provision that directs HUD to prevent the financial or competitive harm to the enterprises that could flow from providing public access to proprietary information. FHEFSSA, however, also provides guidance on how the balance between these conflicting directives is to be struck.

That is, FHEFSSA suggests that where reasonable people might disagree as to whether information is proprietary or not, the issue should be resolved in favor of according the data proprietary treatment. Under FHEFSSA, information is not to be made public until HUD makes a final determination as to whether the information is proprietary. It follows, therefore, that where HUD is unable to make that determination to a reasonable degree of certainty, the information should not be made public. This treatment of data where its proprietary character is uncertain would seem to be especially appropriate during the 1993–1994 interim time period.

The approach that the balance is to be struck against public disclosure presumably reflects a recognition on Congress' part that, in the long run, Freddie Mac and Fannie Mae will be able to contribute most effectively to the nation's housing needs if they retain one of the key attributes of every viable business—the ability to protect the confidentiality of business strategies and plans. That is, in close cases, the need to protect the fundamentals of the enterprises' ability to perform is presumed to outweigh the short-term benefits of placing more information on the public record.

B. What is "Proprietary" Information?

The term "proprietary" is not defined in FHEFSSA and, on the face of the term, it could apply to virtually every data element of the loan registries: All were developed by Freddie Mac and are Freddie Mac's property, and nearly all are the types of information that Freddie Mac does not customarily provide to the public. However, reading the term in the context of the two competing directives described above, the legislative history of the Act and analogous case law, it may be more appropriate to interpret proprietary information to mean information that Freddie Mac does not customarily release to the public—where the release of that information could tend to cause financial or competitive injury to Freddie Mac, or could tend to impair competition between Freddie Mac and Fannie Mae.

That more-limited interpretation is consistent with the legislative history of FHEFSSA. For example, the issue of the scope of the term "proprietary" information was discussed directly in a floor debate of section 515 of the Senate bill (the precursor to the proprietary provision of FHEFSSA) involving Senators Seymore and Garn:

Mr. SEYMORE. It is my understanding that section 515 of the bill prohibits the Director [the Director was to administer the housing goals under the Senate bill] from disclosing to the public information provided by the enterprises that the Director determines to be proprietary. What types of information does this legislation contemplate would be treated as proprietary?

Mr. GARN. As a general matter, courts have construed various types of business information to be proprietary if it might cause competitive or financial harm to the company.

While the legislation contemplates that the Director will determine what information is proprietary consistent with current legal precedents applicable to other companies, section 515 is intended to protect especially information relating to pricing and fees. If one of the enterprises learned of the other's pricing and fee strategy, it would create an extraordinary competitive disadvantage.

Maintining competition between Fannie Mae and Freddie Mac is essential because there are only two GSE's involved in mortgage finance. Congress created the two GSE's expressly for the purpose of ensuring competition. This competition has resulted in lowering prices and enhancing efficiency to the housing finance market, which ultimately benefits homeowners and renters.

Mr. SEYMORE. So, if I understand the Senator correctly, section 515 should ensure that information on pricing, fees and other key aspects of business strategy will be considered proprietary and therefore protected from disclosure to the public.

Mr. GARN. That is correct. By including this provision in the legislation, it was intended that the Director protect from public disclosure a broad range of information that might impair competition between these two GSE's.

138 *Cong. Rec.* S8778–S8779 (daily ed. June 24, 1992).

That interpretation also is consistent with case law interpreting Exemption 4 of the Freedom of Information Act ("FOIA") (5 U.S.C. 552(b)(4)), which is probably the case law to which the two senators had referred. The term "proprietary information" does not appear in FOIA, but the principles underlying that exemption are similar—but not identical—to those underlying section 1326 of FHEFSSA.

FOIA Exemption 4 applies to "trade secrets and commercial or financial information obtained from a person and privileged and confidential," and courts have applied that exemption to protect information that a person is required to submit to a federal agency where

(1) The information was of the type "which would customarily not be released to the public by the person from whom it was obtained," S. Rep. No. 813, 89th Cong., 2d Sess. 9 (1964), *reprinted in* 1966 U.S.C.C.A.N. 2418 (quoted in *Sterling Drug, Inc.* v. *FTC*, 450 F.2d 698, 709 (D.C. Cir. 1971) and *Critical Mass Energy Project* v. *NRC*, 975 F.2d 871, 872–73 (D.C. Cir. 1992)), and

(2) The release of the information would be likely to cause substantial competitive injury to the person submitting the information, *see Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1291 & n.30 (D.C. Cir. 1983); *Gulf & Western Industries, Inc.* v. *United States*, 615 F.2d 527, 530 (DC Cir. 1979); *National Parks and Conservation Ass'n* v. *Morton*, 498 F.2d 765, 770 (DC Cir. 1974); *see also* OCC Interpretive Letter from Chief Counsel P. Allan Schott to James C. Goodale, 1989 WL 300373 (database FFIN–OCCIL) (April 5, 1989) (based on Exemption 4, OCC denied FOIA request for portions of documents describing commercial and financial facts surrounding loan).

*II. Reasons for Designating Certain Data Elements as Proprietary*

While Congress wished to shed increased light on the affordable-housing activities of Freddie Mac and Fannie Mae, it is virtually impossible to be certain that the release of any particular data from the loan registries would be harmless to Freddie Mac, particularly during this interim period. Freddie Mac operates in an environment in which its operations are constantly scrutinized by analysts at Fannie Mae, on Wall Street, and in other sophisticated financial institutions. Those analysts have access to information from a variety of sources, and have increasing abilities to analyze that information in ways that one may not immediately imagine.

