

# Federal Register

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### WASHINGTON, DC

#### (TWO BRIEFINGS)

- WHEN:** January 25 at 9:00 am and 1:30 pm  
**WHERE:** Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538



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# Rules and Regulations

Federal Register

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

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 967

[Docket No. FV94-967-3FR]

#### Suspension of Marketing Order 967; Celery Grown in Florida

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

**ACTION:** Suspension order.

**SUMMARY:** This rule suspends Federal Marketing Order No. 967 for celery grown in Florida, and rules and regulations implemented thereunder, through December 31, 1997. The suspension includes budget, assessment, and volume control rules which were previously established for the 1994-95 marketing season. This rule is in response to a recommendation for suspension made by the Florida Celery Committee (committee), the agency responsible for local administration of the order. The committee's recommendation is based on the belief that loss of market share and a reduction in the number of producers and handlers has diminished the need for regulating Florida celery.

**EFFECTIVE DATE:** January 12, 1995, through December 31, 1997.

**FOR FURTHER INFORMATION CONTACT:**

William G. Pimental, Southeast Marketing Field Office, P.O. Box 2276, Winter Haven, Florida 33883-2276, telephone 813-299-4770, or Mark Slupek, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-205-2830.

**SUPPLEMENTARY INFORMATION:** This action is issued under Marketing Agreement and Order No. 967, both as amended [7 CFR part 967], regulating the handling of celery grown in Florida,

hereinafter referred to as the order. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act. This suspension action is being taken under the provisions of section 8c(16)(A) of the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This suspension order has been reviewed under Executive Order 12778, Civil Justice Reform. The order suspends Marketing Order No. 967 for celery grown in Florida, and rules and regulations implemented thereunder, through December 31, 1997. Administrative budget, assessment, and volume control rules which were previously established for the 1994-95 marketing season, which began August 1, 1994, also are suspended. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

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

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

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

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are six handlers of Florida celery who are subject to regulation under the marketing order and five celery producers within the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$500,000. Small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of these Florida celery handlers and producers may be classified as small entities.

Marketing Order No. 967 has been in effect since 1965. The order provides for the establishment of grade, size, container and inspection requirements, as well as volume regulation. In addition, the order authorizes production research, marketing research, and development projects. It also provides for reporting and recordkeeping requirements on affected handlers. The production and marketing season runs from early November through late June.

The committee held a teleconference on November 22, 1994, and unanimously recommended suspension of the marketing order through December 31, 1997. The committee's recommendation was based on the fact that the number of growers and handlers had declined to the lowest number in 20 years. Only five growers remain. There are six handlers. The suspension will eliminate the continued expense of administering the marketing order and will relieve the industry of assessments. With the economic conditions the industry is facing, this reduction in costs should be beneficial.

The authority to implement grade, size, container and inspection requirements has not been used for years. The authorities that were being utilized were the provisions for research and development and volume regulation. However, the Committee believes that the program is no longer effectively helping market Florida celery.

The volume control limitations placed on the quantity of Florida celery handled for fresh shipment have not restricted the quantity of Florida celery actually produced or shipped to fresh markets in recent years, because production and shipments have been less than the marketable quantities established. Thus, regulating volume has been inconsequential.

The committee recommended suspension, not termination, of the marketing order to allow the industry an opportunity to recover. Florida's share of the domestic celery market has declined, but committee members remain optimistic that, in time, the Florida celery industry may regain its former position. If the industry should recover, the committee would like to maintain the option of reactivating the Federal marketing order.

Under the suspension, the industry will be able to monitor the status of celery production in Florida for the next three marketing seasons. A meeting will be held prior to December 1997, to discuss the condition of the industry. At that time, a determination will be made to recommend reactivation, continuation of the suspension, or termination of the order. The recommendation would require the approval of the Secretary. If conditions improve enough to convince the industry that the order would be effective before the conclusion of the suspension period, a recommendation could be made to the Secretary to remove the suspension at that time.

Therefore, based on the foregoing considerations, it is found that Federal Marketing Order No. 967, and the rules and regulations issued thereunder, do not tend to effectuate the declared policy of the Act. This action suspends, through December 31, 1997, the provisions of Federal Marketing Order No. 967 and the rules and regulations issued thereunder, including but not limited to, the:

- (1) Provisions of the order dealing with the establishment and responsibilities of the committee and the administration of the order;
- (2) Any rule or regulation, including a budget and assessment rule [59 FR 52411, October 18, 1994] and volume control regulations [59 FR 49571, September 29, 1994] issued for the 1994-95 marketing season, and research and development projects;
- (3) Provisions of the order dealing with expenses and the collection of assessments; and
- (4) Information collection and reporting requirements (In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), such

requirements have been approved by the Office of Management and Budget and assigned OMB Control No. 0581-0145).

During the suspension period, all committee members and their alternates will serve as trustees. The trustees will be responsible for overseeing the administrative affairs of the order. This includes completing the committee's unfinished business, ensuring termination of all outstanding agreements, contracts, and the payment of all obligations. The trustees will also be responsible for safeguarding program assets, and arranging for a financial audit to be conducted. All such actions by the trustees during the period of suspension are subject to the approval of the Secretary. Those designated as trustees are: Mr. Pat Ferlise, Chairperson, Mr. Thomas L. Brown, Vice-Chairperson, Mr. L. E. Duff, Secretary/Treasurer, Mr. Tony Woodham, Mr. David L. Young, Mr. F. S. Duda, Mr. Charles E. Allison, Mr. Glenn R. Rogers, Mr. W. Rex Clonts, Sr., Mr. W. Rex Clonts, Jr., Mr. Felix Ferlise, Mr. Henry M. Daniels, Mr. Milton Ferlise, Mr. Dan Duda, Mr. Francis J. McCarthy, Mr. Walter Duda, Mr. Bill Grindstaff. The trustees shall continue in their capacity as long as they are eligible to serve as provided in § 967.26 of the order, and until the order is reactivated or terminated, unless they are discharged by the Secretary.

The remainder of the reserves, after immediate expenses are paid, will be held by the trustees to be used to cover unforeseen, outstanding expenses obligated by the committee. Such funds could also be used by the trustees to pay for necessary start-up costs should the order, at the determination of the Secretary, be reactivated. When a final determination is made regarding the order, any remaining funds will be used or disbursed in accordance with the appropriate order provisions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure with respect to this action because: (1) This action relieves restrictions on handlers by suspending the requirements regulating the handling of celery pursuant to Marketing Order No. 967; (2) handlers are aware of this action, which was discussed and recommended at a meeting held by the committee; and (3) no useful purpose would be served

by delaying the suspension of the marketing order.

#### List of Subjects in 7 CFR Part 967

Marketing Agreements, Celery, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority of 7 U.S.C. 601-674, 7 CFR Part 967, is suspended effective January 12, 1995 through December 31, 1997.

Dated: January 6, 1995.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 95-727 Filed 1-11-95; 8:45 am]

BILLING CODE 3410-02-P

#### Rural Utilities Service

##### 7 CFR Part 1773

##### Correction of Typographical Error

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule correction of typographical error.

**SUMMARY:** This document corrects a typographical error in a final rule published by the Rural Utilities Service (RUS) on December 27, 1994, at 59 FR 66438. This regulation revised nomenclature in agency regulations to reflect the reorganization of the Department of Agriculture mandated by recent legislation.

**EFFECTIVE DATE:** December 27, 1994.

**FOR FURTHER INFORMATION CONTACT:** Sue Arnold, Financial Analyst, Program support Staff, Rural Utilities Service, room 2234, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number 202-720-0736; FAX 202-720-4120.

**SUPPLEMENTARY INFORMATION:** This correction affects revisions to definitions in 7 CFR Part 1773. The published document, in the second column of page 66440 cites the incorrect section of part 1773. The definitions revised are actually in section 1773.2. To avoid confusion, RUS is correcting this error.

Therefore, 7 CFR Part 1773 is corrected as follows:

1. The authority citation for part 1773 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*; Pub.L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. In the second column of page 66440, in amendatory instruction number 25 "1773.3" is corrected to read "1773.2".

Dated: January 9, 1995.

**Wally Beyer,**

*Administrator, Rural Utilities Service.*

[FR Doc. 95-788 Filed 1-11-95; 8:45 am]

BILLING CODE 3410-15-P

**Animal and Plant Health Inspection Service**

**9 CFR Part 78**

[Docket No. 94-009-3]

**Brucellosis in Cattle; State and Area Classifications; California**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of California from Class Free to Class A. We have determined that California no longer meets the standards for Class Free status. The interim rule was necessary to impose certain restrictions on the interstate movement of cattle from California.

**EFFECTIVE DATE:** February 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during January. Telephone: (301) 436-4918 (Hyattsville); (301) 734-4918 (Riverdale).

**SUPPLEMENTARY INFORMATION:**

**Background**

In an interim rule effective and published in the **Federal Register** on September 16, 1994 (59 FR 47533-47534, Docket No. 94-009-2), we amended the brucellosis regulations in 9 CFR part 78 by removing California from the list of Class Free States in § 78.41(a) and adding it to the list of Class A States in § 78.41(b).