The data elements Freddie Mac has designated contain the type of information that Freddie Mac does not customarily release to the public, and if all those data elements were to be publicly disclosed, we believe a variety of competitive and financial harms could be suffered by Freddie Mac. In some cases, this harm could occur as a result of the disclosure of a data element standing on its own; in other cases, the harm would occur because of a correlation of one data element with another. The following are examples of problems that disclosure of all the elements would pose:

(1) Both competitors and customers would be able to learn a great deal about the types of loans we are targeting for purchase in particular areas of the country, thereby enabling them to counter our marketing strategy more effectively. Moreover, the data would be available in one place, permitting competitors to obtain information relatively cheaply;

(2) Competitors and customers would be able to learn far more than they can learn now as to our philosophy and strategy concerning the purchase of newly originated versus seasoned loans;

(3) Both customers and competitors would be able to learn more about the cycles of Freddie Mac's business during the year, *e.g.*, times at which we tend to be more busy than others, and the likely implications of seasonality to our pricing strategy;

(4) By analyzing the types of products we are purchasing, and where the purchases are occurring, customers and competitors would be able to divine a great deal of nonpublic information about our likely strategy for meeting the affordable housing goals;

(5) Customers and competitors would learn far more than they currently know about how the mix of mortgage types that we purchase varies by region, thereby affecting the course of business negotiations in particular transactions in particular regions:

(6) Customers and competitors would be able to change the dynamics of business negotiations regarding the disposition of real estate owned ("REO"), since they would have access to far greater information concerning our REO disposition strategies and practices. In addition, by analyzing REO statistics, a competitor could learn much about our default patterns;

(7) Customers and competitors would could use seemingly non-proprietary data as a "proxy" for information that clearly is proprietary, or could use seemingly non-proprietary data as a link to other available information, so as to reveal other, previously inaccessible proprietary information.

In each case, the disclosure of information would work to the disadvantage of Freddie Mac, and to the advantage of other parties. Also, in many cases—particuarly, but not exclusively, in the multifamily field—the public release of all the data elements listed in a fully correlated manner probably would permit reviewers of the data to identify specific properties. This raises important issues of personal privacy for homeowners, tenants, and lenders, who could soon expect to become the targets of marketing efforts not only by our competitors, but by other businesses seeking to market their products in demographic niches. In comparable circumstances, HUD has previously taken the position that it would not release individual mortgage records in response to a request under the Freedom of Information Act, 5 U.S.C. 552, because it would be an unwarranted invasion of the borrowers' privacy interests. See *Schoettle* v. *Kemp*, 733 F. Supp. 1395 (D. Haw. 1990) (upholding denial of FOIA request based on Exemption 6, 5 U.S.C. 552(b)(6)); *see also Heights Community Congress* v. *Veterans Administration*, 732 F.2d 526 (6th Cir. 1984) (court upholding VA's denial of FOIA request for property address, loan amount and identity of lender on VA-insured loans in certain city, based on FOIA Exemption 6).

In light of the above concerns, Freddie Mac has evaluated each data element to determine whether or not its release would be reasonably likely to cause Freddie Mac competitive or financial harm, either standing alone or linked to other available information. In the interest of making as much data as possible available to the public, Freddie Mac also considered whether certain data elements might be made available as separate files or packages of data elements, so that they could be released without identifying the location of the underlying property. Without a link to the geographic data, there may be no reason for HUD to withhold certain data elements as proprietary information. Similarly, we considered whether certain data elements might be recoded so that HUD would not need to withhold them as proprietary information. Such alternative treatments would substantially reduce Freddie Mac's proprietary concerns with respect to those data elements, while making more information available to the public, consistent with the intent of Congress. *See* S. Rep. No. 464, 102d Cong., 2d Sess. 44 (1992) ("The Director is encouraged whenever possible to develop disclosure methods that take into account any proprietary concerns, while continuing public access to the information."). The results of Freddie Mac's evaluations, including proposed alternative treatments of certain data elements, are summarized in the attachment to this request.

We trust that this request and attachment will be sufficient for HUD to make its determination that the information contained in the data elements designated in the attachment to this request contain "proprietary" information—that is, that the designated data elements contain information that Freddie Mac does not customarily release to the public and that the release of that information could tend to cause financial or competitive injury to Freddie Mac, or could tend to impair competition between Freddie Mac and Fannie Mae. Alternatively, it should be sufficient for HUD to find that it *cannot* determine that certain of those data elements do *not* contain "proprietary" information. In either case, the designated data elements should not be made publicly available.

* * * * *

Attachment

**Federal Home Loan Mortgage Corporation's Designation of Certain Loan-Registry Data Elements as Proprietary [1]**

*I. Proprietary Confidential Data Elements*

A. Single Family Data Elements

- *Acquisition UPB* [positions 80–85]
- *Loan-to-Value Ratio At Origination* [positions 86–88]
- *Date of Mortgage Note* [positions 89–94]
- *Date of Acquisition* [positions 95–100]
- *Cooperative Unit Mortgage* [position 102]
- *Refinancing Loan From Own Portfolio* [position 103]
- *Special Affordable, Seasoned Loan Proceeds Recycled* [position 104]
- *Product Type* [positions 105–106]
- *RTC/FDIC* [position 108]
- *Term of Mortgage At Origination* [positions 109–111]
- *Amortization Term* [positions 112–114]
- *Seller Institution* [position 115]
- *Mortgage Purchased Under FHLMC/FNMA Community Lending Program* [position 118]
- *Acquisition Type* [position 119]
- *FHLMC's Real Estate Owned* [position 120]
- *Public Subsidy Programs* [position 121]

B. Multifamily Data Elements

- *U.S. Postal Zip Code* [positions 13–17]
- *Acquisition UPB* [positions 71–76]
- *Percent Participation* [positions 77–80]
- *Date of Mortgage Note* [positions 81–86]
- *Date of Acquisition* [positions 87–92]
- *Refinancing Loan From Own Portfolio* [position 95]
- *Special Affordable, Seasoned Loans: Are Proceeds Recycled?* [position 96]
- *Cooperative Project Loan* [position 94]
- *Mortgagor Type* [position 97]
- *Term of Mortgage At Origination* [positions 98–100]
- *Loan Type* [position 101]
- *Amortization term* [positions 102–104]
- *Seller Institution* [position 105]
- *Acquisition Type* [position 107]
- *FHLMC's Real Estate Owned* [position 108]
- *Public Subsidy Programs* [position 109]
- *Special Affordable—45%* [positions 115–123]
- *Special Affordable—55%* [positions 124–132]
- *MF Unit Type XX—Affordability Level* [position 133+4—fifth unit-level field]

[1] Each data element is identified by the field description and the position numbers shown in the January 14, 1994, letter from HUD that set forth the loan-registry requirements.