Comments on the interim rule were required to be received on or before November 15, 1994. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act,

Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

**List of Subjects in 9 CFR Part 78**

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

**PART 78—BRUCELLOSIS**

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78.41 and that was published at 59 FR 47533-47534 on September 16, 1994.

**Authority:** 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 6th day of January 1995.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-807 Filed 1-11-95; 8:45 am]

BILLING CODE 3410-34-P

**9 CFR Part 97**

[Docket No. 94-131-1]

**Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning overtime services provided by employees of Veterinary Services by adding a commuted traveltime allowance for Helena, Montana. Commuted traveltime allowances are the periods of time required for Veterinary Services employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Veterinary Services employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for this location.

**EFFECTIVE DATE:** January 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Louise R. Lothery, Director, Resource Management Support, Veterinary Services, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20783. The

telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during January. Telephone: (301) 436-7517 (Hyattsville); (301) 734-7517 (Riverdale).

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal byproducts, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of Veterinary Services (VS) on a Sunday or holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by adding a commuted traveltime allowance for Helena, Montana. The amendment is set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

**Effective Date**

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

**Executive Order 12866 and Regulatory Flexibility Act**

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The number of requests for overtime services of a VS employee at the location affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

**Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 9 CFR Part 97**

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

Accordingly, 9 CFR part 97 is amended as follows:

**PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS**

1. The authority citation for part 97 continues to read as follows:

**Authority:** 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 97.2 is amended by adding in the table, in alphabetical order, under Montana, the following entry to read as follows:

**§ 97.2 Administrative instruction prescribing commuted traveltime.**

\* \* \* \* \*

**COMMUTED TRAVELTIME ALLOWANCES**  
[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
Montana:			
	*	*	*
Helena . . . . .		1	
	*	*	*

Done in Washington, DC, this 6th day of January 1995.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-808 Filed 1-11-95; 8:45 am]

BILLING CODE 3410-34-P

**9 CFR Part 112**

[Docket No. 92-098-3]

**Viruses, Serums, Toxins, and Analogous Products; Packaging and Labeling**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule; postponement of effective date.

**SUMMARY:** This document postpones the effective date, upon which the final rule on the packaging and labeling of veterinary biological products takes effect, from February 21, 1995, to August 19, 1995. Upon the effective date, the final rule prohibits the repackaging and relabeling, for further sale or distribution, of final containers of product that are imported or that are packaged at licensed establishments in cartons or other containers. The extension of the effective date is necessary in order to allow a sufficient transition period and to ensure the continued availability of single-dose veterinary biologics.

**EFFECTIVE DATE:** The effective date of the final rule is postponed from February 21, 1995, to August 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, PO Drawer 810, Riverdale, MD

20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during January 1995. Telephone: (301) 436-8245 (Hyattsville); (301) 734-8245 (Riverdale).

**SUPPLEMENTARY INFORMATION:** Under authority of the Virus-Serum-Toxin Act (21 U.S.C. 151-159), as amended by the Food Security Act of 1985, the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, published a proposed rule on April 28, 1993 (58 FR 25786-25788, Docket No. 92-098-1) on the packaging and labeling of veterinary biologics. During the 60-day comment period, thirty-nine comments were received. Thirty-six comments were in support of the rule; three were not. The final rule was published on August 24, 1994 (59 FR 43441-43445, Docket No. 92-098-2). Unless otherwise exempted, the final rule prohibits the repackaging and relabeling, for further sale or distribution, of final containers of veterinary biologics that are imported or that are prepared in licensed establishments. The effective date of the final rule that was published on August 24, 1994, was to have been 180 days after the date of publication or February 21, 1995.

Since the publication of the final rule, APHIS has received a large number of (in excess of 400) letters and numerous inquiries from congresspersons, a State governor, distributors, consumers, and representatives of kennel clubs and humane societies expressing concern that implementation of the final rule would result in a shortage of single-dose animal vaccines which could be sold without restriction. This shortage, it was claimed, would result in the failure to vaccinate a large number of animals that are currently vaccinated by owners. Based on these letters and inquiries and its own monitoring efforts, APHIS has determined that additional time is necessary to allow for coordination between producers and distributors of veterinary biologics in order to provide distributors and consumers with fully packaged and labeled single-dose biological products.

Therefore, the effective date of the final rule that was published at 59 FR 43441-43445, August 24, 1994, Docket No. 92-098-2, is postponed until August 19, 1995.

**Authority:** 21 U.S.C. 151-159; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 6th day of January 1995.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-806 Filed 1-11-95; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 94-ANE-59; Amendment 39-9113; AD 95-01-02]

#### **Airworthiness Directives; Hartzell Model HC-B4 Series Propellers Installed on Mitsubishi MU-2 Series Aircraft**

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

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

**SUMMARY:** This amendment supersedes three existing airworthiness directives (AD), applicable to Hartzell Model HC-B4TN-5(D,G,J)L/LT10282(B,K)-5.3R and HC-B4TN-5(D,G,J)L/LT10282N(B,K)-5.3R propellers installed on Mitsubishi MU-2 series aircraft. These AD's currently require replacement of existing LT10282(B,K)-5.3R propeller blades with LT10282N(B,K)-5.3R improved "N" configuration propeller blades, and repetitive inspection and rework when required of the inner hub arm bore. This amendment requires new repair limits, shot peening procedures, and retirement at 10,000 hours time in service for the "N" configuration blades. Additionally, this action requires replacement of existing propeller hubs with new improved fatigue strength steel hubs and requires inspection, and specified rework as necessary, of the new steel hubs at a repetitive interval of 3,000 hours time in service. This amendment is prompted by a determination that the current hub design and blade repair limits do not adequately protect against initiation of fatigue cracks in the propeller hub arm bore and do not prevent the resonant speed of the propeller from shifting into the permitted ground idle operating range. The actions specified by this AD are intended to prevent initiation of fatigue cracks in propeller assemblies and subsequent progression to propeller failure, with departure of the blade, or hub arm and blade, that may result in loss of aircraft control.

**DATES:** Effective January 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 27, 1995.

Comments for inclusion in the Rules Docket must be received on or before March 13, 1995.

**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-59, 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, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Room 232, Des Plaines, IL 60018; telephone (708) 294-7031, fax (708) 294-7834.

**SUPPLEMENTARY INFORMATION:** Airworthiness directive (AD) 93-01-09, Amendment 39-8463, effective April 20, 1993, applicable to Hartzell Model HC-B4TN-5(D,G,J)L/LT10282(B,K)-5.3R propellers installed on Mitsubishi MU-2 series aircraft was published in the **Federal Register** on March 26, 1993 (58 FR 16347). That action was prompted by three reports of propeller blades separating during flight. The manufacturer's investigation of the failed blades revealed that fatigue cracks could initiate at the radius end of the blade bearing bore. That condition, if not corrected, can result in fatigue cracks initiating and progressing to failure resulting in departure of the blade and possible loss of aircraft control.

That AD requires initial and repetitive inspections for fatigue cracks at the blade bearing bore. All affected propeller blades showing evidence of cracks or propeller blades not meeting acceptable rework criteria are required to be replaced with serviceable blades prior to further flight. Additionally, as a terminating action to the repetitive inspections, AD 93-01-09 requires replacement of existing LT10282(B,K)-5.3R propeller blades with LT10282N(B,K)-5.3R improved "N" configuration propeller blades at the next overhaul, or within 15 months of

the effective date of that AD (July 31, 1994), whichever occurs first. Propeller blades modified to the "N" configuration have design improvements in the blade bearing bore that reduce the susceptibility to corrosion and localized stresses. The modified blades also have additional thickness added to the blade inboard stations to reduce operating stresses. The FAA determined that long term continued operational safety would be better assured by actual modification of the propeller to remove the source of the problem rather than continuing with repetitive inspections.

On April 28, 1993, the FAA issued priority letter AD 93-09-04, applicable to both Hartzell Model HC-B4TN-5(D,G,J)L/LT10282(B,K)-5.3R and Model HC-B4TN-5(D,G,J)L/LT10282N(B,K)-5.3R propellers installed on Mitsubishi Model MU-2B-60 aircraft. That AD was published in the **Federal Register** on July 22, 1993 (58 FR 39139). That AD action was prompted by two reports of propeller hub arm assembly fatigue failures and subsequent hub arm and blade separation from aircraft in flight. Preliminary data indicated that fatigue cracks can originate in the propeller hub arm assembly.

That AD requires initial and repetitive removals from service of affected propeller hub assemblies for inspection and specified rework procedures before returning to service. That AD was an interim action until more data became available on the cause of propeller hub arm assembly failures.

On June 10, 1993, the FAA issued priority letter AD 93-12-01, also applicable to both Hartzell Model HC-B4TN-5(D,G,J)L/LT10282(B,K)-5.3R and Model HC-B4TN-5(D,G,J)L/LT10282N(B,K)-5.3R propellers installed on MU-2B-26A, -36A, and -40 aircraft. That AD was published in the **Federal Register** on September 29, 1993 (58 FR 50840). That action was prompted by a report of a hub assembly with a crack indication in the hub arm that was found during the inspection and rework required by AD 93-09-04. In addition, although not stated in AD 93-12-01, the FAA based AD 93-12-01 on flight strain survey investigations. Airworthiness Directive 93-12-01 cites the same safety concerns and requirements as AD 93-09-04 and was also an interim action until more data became available on the cause of propeller hub arm assembly failures.