Rather than making this data element available, Freddie Mac suggests that HUD instead disclose the element *Affordability Category* [position 70] (which is defined in terms of four "buckets" or range of values rather than as a particular percent)— along with the unit-level data and in a manner that is entirely severed from any information from which one might determine location. Alternatively, or in addition, *Affordability Level* could be recoded into "buckets" or ranges of values rather than being expressed in terms of a specific percent of adjusted local median income, and then could be released with the unit-level data as described below.

*II. Data Elements That Should Be Released Only in Unit-Level Files*

We request that the following unit-level data for two- to four-unit and multifamily properties be released only as a separate file or "package" of data—severed entirely from the geographic and other data:

A. Single-Family Unit-Level Data Files

We request that the following single-family elements for each two- to four-unit property be released only in a separate file, which file would contain no other data elements:

- *Number of Units* [position 133]
- *Unit 1/2/3/4 Number of Bedrooms* [positions 134, 147, 160, 173]
- *Unit 1/2/3/4 Owned-Occupied [or Tenant]* [positions 135, 148, 161, 174]
- *Unit 1/2/3/4 Affordability Category* [positions 136, 149, 162, 175]
- *Unit 1/2/3/4 Reported Rent Level [positions 137–141, 150–154, 163–167, 176–180]*
- *Unit 1/2/3/4 Reported Rent Level Plus Utilities* [positions 142–146, 155–159, 168–172, 181–185]

B. Multifamily Unit-Level Data Files

Similarly, we request that the following multifamily elements for each multifamily property be released only in a separate file, which file would contain no other data elements:

- *Number of Units* [positions 110–114]
- *Unit Type XX—Number of Bedrooms* [position 133—first unit-level field]
- *Unit Type XX—Numbers of Units* [position 133+1—second unit-level field]
- *Unit Type XX—Average Reported Rent Level* [position 133+2—third unit-level field]
- *Unit Type XX—Average Reported Rent Level Plus Utilities* [position 133+3—fourth unit-level field]
- *Unit Type XX—Affordability Level* [position 133+4—fifth unit-level field] As is described above, we would propose that this data element be included in a unit-level file *only* after it is recoded to show affordability level by "bucket" or range of values rather than by a particular percent of adjusted local median income. In its current form, the data element is proprietary and should not be released—even in a unit-level file.
- *Affordability Category* [position 70]

*III. Data Element That Should Be Recoded Consistent With HMDA Before Being Made Publicly Available*

The data element *Occupancy Code* [position 132] indicates whether a single-family mortgage purchased by Freddie Mac was for a "Principal Residence/Owner Occupied," "Second Home" or "Investment Property (Rental)." We request that this element be released only after it is recoded so that the second homes would be combined with investment properties as "Not owner Occupied" consistent with the treatment of second homes under the Home Mortgage Disclosure Act ("HMDA"). *See* 12 CFR part 203, App. A, section V(A)(7)(a).

* * * * *

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Part V

# The President

## Executive Order 12919—National Defense Industrial Resources Preparedness

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# Presidential Documents

Title 3—

The President

## Executive Order 12919 of June 3, 1994

## National Defense Industrial Resources Preparedness

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Defense Production Act of 1950, as amended (64 Stat. 798; 50 U.S.C. App. 2061, *et seq.*) and section 301 of title 3, United States Code, and as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows

### PART I—PURPOSE, POLICY AND IMPLEMENTATION

**Section 101.** *Purpose.* This order delegates authorities and addresses national defense industrial resource policies and programs under the Defense Production Act of 1950, as amended ("the Act"), except for the amendments to Title III of the Act in the Energy Security Act of 1980 and telecommunication authorities under Executive Order No. 12472.

**Sec. 102.** *Policy.* The United States must have an industrial and technology base capable of meeting national defense requirements, and capable of contributing to the technological superiority of its defense equipment in peacetime and in times of national emergency. The domestic industrial and technological base is the foundation for national defense preparedness. The authorities provided in the Act shall be used to strengthen this base and to ensure it is capable of responding to all threats to the national security of the United States.

**Sec. 103.** *General Functions.* Federal departments and agencies responsible for defense acquisition (or for industrial resources needed to support defense acquisition) shall:

(a) Identify requirements for the full spectrum of national security emergencies, including military, industrial, and essential civilian demand;

(b) Assess continually the capability of the domestic industrial and technological base to satisfy requirements in peacetime and times of national emergency, specifically evaluating the availability of adequate industrial resource and production sources, including subcontractors and suppliers materials, skilled labor, and professional and technical personnel;

(c) Be prepared, in the event of a potential threat to the security of the United States, to take actions necessary to ensure the availability of adequate industrial resources and production capability, including services and critical technology for national defense requirements;

(d) Improve the efficiency and responsiveness to defense requirements of the domestic industrial base; and

(e) Foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components and equipment to enhance industrial base efficiency and responsiveness

**Sec. 104.** *Implementation.* (a) The National Security Council is the principal forum for consideration and resolution of national security resource preparedness policy.

(b) The Director, Federal Emergency Management Agency ("Director FEMA") shall:

(1) Serve as an advisor to the National Security Council on issues of national security resource preparedness and on the use of the authorities and functions delegated by this order·

(2) Provide for the central coordination of the plans and programs incident to authorities and functions delegated under this order, and provide guidance and procedures approved by the Assistant to the President for National Security Affairs to the Federal departments and agencies under this order;

(3) Establish procedures, in consultation with Federal departments and agencies assigned functions under this order, to resolve in a timely and effective manner conflicts and issues that may arise in implementing the authorities and functions delegated under this order; and

(4) Report to the President periodically concerning all program activities conducted pursuant to this order.

(c) The head of every Federal department and agency assigned functions under this order shall ensure that the performance of these functions is consistent with National Security Council policy and guidelines.

## PART II—PRIORITIES AND ALLOCATIONS

**Sec. 201.** *Delegations of Priorities and Allocations.* (a) The authority of the President conferred by section 101 of the Act to require acceptance and priority performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense, is delegated to the following agency heads:

(1) The Secretary of Agriculture with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer;

(2) The Secretary of Energy with respect to all forms of energy;

(3) The Secretary of Health and Human Services with respect to health resources;

(4) The Secretary of Transportation with respect to all forms of civil transportation;

(5) The Secretary of Defense with respect to water resources; and

(6) The Secretary of Commerce for all other materials, services, and facilities, including construction materials.

(b) The Secretary of Commerce, in consultation with the heads of those departments and agencies specified in subsection 201(a) of this order, shall administer the Defense Priorities and Allocations System ("DPAS") regulations that will be used to implement the authority of the President conferred by section 101 of the Act as delegated to the Secretary of Commerce in subsection 201(a)(6) of this order. The Secretary of Commerce will redelegate to the Secretary of Defense, and the heads of other departments and agencies as appropriate, authority for the priority rating of contracts and orders for all materials, services, and facilities needed in support of programs approved under section 202 of this order. The Secretary of Commerce shall act as appropriate upon Special Priorities Assistance requests in a time frame consistent with the urgency of the need at hand.

(c) The Director, FEMA, shall attempt to resolve issues or disagreements on priorities or allocations between Federal departments or agencies in a time frame consistent with the urgency of the issue at hand and, if not resolved, such issues will be referred to the Assistant to the President for National Security Affairs for final determination.

(d) The head of each Federal department or agency assigned functions under subsection 201(a) of this order, when necessary, shall make the finding required under subsection 101(b) of the Act. This finding shall be submitted for the President's approval through the Assistant to the President for National Security Affairs. Upon such approval the head of the Federal depart-

ment or agency that made the finding may use the authority of subsection 101(a) of the Act to control the general distribution of any material (including applicable services) in the civilian market.

(e) The Assistant to the President for National Security Affairs is hereby delegated the authority under subsection 101(c)(3) of the Act, and will be assisted by the Director, FEMA, in ensuring the coordinated administration of the Act.

**Sec. 202.** *Determinations.* The authority delegated by section 201 of this order may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense:

(a) By the Secretary of Defense with respect to military production and construction, military assistance to foreign nations, stockpiling, outer space, and directly related activities;

(b) By the Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activities; and

(c) By the Director, FEMA, with respect to essential civilian needs supporting national defense, including civil defense and continuity of government and directly related activities.

**Sec. 203.** *Maximizing Domestic Energy Supplies.* The authority of the President to perform the functions provided by subsection 101(c) of the Act is delegated to the Secretary of Commerce, who shall redelegate to the Secretary of Energy the authority to make the findings described in subsection 101(c)(2)(A) that the materials (including equipment), services, and facilities are critical and essential. The Secretary of Commerce shall make the finding described in subsection 101(c)(2)(A) of the Act that the materials (including equipment), services, or facilities are scarce, and the finding described in subsection 101(c)(2)(B) that it is necessary to use the authority provided by subsection 101(c)(1).

**Sec. 204.** *Chemical and Biological Warfare.* The authority of the President conferred by subsection 104(b) of the Act is delegated to the Secretary of Defense. This authority may not be further delegated by the Secretary.

## PART III—EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

**Sec. 301.** (a) *Financing Institution Guarantees.* To expedite or expand production and deliveries or services under government contracts for the procurement of industrial resources or critical technology items essential to the national defense, the head of each Federal department or agency engaged in procurement for the national defense (referred to as "agency head" in this part) and the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) are authorized to guarantee in whole or in part any public or private financing institution, subject to provisions of section 301 of the Act. Guarantees shall be made in consultation with the Department of the Treasury as to the terms and conditions thereof. The Director of the Office of Management and Budget ("OMB") shall be informed when such guarantees are to be made.

(b) *Direct Loan Guarantees.* To expedite or expand production and deliveries or services under government contracts for the procurement of industrial resources or critical technology items essential to the national defense, each agency head is authorized to make direct loan guarantees from funds appropriated to their agency for Title III.

(c) *Fiscal Agent.* Each Federal Reserve Bank is designated and authorized to act, on behalf of any guaranteeing agency, as fiscal agent in the making of guarantee contracts and in otherwise carrying out the purposes of section 301 of the Act.

(d) *Regulations.* The Board of Governors of the Federal Reserve System is authorized, after consultation with heads of guaranteeing departments and agencies, the Secretary of the Treasury, and the Director, OMB, to

prescribe regulations governing procedures, forms, rates of interest, and fees for such guarantee contracts.

**Sec. 302.** *Loans.* (a) To expedite production and deliveries or services to aid in carrying out government contracts for the procurement of industrial resources or a critical technology item for the national defense, an agency head is authorized, subject to the provisions of section 302 of the Act, to submit to the Secretary of the Treasury or the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) applications for loans.

(b) To expedite or expand production and deliveries or services under government contracts for the procurement of industrial resources or critical technology items essential to the national defense, each agency head may make direct loans from funds appropriated to their agency for Title III.

(c) After receiving a loan application and determining that financial assistance is not otherwise available on reasonable terms, the Secretary of the Treasury or the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) may make loans, subject to provisions of section 302 of the Act.

**Sec. 303.** *Purchase Commitments.* (a) In order to carry out the objectives of the Act, and subject to the provisions of section 303 thereof, an agency head is authorized to make provision for purchases of, or commitments to purchase, an industrial resource or a critical technology item for government use or resale.

(b) Materials acquired under section 303 of the Act that exceed the needs of the programs under the Act may be transferred to the National Defense Stockpile, if such transfer is determined by the Secretary of Defense as the National Defense Stockpile Manager to be in the public interest.

**Sec. 304.** *Subsidy Payments.* In order to ensure the supply of raw or non-processed materials from high-cost sources, an agency head is authorized to make subsidy payments, after consultation with the Secretary of the Treasury and the Director, OMB, and subject to the provisions of section 303(c) of the Act.