Since the issuance of AD 93-09-04 and AD 93-12-01, the FAA determined that fretting can cause a fatigue crack to initiate in the propeller hub arms of the affected propellers. The fatigue crack

initiates in the propeller inner hub arm bore. The fretting fatigue can be caused by a high stress loading condition that occurs two times per revolution when operating in a propeller ground resonance condition known as the "reactionless mode." The propeller resonance condition can be experienced in MU-2 series aircraft when Hartzell HC-B4 series propellers, with blades at or near the previous thickness repair limits, are operated at the originally certified engine ground idle speed when a quartering tail wind is present.

The FAA has also issued AD 94-11-04, Amendment 39-8920, effective on June 10, 1994, applicable to Mitsubishi Model MU-2B-26A, -36A, -40, -60, and MU-2B-36 aircraft Modified by Supplemental Type Certificate (STC) SA2413SW. That AD restricts the engine ground idle speed to a range of 76.5 percent to 78.5 percent to prevent the possibility of operating the propeller too close to the ground idle resonant speed. The requirements of AD 94-11-04 are not affected by this action.

Since the issuance of AD's 93-01-09, 93-09-04, and 93-12-01, the manufacturer has developed an improved fatigue strength steel propeller hub that has a compressive rolled internal bearing bore in the hub arms. Additionally, to further assure propeller operation will not occur in the reactionless mode, the manufacturer has developed new repair limits and shot peening procedures, and has established a retirement life limit of 10,000 hours time in service for the "N" configuration propeller blades. This AD will mandate phase in of the new steel hub design and the new "N" configuration propeller blade repair limits, shot peening procedures, and retirement life.

The FAA has reviewed and approved the technical contents of the following service documents:

Hartzell Alert Service Bulletins (ASB's) No. A182A and A183A both dated March 11, 1994, that describe procedures for installation, inspection, and rework as required for an improved fatigue strength steel hub applicable to propellers installed on Mitsubishi MU-2B-60 aircraft and MU-2B-26A, -36A, -40 or other MU-2 model aircraft, respectively; and

Hartzell ASB No. A188 dated February 25, 1994, applicable to affected propellers installed on all Mitsubishi MU-2 series aircraft that describes new repair limits and procedures for shot peening the LT10282N(B,K)-5.3R blade surfaces for optimum service life when installed on Mitsubishi MU-2 series aircraft.

Since an unsafe condition has been identified that is likely to exist or

develop on other propellers of this same type design, the FAA is superseding AD's 93-01-09, 93-09-04, and 93-12-01; and adopting a new AD which requires replacement of any remaining LT10282(B,K)-5.3R propeller blades with LT10282N(B,K)-5.3R improved "N" configuration propeller blades, requires shot peening of all "N" blades, and establishes a new life limit of 10,000 hours time in service for "N" blades used on Mitsubishi MU-2 series aircraft; and requires replacement of Part Number (P/N) 840-139 or P/N 840-91 propeller hubs with new improved fatigue strength steel hubs which require inspection, and specified rework as necessary, at a repetitive interval of 3,000 hours time in service. The actions are required to be accomplished in accordance with the alert service bulletins 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-59." 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 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 removing amendment 39-8463 (58 FR 16347, March 26, 1993); amendment 39-8583 (58 FR 39139, July 22, 1993); and amendment 39-8642 (58 FR 50840, September 29, 1993); and by adding a

new airworthiness directive to read as follows:

**95-01-02 Hartzell Propeller Inc.:**

Amendment 39-9113. Docket 94-ANE-59. Supersedes AD 93-01-09, Amendment 39-8463; AD 93-09-04, Amendment 39-8583; and AD 93-12-01, Amendment 39-8642.

**Applicability:** Hartzell Propeller Inc. Models HC-B4TN-5(D,G,J)/LT10282(B,K)-5.3R, HC-B4TN-5(D,G,J)/LT10282N(B,K)-5.3R, and HC-B4TN-5(D,G,J)/LT10282NS(B,K)-5.3R propellers installed on Mitsubishi MU-2B-26A, -36A, -40, -60; MU-2B-30 Modified by Supplemental Type Certificate (STC) SA336GL-D & SA339GL-D; MU-2B-36 Modified by SA2413SW; and any other MU-2 Series aircraft which have the affected propellers installed.

**Note:** The parentheses indicate the presence or absence of an additional letter(s) which vary the basic propeller hub and blade model designation. This Airworthiness Directive (AD) still applies regardless of whether these letters are present or absent on the propeller hub and blade model designation.

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

To prevent initiation of fatigue cracks in propeller assemblies and subsequent progression to propeller failure, with departure of the blade, or hub arm and blade, that may result in loss of aircraft control, accomplish the following:

(a) Before further flight replace Hartzell Model HC-B4TN-5(D,G,J)/LT10282(B,K)-5.3R propeller blades with serviceable Hartzell HC-B4TN-5(D,G,J)/LT10282N(B,K)-5.3R or HC-B4TN-5(D,G,J)/LT10282NS(B,K)-5.3R "N" configuration propeller blades. Airworthiness Directive 93-01-09, which is superseded by this AD, required this action to be completed by July 31, 1994.

(b) For propeller hub assemblies that experience a blade strike, as defined in paragraph (g) of this AD, after the effective date of this AD, before further flight, accomplish the following as applicable:

(1) Replace propeller hub unit, Part Number (P/N) 840-139 or P/N 840-91, with a hub that has compressive rolled internal bearing bores, which is identified with the addition of a third letter "A" in the hub serial number prefix (e.g. "CDA1234"). Propeller hub assemblies removed from service in accordance with this AD paragraph are to be permanently retired and may not be returned to service on any aircraft; and

(2) Thereafter, at intervals of 3,000 hours time in service (TIS) or 60 calendar months, whichever occurs first, remove the compressive rolled internal bore hub assembly, identified with the addition of a third letter "A" in the hub serial number prefix (e.g. "CDA1234"), for inspection and specified rework in accordance with Hartzell Alert Service Bulletins (ASB's) No. A182A or A183A, both dated March 11, 1994.

(3) For compressive rolled internal bearing bore hub assemblies, identified with the addition of a third letter "A" in the hub serial number prefix (e.g. "CDA1234"), that experience a blade strike, remove the hub

assembly for inspection and specified rework procedures, in accordance with Hartzell ASB Nos. A182A or A183A, both dated March 11, 1994, Thereafter, at intervals of 3,000 TIS or 60 calendar months, whichever occurs first, repeat this inspection and required rework.

(c) Before further flight for propeller hub assemblies that have never been inspected; or within 750 hours TIS since the last inspection for those propeller hub assemblies inspected in accordance with Hartzell ASB's Nos. A182A, or A183A, both dated March 11, 1994; or ASB No. A182, dated April 28, 1993, or ASB No. A183, dated June 1, 1993; but in no case later than 12 calendar months from the effective date of this AD; accomplish the following:

(1) Replace propeller hub unit P/N 840-139 or P/N 840-91, unless already accomplished, with a hub that has compressive rolled internal bearing bores, which is identified with the addition of a third letter "A" in the hub serial number prefix (e.g. "CDA1234"). Propeller hub assemblies removed from service in accordance with this AD paragraph are to be permanently retired and may not be returned to service on any aircraft; and

(2) Thereafter at intervals of 3,000 hours TIS or 60 calendar months, whichever occurs first, remove the compressive rolled internal bearing bore hub assembly, identified with the addition of a third letter "A" in the hub serial number prefix (e.g. "CDA1234"), for inspection and specified rework in accordance with Hartzell ASB's No. A182A or A183A both dated March 11, 1994.

(d) Perform a propeller blade thickness inspection, rework if necessary, shotpeen, and mark the blades, in accordance with Hartzell ASB No. A188, dated February 25, 1994, in accordance with the following schedule and requirements:

Propeller blade time since new (TSN) on the effective date of this AD	Compliance required
Greater than or equal to 2,900 hours TSN.	Within 100 hours TIS after the effective date of this AD, or during compliance with paragraphs (b) or (c) of this AD, as applicable, whichever occurs first.
Less than 2,900 hours TSN but greater than 2,200 hours TSN.	Prior to reaching 3,000 hours time TSN or during compliance with paragraphs (b) or (c) of this AD, as applicable, whichever occurs first.
Less than or equal to 2,200 hours TSN.	Within 800 hours TIS after the effective date of this AD or during compliance with paragraphs (b) or (c) of this AD, as applicable, whichever occurs first.

(1) If blade thickness requires rework of blades comprising thickness reduction of inboard stations then shot peening is also required prior to returning to service.

(2) If the blade thickness inspection is satisfactory and no rework is required, shot peening may be deferred until the next

overhaul, but not to exceed 3,000 hours TSN of the propeller blades, or within 60 calendar months since the last overhaul, whichever occurs first.