**Sec. 305.** *Determinations and Findings.* When carrying out the authorities in sections 301 through 303 of this order, an agency head is authorized to make the required determinations, judgments, statements, certifications, and findings, in consultation with the Secretary of Defense, Secretary of Energy or Director, FEMA, as appropriate. The agency head shall provide a copy of the determination, judgment, statement, certification, or finding to the Director, OMB, to the Director, FEMA, and, when appropriate, to the Secretary of the Treasury.

**Sec. 306.** *Strategic and Critical Materials.* (a) The Secretary of the Interior in consultation with the Secretary of Defense as the National Defense Stockpile Manager and subject to the provisions of section 303 of the Act, is authorized to encourage the exploration, development, and mining of critical and strategic materials and other materials.

(b) An agency head is authorized, pursuant to section 303(g) of the Act, to make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources to aid the national defense.

(c) An agency head is authorized, pursuant to section 303(a)(1)(B) of the Act, to make provisions to encourage the exploration, development and mining of critical and strategic materials and other materials.

**Sec. 307.** *Government-owned Equipment.* An agency head is authorized, pursuant to section 303(e) of the Act, to install additional equipment, facilities, processes, or improvements to facilities owned by the government and to install government-owned equipment in industrial facilities owned by private persons.

**Sec. 308.** *Identification of Shortfalls.* Except during periods of national emergency or after a Presidential determination in accordance with sections 301(e)(1)(D)(ii), 302(c)(4)(B), or 303(a)(7)(B) of the Act, no guarantee, loan or other action pursuant to sections 301, 302, and 303 of the Act to correct an industrial shortfall shall be taken unless the shortfall has been identified in the Budget of the United States or amendments thereto.

**Sec. 309.** *Defense Production Act Fund Manager.* The Secretary of Defense is designated the Defense Production Act Fund Manager, in accordance with section 304(f) of the Act, and shall carry out the duties specified in that section, in consultation with the agency heads having approved Title III projects and appropriated Title III funds.

**Sec. 310.** *Critical Items List.* (a) Pursuant to section 107(b)(1)(A) of the Act, the Secretary of Defense shall identify critical components and critical technology items for each item on the Critical Items List of the Commanders-in-Chief of the Unified and Specified Commands and other items within the inventory of weapon systems and defense equipment.

(b) Each agency head shall take appropriate action to ensure that critical components or critical technology items are available from reliable sources when needed to meet defense requirements during peacetime, graduated mobilization, and national emergency. "Appropriate action" may include restricting contract solicitations to reliable sources, restricting contract solicitations to domestic sources (pursuant to statutory authority), stockpiling critical components, and developing substitutes for critical components or critical technology items.

**Sec. 311.** *Strengthening Domestic Capability.* An agency head, in accordance with section 107(a) of the Act, may utilize the authority of Title III of the Act or any other provision of law, in consultation with the Secretary of Defense, to provide appropriate incentives to develop, maintain, modernize, and expand the productive capacities of domestic sources for critical components, critical technology items, and industrial resources essential for the execution of the national security strategy of the United States.

**Sec. 312.** *Modernization of Equipment.* An agency head, in accordance with section 108(b) of the Act, may utilize the authority of Title III of the Act to guarantee the purchase or lease of advance manufacturing equipment and any related services with respect to any such equipment for purposes of the Act.

## PART IV—IMPACT OF OFFSETS

**Sec. 401.** *Offsets.* (a) The responsibilities and authority conferred upon the President by section 309 of the Act with respect to offsets are delegated to the Secretary of Commerce, who shall function as the President's Executive Agent for carrying out this authority.

(b) The Secretary of Commerce shall prepare the annual report required by section 309(a) of the Act in consultation with the Secretaries of Defense, Treasury, Labor, State, the United States Trade Representative, the Arms Control and Disarmament Agency, the Director of Central Intelligence, and the heads of other departments and agencies as required. The heads of Federal departments and agencies shall provide the Secretary of Commerce with such information as may be necessary for the effective performance of this function.

(c) The offset report shall be subject to the normal interagency clearance process conducted by the Director, OMB, prior to the report's submission by the President to Congress.

## PART V—VOLUNTARY AGREEMENTS AND ADVISORY COMMITTEES

**Sec. 501.** *Appointments.* The authority of the President under sections 708(c) and (d) of the Act is delegated to the heads of each Federal department or agency, except that, insofar as that authority relates to section 101 of the Act, it is delegated only to the heads of each Federal department or agency assigned functions under section 201(a) of this order. The authority

delegated under this section shall be exercised pursuant to the provisions of section 708 of the Act, and copies and the status of the use of such delegations shall be furnished to the Director, FEMA.

**Sec. 502.** *Advisory Committees.* The authority of the President under section 708(d) of the Act and delegated in section 501 of this order (relating to establishment of advisory committees) shall be exercised only after consultation with, and in accordance with, guidelines and procedures established by the Administrator of General Services.

## PART VI—EMPLOYMENT OF PERSONNEL

**Sec. 601.** *National Defense Executive Reserve.* (a) In accordance with section 710(e) of the Act, there is established in the Executive Branch a National Defense Executive Reserve ("NDER") composed of persons of recognized expertise from various segments of the private sector and from government (except full-time federal employees) for training for employment in executive positions in the Federal Government in the event of an emergency that requires such employment.

(b) The head of any department or agency may establish a unit of the NDER in the department or agency and train members of that unit.

(c) The head of each department or agency with an NDER unit is authorized to exercise the President's authority to employ civilian personnel in accordance with section 703(a) of the Act when activating all or a part of its NDER unit. The exercise of this authority shall be subject to the provisions of subsections 601(d) and (e) of this order and shall not be redelegated.

(d) The head of a department or agency may activate an NDER unit, in whole or in part, upon the written determination that an emergency affecting the national security or defense preparedness of the United States exists and that the activation of the unit is necessary to carry out the emergency program functions of the department or agency.

(e) At least 72 hours prior to activating the NDER unit, the head of the department or agency shall notify, in writing, the Assistant to the President for National Security Affairs of the impending activation and provide a copy of the determination required under subsection 601(d) of this order

(f) The Director, FEMA, shall coordinate the NDER program activities of departments and agencies in establishing units of the Reserve; provide for appropriate guidance for recruitment, training, and activation; and issue necessary rules and guidance in connection with the program.

(g) This order suspends any delegated authority, regulation, or other requirement or condition with respect to the activation of any NDER unit, in whole or in part, or appointment of any NDER member that is inconsistent with the authorities delegated herein, provided that the aforesaid suspension applies only as long as sections 703(a) and 710(e) of the Act are in effect.

**Sec. 602.** *Consultants.* The head of each department or agency assigned functions under this order is delegated authority under sections 710(b) and (c) of the Act to employ persons of outstanding experience and ability without compensation and to employ experts, consultants, or organizations. The authority delegated by this section shall not be redelegated.

## PART VII—LABOR SUPPLY

**Sec. 701.** *Secretary of Labor.* The Secretary of Labor, identified in this section as the Secretary, shall:

(a) Collect, analyze, and maintain data needed to make a continuing appraisal of the nation's labor requirements and the supply of workers for purposes of national defense. All agencies of the government shall cooperate with the Secretary in furnishing information necessary for this purpose, to the extent permitted by law;

(b) In response to requests from the head of a Federal department or agency engaged in the procurement for national defense, consult with and advise that department or agency with respect to (1) the effect of contemplated

actions on labor supply and utilization, (2) the relation of labor supply to materials and facilities requirements, and (3) such other matters as will assist in making the exercise of priority and allocations functions consistent with effective utilization and distribution of labor;

(c) Formulate plans, programs, and policies for meeting defense and essential civilian labor requirements;

(d) Project skill shortages to facilitate meeting defense and essential civilian needs and establish training programs;

(e) Determine the occupations and skills critical to meeting the labor requirements of defense and essential civilian activities and, with the assistance of the Secretary of Defense, the Director of Selective Service, and such other persons as the Director, FEMA, may designate, develop policies regulating the induction and deferment of personnel for the armed services, except for civilian personnel in the reserves; and

(f) Administer an effective labor-management relations policy to support the activities and programs under this order with the cooperation of other Federal agencies, including the National Labor Relations Board and the Federal Mediation and Conciliation Service.

## PART VIII—DEFENSE INDUSTRIAL BASE INFORMATION AND REPORTS

**Sec. 801.** *Foreign Acquisition of Companies.* The Secretary of the Treasury, in cooperation with the Department of State, the Department of Defense, the Department of Commerce, the Department of Energy, the Department of Agriculture, the Attorney General, and the Director of Central Intelligence, shall complete and furnish a report to the President and then to Congress in accordance with the requirements of section 721(k) of the Act concerning foreign efforts to acquire United States companies involved in research, development, or production of critical technologies and industrial espionage activities directed by foreign governments against private U.S. companies.

**Sec. 802.** *Defense Industrial Base Information System.* (a) The Secretary of Defense and the heads of other appropriate Federal departments and agencies, as determined by the Secretary of Defense, shall establish an information system on the domestic defense industrial base in accordance with the requirements of section 722 of the Act.

(b) In establishing the information system required by subsection (a) of this order, the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate Federal departments and agencies, as determined by the Secretary of Defense in consultation with the Secretary of Commerce, shall consult with each other for the purposes of performing the duties listed in section 722(d)(1) of the Act.

(c) The Secretary of Defense shall convene a task force consisting of the Secretary of Commerce and the Secretary of each military department and the heads of other appropriate Federal departments and agencies, as determined by the Secretary of Defense in consultation with the Secretary of Commerce, to carry out the duties under section 722(d)(2) of the Act.

(d) The Secretary of Defense shall report to Congress on a strategic plan for developing a cost-effective, comprehensive information system capable of identifying on a timely, ongoing basis vulnerability in critical components and critical technology items. The plans shall include an assessment of the performance and cost-effectiveness of procedures specified in section 722(b) of the Act.

(e) The Secretary of Commerce, acting through the Bureau of the Census, shall consult with the Secretary of Defense and the Director, FEMA, to improve the usefulness of information derived from the Census of Manufacturers in carrying out section 722 of the Act.

(f) The Secretary of Defense shall perform an analysis of the production base for not more than two major weapons systems of each military depart-

ment in establishing the information system under section 722 of the Act. Each analysis shall identify the critical components of each system.

(g) The Secretary of Defense, in consultation with the Secretary of Commerce, and the heads of other Federal departments and agencies as appropriate, shall issue a biennial report on critical components and technology in accordance with section 722(e) of the Act.

### PART IX—GENERAL PROVISIONS

**Sec. 901.** *Definitions.* In addition to the definitions in section 702 of the Act, the following definitions apply throughout this order:

(a) "Civil transportation" includes movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within the United States, its territories and possessions, and the District of Columbia, and, without limitation, related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities. However, "civil transportation" shall not include transportation owned or controlled by the Department of Defense, use of petroleum and gas pipelines, and coal slurry pipelines used only to supply energy production facilities directly. As applied herein, "civil transportation" shall include direction, control, and coordination of civil transportation capacity regardless of ownership.

(b) "Energy" means all forms of energy including petroleum, gas (both natural and manufactured), electricity, solid fuels (including all forms of coal, coke, coal chemicals, coal liquification, and coal gasification), and atomic energy, and the production, conservation, use, control, and distribution (including pipelines) of all of these forms of energy.

(c) "Farm equipment" means equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources.

(d) "Fertilizer" means any product or combination of products that contain one or more of the elements—nitrogen, phosphorus, and potassium—for use as a plant nutrient.

(e) "Food resources" means all commodities and products, simple, mixed, or compound, or complements to such commodities or products, that are capable of being ingested by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. "Food resources" also means all starches, sugars, vegetable and animal or marine fats and oils, cotton, tobacco, wool, mohair, hemp, flax fiber, and naval stores, but does not mean any such material after it loses its identity as an agricultural commodity or agricultural product.

(f) "Food resource facilities" means plants, machinery, vehicles (including on-farm), and other facilities required for the production, processing, distribution, and storage (including cold storage) of food resources, livestock and poultry feed and seed, and for the domestic distribution of farm equipment and fertilizer (excluding transportation thereof).