(3) Propeller Model LT10282N(B,K)-5.3R "N" configuration blades that have been satisfactorily shot peened and inspected and must be metal impression stamped in the blade butt as well as ink stamped externally on the blade shank with the suffix letter "S" in the blade model designation, per Hartzell ASB No. A188, dated February 25, 1994.

(e) Any blade repairs made after the effective date of this AD shall be accomplished in accordance with the procedures specified in Hartzell ASB No. A188, dated February 25, 1994.

**Note:** Airworthiness Directive (AD) 94-11-04 restricts Mitsubishi Model MU-2B-26A, -36A, -40, -60, and MU-2B-36 Aircraft Modified by (STC) SA2413SW on an engine ground idle speed range of 76.5 to 78.5 percent to prevent the possibility of operating the propeller too close to the ground idle resonant speed ("reactionless mode"). The purpose of Paragraphs (d) and (e) of this AD are to insure that the resonant speed does not shift into the permitted engine ground idle range during operation.

(f) Propeller blade Model LT10282N(B,K)-5.3R and LT10282NS(B,K)-5.3R configuration blades now have a retirement life limit of 10,000 hours TIS and are to be permanently retired from service, and replaced with serviceable blades, upon reaching this limit.

(g) A blade strike is defined as a propeller having any blade that has been bent beyond the repair limits specified in Hartzell Propeller Inc. Standard Practices Manual, Revision 1, Pages 1104-1105, dated June 1994.

(h) The "calendar month" compliance times stated in this AD allow the performance of the required action up to the last day of the month in which compliance is required.

(i) 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, FAA, 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, FAA, 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 FAA, Chicago Aircraft Certification Office.

(j) Except when propeller hub arm assemblies have experienced a blade strike, 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 aircraft to a location where the requirements of this AD can be accomplished.

(k) The actions required by this AD shall be done in accordance with the following Hartzell Propeller Inc. service documents:

Document No.	Pages	Date
ASB No. A182A . Total pages: 3.	1-3	Mar. 11, 1994.
ASB No. A183A . Total pages: 3.	1-3	Mar. 11, 1994.
ASB No. A188 ... Total pages: 4.	1-4	Feb. 25, 1994.
Hartzell Propeller Standard Prac- tices Manual, Revision 1. Total pages: 2.	1104-5	June 1994.

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.

(l) This amendment becomes effective on January 27, 1995.

Issued in Burlington, Massachusetts, on December 22, 1994.

**Jay J. Pardee,**

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

[FR Doc. 95-633 Filed 1-11-95; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Secretary**

**24 CFR Part 597**

[Docket No. R-95-1702; FR-3580-N-04]

RIN 2506-AB65

**Designation of Empowerment Zones and Enterprise Communities; Notice of Waiver of Sunset Provision of Interim Rule**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of waiver.

**SUMMARY:** This Notice announces a waiver granted by the Secretary, under the waiver authority of 24 CFR 597.5, of the sunset provision set forth in § 597.1(c) of the Department's interim rule published on January 18, 1994.

**DATES:** January 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Savage, Deputy Director, Office of Economic Development, Room 7136, Department of Housing and Urban Development, 451 Seventh Street SW,

Washington, DC 20410, telephone (202) 708-2290; TDD (202) 708-2565. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** On January 18, 1994, the Department published an interim rule that implemented that portion of Subchapter C, Part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget Reconciliation Act of 1993 dealing with the designation of urban Empowerment Zones and Enterprise Communities (EZ/EC interim rule). The preamble to the EZ/EC interim rule stated that: "The Department has adopted a policy of setting a date for expiration of an interim rule unless a final rule is published before that date. This "Sunset" provision appears in § 597.1(c) of the rule; and provides that the interim rule will expire on a date 12 months from publication unless a final rule is published before that date."

The EZ/EC final rule is being published elsewhere in today's **Federal Register**. However, consistent with 42 U.S.C. 3535(o)(3) of the Department's authorizing legislation, the EZ/EC final rule cannot become effective until a period of 30 calendar days from the date of publication of the final rule has expired. Accordingly, the EZ/EC final rule, published in today's **Federal Register**, will not become effective by or before January 18, 1995, the date the interim rule expires. In order to prevent a period in which the effective period of the EZ/EC regulations lapses, a waiver is granted under 24 CFR 597.5.

Section 597.5 provides that "The Secretary of HUD may waive for good cause any provision of this part not required by statute, where it is determined that application of the requirement would produce a result adverse to the purpose and objectives of this part." The sunset provision set forth in 24 CFR 597.1(c) of the January 18, 1994 interim rule was not required by statute, and good cause exists to waive this provision in order that the effective period of the interim rule published on January 18, 1994 (59 FR 2700) continues until the date the final rule is published and made effective, at which point the final rule will remain in effect.

Dated: January 5, 1995.

**Henry G. Cisneros,**  
*Secretary.*

[FR Doc. 95-733 Filed 1-11-95; 8:45 am]

BILLING CODE 4210-32-P-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 35**

[FRL-5138-1]

**Reallocation of Reserved Funds Not Awarded; Correcting Amendment**

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Correcting amendment.

**SUMMARY:** In this amendment, EPA is correcting a typographical error in response to requests for clarification on the reallocation of funds for Tribes. The intended effect of this amendment is to enhance the accuracy and reduce misunderstandings of the reallocation of funds for Tribes. The amendments are minor editorial changes and do not impose new requirements.

**EFFECTIVE DATE:** January 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Brady, Office of Wetlands, Oceans and Watersheds, (202) 260-5368, Assessment and Watershed Protection Division, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

**Background**

40 CFR 35.155 (c) is listed twice, but contains different text. This is due to an error in submitting two earlier additions of § 35.155 (c). Accordingly, § 35.155 is corrected by changing the repeated § 35.155 (c) to (d) and listing paragraph (d) immediately following paragraph (c).

**List of Subjects in 40 CFR Part 35**

Environmental protection, Grant programs, Reporting and recordkeeping requirements, Water pollution control, Water supplies.

Dated: December 6, 1994.

**Robert Perciasepe,**

*Assistant Administrator for Water.*

40 CFR part 35, subpart A is amended as follows:

1. The authority citation for part 35, subpart A continues to read as follows:

**Authority:** Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); Secs. 106, 205(g), 205(j), 208, 319, 501(a), and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j-2, 300j-9 and 300j-11); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23 and 25(a) of the Federal Insecticide Fungicide and Rodenticide Act,

as amended (7 U.S.C. 136(b), 136(u) and 136w(a)).

**§ 35.155 [Amended]**

2. Section 35.155 is amended by redesignating the second paragraph (c) as paragraph (d).

[FR Doc. 95-824 Filed 1-11-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 52**

[PA25-1-6683; FRL-5133-6]

**Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania—Emission Statement Program**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision consists of an emission statement program for stationary sources which emit volatile organic compounds (VOCs) and/or nitrogen oxides (NO<sub>x</sub>) at or above specified actual emission threshold levels. The intended effect of this action is to approve in the Commonwealth of Pennsylvania a regulation for annual reporting of actual emissions by sources that emit VOC and/or NO<sub>x</sub> in accordance with section 182(a)(3)(B) of the Clean Air Act Amendments (CAAA). This action is being taken under section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This rule will become effective on February 13, 1995.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, Market Street Office Bldg., Harrisburg, PA 17105-8468.

**FOR FURTHER INFORMATION CONTACT:** Enid A. Gerena, Environmental Protection Agency, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-8239.

**SUPPLEMENTARY INFORMATION:** On July 15, 1994 (59 FR 36128), EPA published

a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of the Commonwealth of Pennsylvania's Emission Statement Program. The formal SIP revision was submitted on November 12, 1992.

The Pennsylvania Department of Environmental Resources (PADER) submitted a revision to the Pennsylvania's SIP which establishes emissions statement reporting requirements for stationary sources that emit of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs), above specified actual emission applicability thresholds.

Other specific requirements of the SIP revision on Emission Statements and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

**Final Action**

EPA is approving amendments to the regulation at Title 25 Pa. Code chapter 135, to add section 135.5, Recordkeeping, and section 135.21, Emission Statements, as a revision to the Commonwealth of Pennsylvania SIP. Nothing in this section should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Pennsylvania's Emissions Statement Program may not be challenged later in proceedings to

enforce its requirements. (See section 307 (b)(2).)

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 16, 1994.

**Stanley L. Laskowski,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401-7671q.

**Subpart NN—Commonwealth of Pennsylvania**

2. Section 52.2020 is amended by adding paragraph (c)(96) to read as follows:

**§ 52.2020 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(96) Revisions to the Commonwealth of Pennsylvania Regulations State Implementation Plan submitted on November 12, 1992 by the Pennsylvania Department of Environmental Resources:

(i) Incorporation by reference.

(A) Letter of November 12, 1992 from the Pennsylvania Department of Environmental Resources transmitting a revised regulation to establish emission statements requirements annually for sources of nitrogen oxides and volatile organic compounds.

(B) Revisions to amend 25 Pa. Code, specifically to include section 135.5 and section 135.21. Effective on October 10, 1992.