(g) "Functions" include powers, duties, authority, responsibilities, and discretion.

(h) "Head of each Federal department or agency engaged in procurement for the national defense" means the heads of the Departments of Defense, Energy, and Commerce, as well as those departments and agencies listed in Executive Order No. 10789.

(i) "Heads of other appropriate Federal departments and agencies" as used in part VIII of this order means the heads of such other Federal agencies and departments that acquire information or need information with respect to making any determination to exercise any authority under the Act.

(j) "Health resources" means materials, facilities, health supplies, and equipment (including pharmaceutical, blood collecting and dispensing supplies, biological, surgical textiles, and emergency surgical instruments and supplies) required to prevent the impairment of, improve, or restore the physical and mental health conditions of the population.

(k) "Metals and minerals" means all raw materials of mineral origin (excluding energy) including their refining, smelting, or processing, but excluding their fabrication.

(l) "Strategic and Critical Materials" means materials (including energy) that (1) would be needed to supply the military, industrial, and essential civilian needs of the United States during a national security emergency, and (2) are not found or produced in the United States in sufficient quantities to meet such need and are vulnerable to the termination or reduction of the availability of the material.

(m) "Water resources" means all usable water, from all sources, within the jurisdiction of the United States, which can be managed, controlled, and allocated to meet emergency requirements.

**Sec. 902.** *General.* (a) Except as otherwise provided in subsection 902(c) of this order, the authorities vested in the President by title VII of the Act may be exercised and performed by the head of each department and agency in carrying out the delegated authorities under the Act and this order.

(b) The authorities which may be exercised and performed pursuant to subsection 902(a) of this order shall include (1) the power to redelegate authorities, and to authorize the successive redelegation of authorities, to departments and agencies, officers, and employees of the government, and (2) the power of subpoena with respect to authorities delegated in parts II, III, and IV of this order, provided that the subpoena power shall be utilized only after the scope and purpose of the investigation, inspection, or inquiry to which the subpoena relates have been defined either by the appropriate officer identified in subsection 902(a) of this order or by such other person or persons as the officer shall designate.

(c) Excluded from the authorities delegated by subsection 902(a) of this order are authorities delegated by parts V, VI, and VIII of this order and the authority with respect to fixing compensation under section 703(a) of the Act.

**Sec. 903.** *Authority.* All previously issued orders, regulations, rulings, certificates, directives, and other actions relating to any function affected by this order shall remain in effect except as they are inconsistent with this order or are subsequently amended or revoked under proper authority. Nothing in this order shall affect the validity or force of anything done under previous delegations or other assignment of authority under the Act.

**Sec. 904.** *Effect on other Orders.* (a) The following are superseded or revoked:

(1) Section 3, Executive Order No. 8248 of September 8, 1939, (4 FR 3864).

(2) Executive Order No. 10222 of March 8, 1951 (16 FR 2247).

(3) Executive Order No. 10480 of August 14, 1953 (18 FR 4939).

(4) Executive Order No. 10647 of November 28, 1955 (20 FR 8769).

(5) Executive Order No. 11179 of September 22, 1964 (29 FR 13239).

(6) Executive Order No. 11355 of May 26, 1967 (32 FR 7803).

(7) Sections 7 and 8, Executive Order No. 11912 of April 13, 1976 (41 FR 15825, 15826–27).

(8) Section 3, Executive Order No. 12148 of July 20, 1979 (44 FR 43239, 43241).

(9) Executive Order No. 12521 of June 24, 1985 (50 FR 26335).

(10) Executive Order No. 12649 of August 11, 1988 (53 FR 30639).

(11) Executive Order No. 12773 of September 26, 1991 (56 FR 49387), except that part of the order that amends section 604 of Executive Order 10480.

(b) Executive Order No. 10789 of November 14, 1958, is amended by deleting "and in view of the existing national emergency declared by Proclamation No. 2914 of December 16, 1950," as it appears in the first sentence.

(c) Executive Order No. 11790, as amended, relating to the Federal Energy Administration Act of 1974, is amended by deleting "Executive Order No. 10480" where it appears in section 4 and substituting this order's number.

(d) Subject to subsection 904(c) of this order, to the extent that any provision of any prior Executive order is inconsistent with the provisions of this order, this order shall control and such prior provision is amended accordingly.

**Sec. 905.** *Judicial Review.* This order is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
*June 3, 1994.*

[FR Doc. 94-14027
Filed 6-6-94; 10:45 am]
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Tuesday, June 7, 1994