[FR Doc. 95-735 Filed 1-11-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 52**

[W142-01-6623; FRL-5087-8]

**Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Revision to the State Implementation Plan Vehicle Inspection and Maintenance Program**

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

**ACTION:** Final rule.

**SUMMARY:** In this action, the EPA is taking action to approve portions and

conditionally approve other portions of the Wisconsin State Implementation Plan (SIP) for attainment of the National Ambient Air Quality Standards for ozone. On November 15, 1993, Wisconsin submitted a SIP revision request to the EPA to satisfy the requirements of section 182(a)(2) of the Clean Air Act (Act), and the Federal motor vehicle inspection and maintenance (I/M) rule at 40 CFR part 51, subpart S. This revision establishes and requires the implementation of an enhanced I/M program in the Milwaukee-Racine, and the Sheboygan ozone nonattainment areas. On July 14, 1994, the EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Wisconsin. The NPRM proposed approval of portions of the Wisconsin I/M SIP and conditional approval of other portions on the condition that the State submit additional materials to the EPA during the public comment period on the EPA's proposed rulemaking. On July 28, 1994, the State of Wisconsin supplied the EPA with a supplementary SIP submittal. The EPA received no comments on the NPRM. Therefore the EPA is publishing this final action.

**EFFECTIVE DATE:** This rule will become effective on February 13, 1995.

**ADDRESSES:** Copies of the State's submittals and the EPA's technical support document (TSD) are available for public review at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** John M. Mooney, (312) 886-6043.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The CAA requires States to make changes to improve existing I/M programs or implement new ones. Section 182 requires any ozone nonattainment area, which has been classified as "marginal" (pursuant to section 181(a) of the CAA) or worse, with an existing I/M program that was part of a SIP, or any area that was required by the 1977 Amendments to the CAA to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past EPA guidance or to what had been committed to previously in the SIP, whichever is more stringent. In addition, all ozone nonattainment

areas classified as moderate or worse must implement a "basic" or an "enhanced" I/M program depending upon their classifications, regardless of previous requirements.

In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States were to incorporate this guidance into the SIP for all areas required by the CAA to have an I/M program.

**II. Background**

The State of Wisconsin currently contains 2 ozone nonattainment areas that are required to implement I/M programs in accordance with the Act. The Milwaukee-Racine ozone nonattainment area is classified as severe-17 and contains the following 6 counties: Kenosha, Racine, Milwaukee, Ozaukee, Waukesha, and Washington Counties. The Sheboygan ozone nonattainment area is classified as moderate and contains 1 county: Sheboygan County. These designations for ozone were published in the **Federal Register** at 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), and codified at 40 CFR 81.300-81.437.

On November 15, 1993, the Wisconsin Department of Natural Resources (WDNR) submitted a SIP revision to the EPA that provided for an I/M program in the Milwaukee-Racine and Sheboygan nonattainment areas. Under the requirements of the EPA completeness review procedures, 40 CFR part 51, Appendix V, and the requirements of section 110(k) of the CAA, the submittal was deemed complete by the EPA on January 4, 1994.

In its original review of the State's submittal, the EPA found several areas that did not meet the requirements of the I/M rule. Since the EPA's July 14, 1994, Notice of Proposed Rulemaking, the State has submitted additional materials to meet many of these requirements and provided commitments to adopt and submit additional materials, as necessary, to receive conditional approval on other requirements. These areas are summarized below.

On July 14, 1994, the EPA published a notice proposing approval for portions of the State's submittal, and proposing conditional approval or disapproval on the other sections of the original submittal, despite several deficiencies in the original submittal. This proposed action was made contingent on the State

submitting the missing materials 2 weeks prior to the close of the public comment period.

**III. State's Supplemental Submittal**

On July 28, 1994, the WDNR submitted supplementary materials to the EPA related to the I/M program in the Milwaukee-Racine and Sheboygan areas in order to remedy the deficiencies in the State's original submittal.

**IV. The EPA's Analysis of the State's Supplemental Submittal**

The following summary of the State's supplemental submittal is limited to the sections of the State's original submittal that were identified as deficient in the EPA's NPRM. For a discussion of the rest of the State's submittal, see the July 15, 1994 NPRM (59 FR 36123).

*A. Enhanced and Basic I/M Performance Standard*

While the original submittal addressed some of the requirements of 40 CFR 51.351, the State had not formally submitted the required modeling demonstration. In its supplementary submittal, the State formally submitted a modeling demonstration using the EPA computer model MOBILE5a, which showed that the enhanced performance standard is met in the Milwaukee-Racine and the Sheboygan areas. This modeling demonstration included an estimate of the impact that exempt vehicles will have on emissions reductions achieved by the I/M program. The program still meets the enhanced I/M performance standard after accounting for exempt vehicles. As a result, this section is approvable.

*B. Network Type and Program Evaluation*

The original submittal did not fully satisfy 40 CFR section 51.353, because it did not include requirements for schedules and methodologies for program evaluation. The State's supplemental submittal institutes a continuous ongoing evaluation program consistent with the Federal I/M rule. The results of the evaluation program will be reported to the EPA on a biennial basis. The supplemental submittal together with the original submittal satisfies 40 CFR 51.353.

*C. Adequate Tools and Resources*

The original submittal did not fully satisfy 40 CFR 51.354, because it did not include a demonstration that sufficient funds, equipment and personnel are available to meet the program operation requirements of the I/M rule. The State's supplemental submittal included a

narrative describing the budget process, staffing support, and equipment needed to implement the program. This description together with the original submittal satisfies 40 CFR 51.354.

#### *D. Test Frequency and Convenience*

The original submittal did not fully satisfy 40 CFR 51.355 due to the fact that Wisconsin's adopted legislation had not yet been formally submitted to the EPA. In its supplemental submittal WDNR officially submitted its 1993 Wisconsin Act 288, enacted on April 13, 1994, which provides the necessary authority to enforce the test frequency requirements of the program.

#### *E. Vehicle Coverage*

The original submittal did not fully satisfy 40 CFR 51.356 for several reasons: (1) The State had not submitted its final, signed contract containing detailed procedures for identifying subject vehicles; (2) the submittal did not contain estimates of registered and unregistered vehicles in the area; (3) the State had not yet finished final modifications on its TRANS 131 rule to establish requirements for the testing of fleets; and (4) the State had not yet submitted final performance standard modeling to account for vehicles that are exempt from program requirements. The State's supplemental submittal contains final performance standard modeling runs that demonstrate the impact of exemptions on the program. Estimates of registered and unregistered vehicles will be contained in the final, signed I/M contract. In its supplemental submittal, the State included a commitment to adopt and submit the final I/M contract and final rule revisions to TRANS 131 within 1 year of the EPA's conditional approval.

#### *F. Test Procedures and Standards*

The original submittal did not fully satisfy 40 CFR 51.357, because the State had not submitted its final, signed contract containing detailed test procedures for the I/M program. In addition, the State is in the process of amending its NR 485 rule to establish specific program cutpoints. In its supplemental submittal, the State included a commitment to adopt and submit the final I/M contract and final rule revisions to NR 485 within 1 year of the EPA's conditional approval.

#### *G. Test Equipment*

The original submittal did not fully satisfy 40 CFR 51.358, because the State had not submitted its final, signed contract detailing specifications for program test equipment. In its supplemental submittal, the State

commits to submit its final, signed contract addressing these requirements to the EPA within 1 year of the EPA's final conditional approval. General provisions for test equipment specifications are contained in the State's Request for Proposal (RFP).

#### *H. Quality Control*

The original submittal did not fully satisfy 40 CFR 51.359, because the State had not submitted its final, signed contract detailing its quality control procedures. In its supplemental submittal, the State commits to submit its final, signed contract addressing these requirements to the EPA within 1 year of the EPA's final conditional approval.

#### *I. Waivers and Compliance via Diagnostic Inspection*

The original submittal did not fully satisfy 40 CFR 51.360, because the State had not submitted its final, signed contract detailing procedures for the granting of waivers, including cost limits, tampering, warranty related repairs, quality control and administration. The State also failed to include a description of corrective actions to be taken if the waiver rate exceeds 3 percent. In addition, the State had not completed changes to its TRANS 131 rule to reflect changes that had been made in the Wisconsin Statutes regarding the issuance of waivers.

In its supplemental submittal, the State commits to submit its final, signed contract and its amended TRANS 131 rule addressing these requirements to the EPA within 1 year of the EPA's final conditional approval. The State has included a waiver rate of 3 percent in all subject areas and has used this waiver rate in its modeling demonstration. The State has committed to this waiver rate and has committed to take specific corrective action if this rate is not achieved. The proper criteria, procedures, quality assurance and administration regarding the issuance of waivers will be ensured by the State and managing contractor and are contained in general detail in the SIP narrative and RFP and will be more fully developed in the final contract.

#### *J. Motorist Compliance Enforcement*

The original submittal did not fully satisfy 40 CFR 51.361, because it failed to include a detailed description of the penalty schedule for noncompliance and a formal commitment to a 96 percent compliance rate. In its supplemental submittal, the State commits to submit revisions to its TRANS 131 rule to establish a more

thorough penalty schedule within 1 year of the EPA's final conditional approval. The State has chosen to use registration denial as its primary enforcement mechanism in both basic and enhanced I/M areas. Motorists will be denied vehicle registration unless the vehicle has complied with the I/M program requirements. Penalties for failure to register and failure to have vehicles tested are contained in the Wisconsin Statutes, sections 341 and 110, respectively. The legal authority to implement and enforce the program is included in the Wisconsin statutes and regulations contained and cited in the SIP. In addition, the State has committed to a compliance rate of 96 percent and has used this compliance rate in its modeling demonstration.

#### *K. Motorist Compliance Enforcement Program Oversight*

The original submittal did not fully satisfy 40 CFR 51.363, because the State had not submitted its final, signed contract detailing procedures for quality control of its enforcement program and the establishment of an information management system. In its supplementary submittal, the State commits to submit its final, signed contract addressing these requirements to the EPA within 1 year of the EPA's final conditional approval.

#### *L. Enforcement Against Contractors, Stations, and Inspectors*

The original submittal did not fully satisfy 40 CFR 51.364, because the State had not submitted its final, signed contract detailing specific penalty schedules for stations, contractors, and inspectors. In its supplementary submittal, the State commits to submit its final, signed contract addressing these requirements to the EPA within 1 year of the EPA's final conditional approval. The Wisconsin SIP includes the legal authority for establishing and imposing penalties. Contractual enforcement mechanisms will be established by the final, signed contract.

#### *M. Data Collection*

The original submittal did not fully satisfy 40 CFR 51.365, because it did not include a detailed description of specific data to be collected on individual tests and data related to quality control checks. In its supplemental submittal, the State commits to submit its final, signed contract addressing these requirements to the EPA within 1 year of the EPA's final conditional approval.

*N. Data Analysis and Reporting*

The original submittal did not fully satisfy 40 CFR 51.366, because the State had not submitted its final, signed contract detailing procedures for the analysis and reporting of data for the testing program, quality assurance program, quality control program, and the enforcement program. In addition, the State had not committed to submitting annual and biennial reports to the EPA in accordance with the I/M rule. In its supplemental submittal, the State commits to submit its final, signed contract addressing these requirements to the EPA within 1 year of the EPA's final conditional approval. The State has submitted commitments to submit annual and biennial reports to the EPA, as well as descriptions of the methodologies and procedures used to develop these reports.

*O. Inspector Training and Licensing or Certification*

The original submittal did not fully satisfy 40 CFR 51.367, because the State had not submitted its final, signed contract detailing its training and licensing program. In its supplemental submittal, the State has committed to submit its final, signed contract addressing these requirements to the EPA within 1 year of the EPA's final conditional approval.

*P. Public Information and Consumer Protection*

The original submittal did not fully satisfy 40 CFR 51.368, because the State had not submitted its final, signed contract detailing its public information and consumer protection program. In its supplemental submittal, the State has committed to submit its final, signed contract addressing these requirements to the EPA within 1 year of the EPA's final conditional approval.

*Q. Improving Repair Effectiveness*

The original submittal did not fully satisfy 40 CFR 51.369 because the State had not submitted its final, signed contract detailing specific procedures for the implementation of a technical assistance program and a repair facility monitoring program. In its supplemental submittal, the State commits to submit its final, signed contract addressing these requirements to the EPA within 1 year of the EPA's final conditional approval. The contract will include a description of the technical assistance, performance monitoring, and repair technician training programs to be implemented. The State's RFP contains provision for a repair technician hotline that will be available for repair technicians.

*R. Compliance With Recall Notices*

The State's original submittal did not fully satisfy 40 CFR 51.370 because the State had not completed revisions to its TRANS 131 rule to establish procedures for its recall compliance program. In its supplemental submittal, the State commits to submit its amended rule addressing these requirements to the EPA within 1 year of the EPA's final conditional approval. The SIP also commits to comply with additional EPA guidance when available.

*S. On-road Testing*

The original submittal did not fully satisfy 40 CFR 51.371, because it did not include a detailed description of the program including test limits and criteria, resource allocations, and methods of collecting, analyzing and reporting the results of the testing. These requirements will be addressed by the State's final I/M contract, as well as amendments to the State's TRANS 131 rule. In its supplemental submittal, the State commits to submit its final, signed contract and its final, amended TRANS 131 rule addressing these requirements to the EPA within 1 year of the EPA's final conditional approval. The legal authority for this program is contained in the Wisconsin legislation.

*T. Concluding Statement*

Wisconsin's original submittal along with the supplemental submittal of its I/M SIP revision represent an acceptable approach to the I/M requirements and meet all the criteria required for approval and conditional approval.

A more detailed analysis of the State's supplemental submittal and how it meets Federal requirements is contained in the EPA's Technical Support Document (TSD), dated September 2, 1994, which is available at the Region 5 Office, listed above.

**V. Response to Comments**

On July 14, 1994 (59 FR 35883), the EPA published an NPRM for the State of Wisconsin. The NPRM proposed approval on portions of the State's submittal, and conditional approval or disapproval on other portions of the State's submittal depending upon the materials submitted by the State 2 weeks prior to close of the comment period. On July 28, 1994, the State of Wisconsin submitted these materials. No adverse public comments were received on the NPRM.

**Final Action**

By this action, the EPA is approving portions and conditionally approving other portions of the State's submittal. The EPA has reviewed the State

submittal against the statutory requirements and for consistency with the EPA regulations and finds it to be acceptable. The rationale for the EPA's action is explained in the NPRM and will not be restated here.

The EPA believes conditional approval is appropriate in this case because the State has developed final, fully adopted rules for the enhanced I/M program and needs only to amend these rules to address a number of enhanced I/M program requirements. In addition, the State has developed a final RFP for the program and needs only to sign the final contract for program operation in order to establish final practices and procedures for program operation. The State has committed to finalize and submit the relevant rule amendments and final contract no later than 1 year after the EPA's final conditional approval.

As a result of this conditional approval on the above portions of the State's SIP, the State must meet its commitments to adopt and submit the final rule amendments and final, signed contract to the EPA within one year of the conditional approval. Once the EPA has conditionally approved this committal, if the State fails to adopt or submit the required rules to the EPA, final approval will become a disapproval. The EPA will notify the State by letter to this effect. Once the SIP has been disapproved, this commitment will no longer be a part of the approved nonattainment area SIP. The EPA subsequently will publish a notice to this effect in the notice section of the **Federal Register** indicating that the commitment has been disapproved and removed from the SIP. If the State adopts and submits the final rule amendments to the EPA within the applicable time frame, the conditionally approved commitment will remain part of the SIP until the EPA takes final action approving or disapproving the new submittal. If the EPA approves the subsequent submittal, those newly approved rules will become a part of the SIP.

If the conditional approval portions are converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin on the effective date of the final disapproval or at the time the EPA notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not correct the deficiency and the EPA does not approve the rule on which the disapproval was based within 18 months of the disapproval, the EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In

addition, the final disapproval starts the 24 month clock for the imposition of a section 110(c) Federal Implementation Plan. Finally, under section 110(m) the EPA has discretionary authority to impose sanctions at any time after a final disapproval.

Nothing in this action should be construed as permitting or establishing a precedent for any future request for a revision to any SIP. Each request for a revision to a SIP shall be considered in light of specific technical, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

As previously noted, the EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 3 under the processing procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214), and revisions to these procedures issued on October 4, 1993, in an EPA memorandum entitled "Changes to State Implementation Plan (SIP) Tables." The Office of Management and Budget has exempted this action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66).

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Reporting and recordkeeping

requirements, Volatile organic compounds.

Dated: September 14, 1994.

**Michelle D. Jordan,**

*Acting Regional Administrator.*

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401-7671q.

#### Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(78) to read as follows:

##### § 52.2570 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(78) On November 15, 1993, the State of Wisconsin submitted a revision to the State Implementation Plan (SIP) for the implementation of a motor vehicle inspection and maintenance (I/M) program in the Milwaukee-Racine and Sheboygan ozone nonattainment areas. This revision included 1993 Wisconsin Act 288, enacted on April 13, 1994, Wisconsin Statutes Sections 110.20, 144.42, and Chapter 341, Wisconsin Administrative Code Chapter NR 485, SIP narrative, and the State's Request for Proposal (RFP) for implementation of the program.

(i) Incorporation by reference.

(A) 1993 Wisconsin Act 288, enacted on April 13, 1994.

(B) Wisconsin Statutes, Sections 110.20, 144.42, and Chapter 341, effective November 1, 1992.

\* \* \* \* \*

3. Section 52.2569 is added to read as follows:

##### § 52.2569 Identification of plan-conditional approval.

(a) Revisions to the plan identified in § 52.2570 were submitted on the date specified.

(1)-(3) (Reserved)

(4) On November 15, 1993, and July 28, 1994, the Wisconsin Department of Natural Resources (WDNR) submitted enhanced inspection and maintenance (I/M) rules and a Request for Proposal (RFP) as a revision to the State's ozone State Implementation Plan (SIP). The EPA conditionally approved these rules and RFP based on the State's commitment to amend its rules and sign its final I/M contract to address deficiencies noted in to the final conditional approval. These final, adopted rule amendments and final, signed contract must be submitted to the EPA within one year of the EPA's conditional approval.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, Chapter NR 485, effective July 1, 1993.