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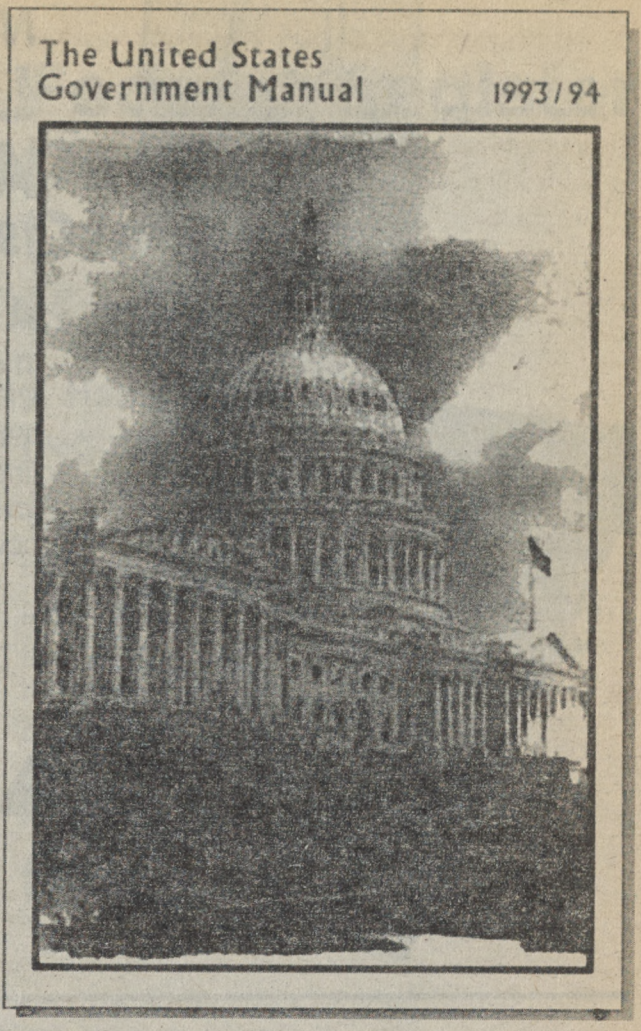
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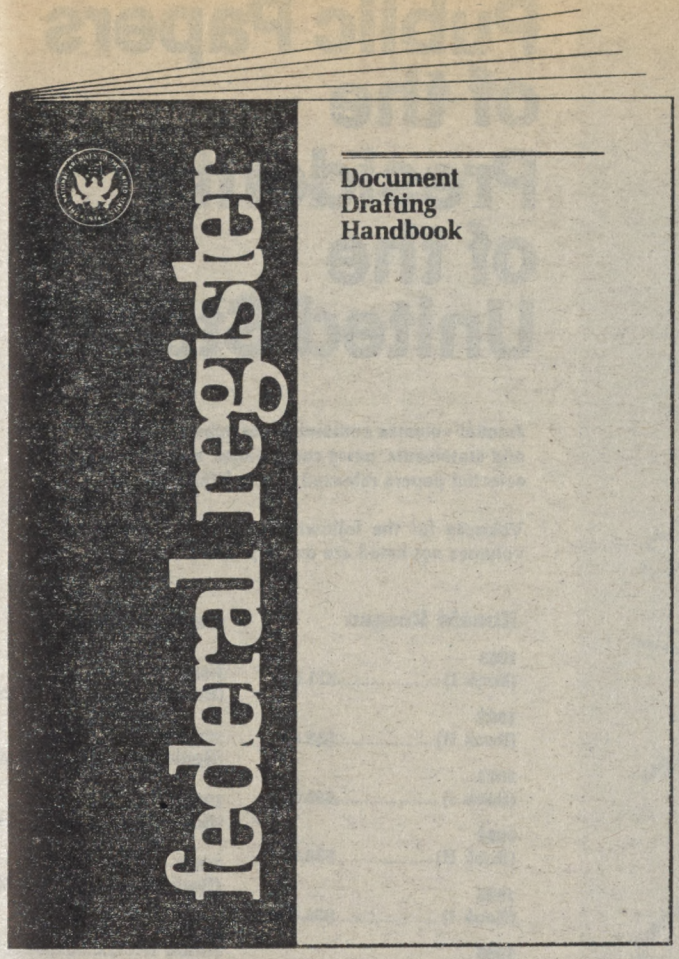
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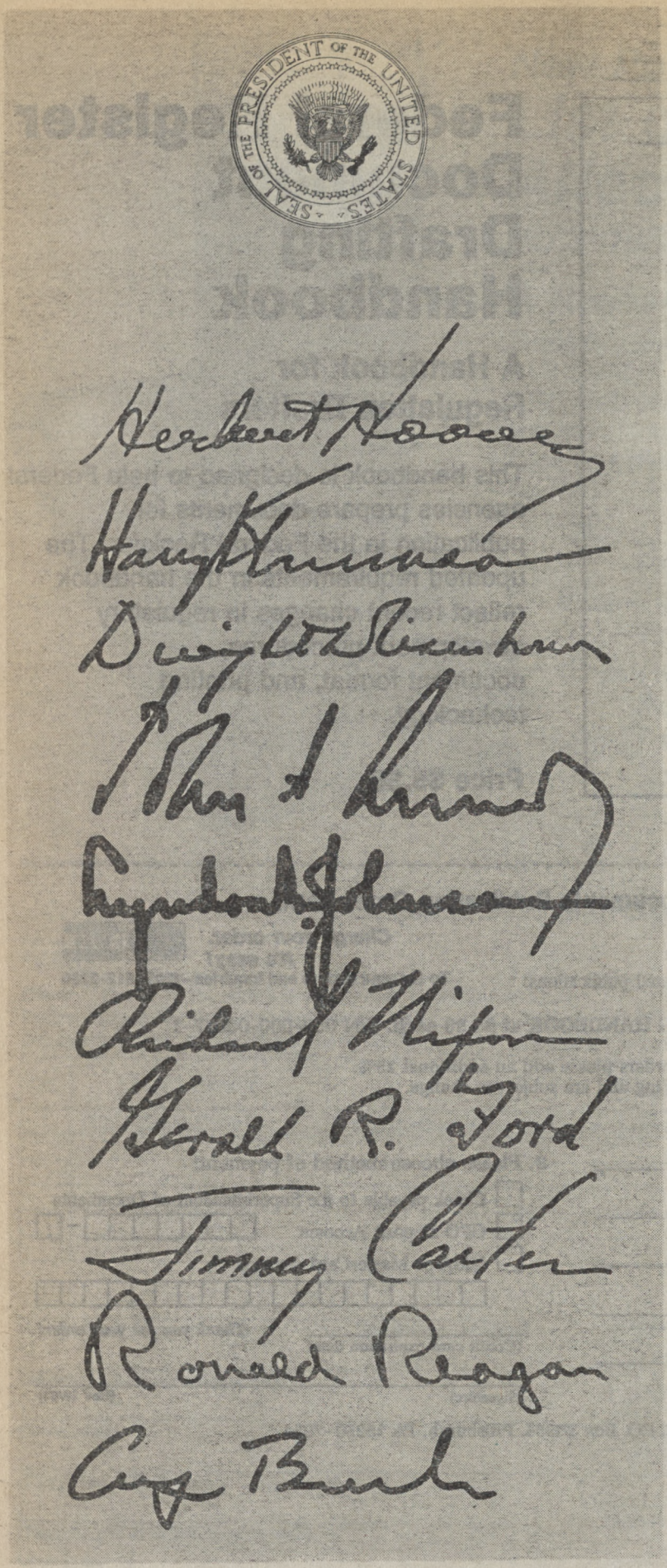
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