(ii) Additional materials.

(A) SIP narrative plan titled "Wisconsin—Ozone SIP—Supplement to 1992 Inspection and Maintenance Program Submittal," submitted to the EPA on November 15, 1993.

(B) RFP, submitted along with the SIP narrative on November 15, 1993.

(C) Supplemental materials, submitted on July 28, 1994, in a letter to the EPA.

[FR Doc. 95-737 Filed 1-11-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Parts 52 and 81

[ME-5-1-6684; A-1-FRL-5127-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Maine; Presque Isle Attainment Plan

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving revisions to the State implementation plan (SIP) submitted by the State of Maine to satisfy certain federal requirements for the Presque Isle nonattainment area. The purpose of the federal requirements is to bring about the attainment of the national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). In addition, EPA is modifying the borders of the Presque Isle nonattainment area to more closely contain the actual area where PM10 concentrations approach ambient standards. EPA also is approving an update of Maine's emergency episode regulation applicable statewide. This action is being taken under the Implementation Plans Section of the Clean Air Act.

**EFFECTIVE DATE:** This rule will become effective on February 13, 1995.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA 02203; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE-131), Washington, DC 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Cairns, (617) 565-4982.

**SUPPLEMENTARY INFORMATION:** On May 10, 1994 (59 FR 24096-24100), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Maine. The NPR proposed approval of Presque Isle's PM10 attainment plan which Maine submitted as a formal SIP revision on August 14, 1991. This submittal also included a request to modify the borders of the Presque Isle nonattainment area. In addition, Maine submitted revisions to the emergency episode regulations on October 22, 1991. These submittals complete the attainment plan for Presque Isle by meeting the applicable requirements—which were due to EPA by November 15, 1991—to demonstrate attainment of the PM10 NAAQS by December 31, 1994 and maintenance of that standard for three years beyond that. These requirements are outlined in Part D, Subparts 1 and 4 of the Act and elaborated upon in EPA's "General Preamble for the Implementation of Title I of the Clean Air Act" [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Specific requirements and the rationale for EPA's proposed action are detailed and explained in the NPR and will not be restated here. No public comments were received on the NPR. Interested parties should consult the NPR, the Technical Support Document (TSD) dated January 2, 1994, or Maine's submission for details on the aspects of the Presque Isle SIP.

#### Maine's SIP Revision

The PM10 control measures contained in the SIP are embodied in Part B of a memorandum of understanding (MOU) which the Maine Department of Environmental Protection (DEP) entered into on March 11, 1991, with the City of Presque Isle and the Maine Department of Transportation. This MOU is included in Maine's submission, will be approved into the SIP, and therefore becomes enforceable by EPA. Under the MOU, the city must use improved (i.e., low entrainment) antiskid materials on its roads. Between December 1 and May 1 each year, as a surrogate for PM10 emission limitations, the city must also maintain silt loadings on dry roads below 10 g/m<sup>2</sup>. Part B lists the streets where these requirements apply. DEP or EPA may require Presque Isle to test antiskid material stockpiles by methods prescribed in Part B, keep records, and report records and test results. Part B also specifies the method DEP must use to determine compliance by the city with the silt loading limit.

DEP has also revised its Chapter 109 "Emergency Episode Regulation." The regulation now contains the PM10 alert, warning, and emergency levels that appear in EPA's "Example Regulations for Prevention of Air Pollution Emergency Episodes" (Appendix L to part 51). The regulation continues to apply statewide and with its adoption DEP has met all section 110 requirements that currently apply to the Presque Isle PM10 nonattainment area.

Lastly, DEP's submission includes a request that EPA change the present borders of the nonattainment area. The present nonattainment area consists of township boundaries enclosing 80 square miles. The new area will comprise a series of streets bounding an area of roughly 0.6 square miles. EPA believes it is appropriate because these new borders more closely contain the actual area where PM10 concentrations approach ambient standards.

#### Final Action

The EPA is approving the plan revisions submitted to EPA for the Presque Isle nonattainment area on August 14, 1991. These revisions include Part B of a memorandum of understanding which DEP entered into on March 11, 1991 with the City of Presque Isle and the Maine Dept of Transportation. This MOU imposes RACM. In addition these revisions to the SIP include an update to Chapter 109, "Emergency Episode Regulations," effective and applicable statewide on September 16, 1991. EPA is also altering the boundaries of the Presque Isle PM10 nonattainment area, as requested by DEP, to more closely contain the actual area where PM10 concentrations approach ambient standards. Among other things, the State of Maine has demonstrated that the Presque Isle moderate PM10 nonattainment area will attain the PM10 NAAQS by December 31, 1994 and maintain air quality levels below the NAAQS at least until January 1, 1998.

As noted in the NPR, contingency measures for the Presque Isle nonattainment area were not due to EPA until November 15, 1993. Maine submitted this attainment plan to EPA on August 14, 1991 and contingency measures were not a part of the attainment plan. On June 1, 1994, Maine submitted to EPA a request to redesignate Presque Isle to attainment; this redesignation request included the contingency measures required both of the initial moderate PM10 nonattainment areas and for redesignation. EPA is processing this attainment plan and the recently submitted redesignation request

(including the contingency measures) in separate rulemaking notices. EPA will determine the adequacy of any such submittal as appropriate and act on those submittals in separate actions.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in

light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

**Note:** Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 4, 1994.

**John P. DeVillars,**

*Regional Administrator, Region I.*

Parts 52 and 81 of chapter I, title 40 of the Code of Federal Regulations are amended as follows:

**PART 52—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401-7671q.

**Subpart U—Maine**

2. Section 52.1020 is amended by adding paragraph (c)(28) to read as follows:

**§ 52.1020 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(28) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on August 14 and October 22, 1991.

(i) Incorporation by reference.  
(A) Letters from the Maine Department of Environmental Protection

dated August 14 and October 22, 1991 submitting revisions to the Maine State Implementation Plan.

(B) Revisions to Chapter 109 of the Maine Department of Environmental Protection Regulations, "Emergency Episode Regulations," effective in the State of Maine on September 16, 1991.

(C) Part B of the Memorandum of Understanding which the Maine Department of Environmental Protection (DEP) entered into (and effective) on March 11, 1991, with the City of Presque Isle, and the Maine Department of Transportation.

(ii) Additional materials.

(A) An attainment plan and demonstration which outlines Maine's control strategy for attainment of the PM10 NAAQS and implements and meets RACM and RACT requirements for Presque Isle.

(B) Nonregulatory portions of the submittal.

\* \* \* \* \*

3. In § 52.1031 table 52.1031 is amended by adding a new citation to entry "109" to read as follows:

**§ 52.1031 EPA-approved Maine regulations.**

\* \* \* \* \*

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by state	Date approved by EPA	Federal Register citation	52.1020	Comments
109	Emergency Episode Regulation.	8/14/91	Jan. 12, 1995	[Insert FR citation from published date].	(c)28	Revisions which incorporate the PM10 alert, warning, and emergency levels.

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

2. Section 81.320 is amended by revising the table for "Maine.—PM10

Nonattainment Areas" to read as follows:

**§ 81.320 Maine.**

\* \* \* \* \*

MAINE—PM10 NONATTAINMENT AREAS

Designated area	Designation		Classification	
	Date	Type	Date	Type
Aroostook County: City of Presque Isle (part) 1. That area bounded by Allen Street from its intersection with Main Street east to Dudley Street, Dudley Street south to Cedar Street, Cedar Street west to Main Street, Main Street south to Kennedy Brook, Kennedy Brook northwest crossing Presque Isle Stream to Coburn Street, Coburn Street northwest to Mechanic Street, Mechanic Street west to Judd Street, Judd Street northeast to State Street, State Street northwest to School Street, School Street northeast to Park Street, Park Street east to Main Street.	11/15/90	Nonattainment	11/15/90	Moderate.

MAINE—PM10 NONATTAINMENT AREAS—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
Rest of State.....	11/15/90	Unclassifiable .....		

<sup>1</sup> This definition of the nonattainment area redefines its borders from the entire City of Presque Isle to this area of 0.6 square miles which circumscribe the area of high emission densities and ambient PM10 levels. (January 12, 1995 and FR citation from published date.)

[FR Doc. 95-736 Filed 1-11-95; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF DEFENSE**

**48 CFR Parts 206 and 237**

**Defense Federal Acquisition Regulation Supplement; Personal Service Contracts**

**AGENCY:** Department of Defense (DoD).  
**ACTION:** Interim rule with request for public comments.

**SUMMARY:** The Director of Defense Procurement is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to establish procedures for contracting for personal services with individuals for health care services.

**DATES:** *Effective Date:* January 5, 1995.  
*Comment Date:* Comments on the interim rule should be submitted to the address shown below on or before March 13, 1995 to be considered in formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Ms. Linda S. Holcombe, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 94-D302 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda S. Holcombe, (703) 602-0131.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 712 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160) requires the Secretary of Defense to establish procedures for entering into personal service contracts under 10 U.S.C. 1091 to carry out health care responsibilities in medical/dental treatment facilities. Section 704 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337) provides authority for the Secretary of Defense to enter into personal service contracts under 10 U.S.C. 1091 to provide the

services of clinical counselors, family advocacy program staff, and victim's services representatives.

**B. Regulatory Flexibility Act**

The interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because it may, to the extent such authority is exercised by the Secretary of Defense, reduce competitive participation by any entities, large or small, which perform, or are interested in performing, personal service contracts under 10 U.S.C. 1091 to carry out health care responsibilities. Using these procedures for selecting sources for health care services, business entities other than individuals are not solicited and cannot receive contract awards. A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Initial Regulatory Flexibility Analysis may be obtained from Ms. Linda S. Holcombe, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. The interim rule applies to both large and small businesses. Comments are invited from small businesses and other interested parties. Comments from small entities will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 94-D302 in all correspondence.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Parts 206 and 237**

Government procurement.  
**Claudia L. Naugle,**  
*Deputy Director, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 206 and 237 are amended to read as follows:

1. The authority citation for 48 CFR Parts 206 and 237 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 206—COMPETITION REQUIREMENTS**

2. A new subpart 206.1 is added to read as follows:

**Subpart 206.1—Full and Open Competition**  
Sec.  
206.102 Use of competitive procedures.

**Subpart 206.1—Full and Open Competition**

**206.102 Use of competitive procedures.**  
(d) *Other competitive procedures.*  
The procedures in 237.104(b)(ii) are competitive procedures.

**PART 237—SERVICE CONTRACTING**

3. Section 237.104 is amended by revising paragraph (b)(ii) to read as follows:

**237.104 Personal services contracts.**  
(b)(i) \* \* \*  
(ii) Personal service contracts for health care are authorized by 10 U.S.C. 1091.

(A) This authority may be used to acquire—  
(1) Direct health care services provided in medical treatment facilities; and

(2) Services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services, provided in medical treatment facilities or elsewhere. Persons with whom a personal services contract may be entered into under this authority include clinical social workers, psychologists, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.

(B) Sources for personal service contracts with individuals under the authority of 10 U.S.C. 1091 shall be

selected through the procedures in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are competitive (see 206.102(d)).

(C) Approval requirements for—

(1) Direct health care personal service contracts (see 237.104(b)(ii)(A)(1)) and a pay cap are in DoDI 6025.5, Personal Services Contracting Authority for Direct Health Care Providers. Requests to enter into a personal service contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(2) Services of clinical counselors, family advocacy program staff, and victim's services representatives (see 237.104(b)(ii)(A)(2)), shall be in accordance with agency procedures.

(D) The contracting officer must ensure that the requiring activity provides a copy of the approval with the purchase request.

(E) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice must include the qualification criteria against which individuals responding will be evaluated. The contracting officer shall solicit applicants through at least one local publication which serves the area of the facility. Acquisitions under this section for personal service contracts are exempt from the posting and synopsis requirements of FAR Part 5.

(F) The contracting officer shall provide the qualifications of individuals responding to the notice to the commander of the facility for evaluation and ranking in accordance with agency procedures. Individuals must be considered solely on the basis of the professional qualifications established for the particular personal services being acquired and the Government's estimate of reasonable rates, fees, or other costs. The commander of the facility shall provide the contracting officer with rationale for the ranking of individuals, consistent with the required qualifications.

(G) Upon receipt from the facility of the ranked listing of applicants, the contracting officer shall either—

(1) Enter into negotiations with the highest ranked applicant. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked applicant and enter into negotiations with the next highest.

(2) Enter into negotiations with all qualified applicants and select on the

basis of qualifications and rates, fees, or other costs.

(H) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(I) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

\* \* \* \* \*

[FR Doc. 95-763 Filed 1-11-95; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 1

[OST Docket No. 1; Amdt. 265]

#### Organization and Delegation of Powers and Duties Delegations to the Director of the Departmental Office of Civil Rights

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

**SUMMARY:** This document contains a delegation of authority to the Director of the Departmental Office of Civil Rights (DOCR) to conduct all stages of the Department's formal internal discrimination complaint process and to provide policy guidance concerning the implementation and enforcement of all civil rights laws, regulations and executive orders for which the Department of Transportation (DOT or the Department) is responsible. This document also amends the delegation of authority to DOT Administrators relating to internal civil rights functions since, with the exception of certain responsibilities related to the resolution of informal complaints of discrimination within DOT operating administrations, these functions are being transferred to the Director of DOCR. There are no substantive changes to the DOCR's functions with respect to the Department's external civil rights programs. The language changes dealing with external programs are only designed to more clearly state existing authority and practice.

**EFFECTIVE DATE:** This rule becomes effective on January 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** Debra J. Rosen, Office of the Assistant

General Counsel for Environmental, Civil Rights and General Law at (202) 366-9167 or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement at (202) 366-9306, Department of Transportation, 400 7th Street SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** Consistent with a provision in the Department of Transportation and Related Agencies Appropriations Act, 1995, Public Law 103-331, the Secretary of Transportation approved the consolidation of internal civil rights functions within the Department. Under the consolidation plan, all functions relating to the processing of formal administrative complaints of employment discrimination filed by Department employees and applicants for federal employment with the Department are assigned to the DOCR. Thus, it is necessary to amend the relevant parts of the CFR to reflect these new authorities.

49 CFR Part 1 describes the organization of DOT and provides for the performance of duties imposed upon, and the exercise of powers vested in, the Secretary of Transportation by law. Section 1.23 describes the spheres of primary responsibility within DOT and is being revised to reflect the new responsibilities assigned to the DOCR and to clarify the DOCR's existing responsibilities. Amended section 1.23 states that the DOCR is responsible for conducting all stages of the formal internal discrimination complaint process. In addition, the DOCR is responsible for providing policy guidance within the Department concerning the implementation and enforcement of all civil rights laws, regulations and executive orders for which the Department is responsible, and for reviewing and evaluating the civil rights programs of the Department's operating administrations (OAs). Finally, amended section 1.23 states that the Director of the DOCR serves as the Department's Equal Employment Opportunity Officer and Title VI Coordinator.

Currently, section 1.45(a)(10) delegates authority to the Administrators of the DOT operating administrations to accept or reject internal complaints of discrimination by their respective employees and applicants for employment on the basis of race, color, religion, sex, national origin, or age arising within their organizations. Under the consolidation, the OAs (including the Coast Guard) will retain responsibility for resolving informal complaints of discrimination

arising within their organizations as well as for developing and implementing affirmative action and diversity plans within their organizations, but will no longer be involved once a complaint reaches the formal process. Each Administrator and the Assistant Secretary for Administration, in the case of the Office of the Secretary, retains his/her existing responsibilities for appointing Equal Opportunity Counselors within his/her organization and assuring that the Equal Opportunity Counseling program is carried out in an effective manner. This paragraph is amended to reflect the OA's revised responsibilities. OAs will also retain their current responsibility for representing management during the various stages of the formal internal complaint process. Similarly, language has been added to section 1.54 delegating authority to Secretarial Officers (including the Inspector General) to resolve informal complaints of discrimination arising within their respective organizations and develop and implement affirmative action and diversity plans within their respective organizations.

Section 1.59 currently delegates authority to the Assistant Secretary for Administration to carry out a number of civil rights responsibilities. These authorities are: development and implementation of an affirmative action plan in the Office of the Secretary to assure equal employment opportunity (section 1.59(b)(2)); reviewing proposals of the Office of the Secretary for each new appointment or transfer to assure compliance with the Action Plan for Equal Opportunity for the Office of the Secretary (section 1.59(b)(5)(ii)); and acceptance or rejection of internal complaints of discrimination on the basis of race, color, religion, sex, national origin, or age arising within or relating to the Office of the Secretary (section 1.59(j)). Since, as described above, this rulemaking delegates authority to each Secretarial Officer to develop and implement affirmative action and diversity plans within their respective organizations, sections 1.59(b)(2) and 1.59(b)(5)(ii) are no longer needed and these delegations are hereby withdrawn. Similarly, as described above, DOCR is now responsible for conducting all stages of the formal internal complaint process, the delegation to the Assistant Secretary for Administration concerning the acceptance or rejection of internal complaints of discrimination is hereby revoked.

This rulemaking adds new section 1.70 to 49 CFR Part 1, delegating to the Director of the DOCR the authority to

conduct all stages of the Department's formal internal discrimination complaint process and confirming the DOCR's long-standing responsibility to provide policy guidance concerning the implementation and enforcement of all civil rights laws, regulations and executive orders for which the Department is responsible, to otherwise perform activities to ensure compliance with external civil rights programs, and to review and evaluate their implementation.

The Department's external civil rights programs are largely carried out by the operating administrations, under the general policy guidance of the DOCR. Also, the Departmental Office of Small and Disadvantaged Business Utilization provides primary policy direction for the Department's minority and disadvantaged business enterprise (DBE) program. Thus, this rule emphasizes that the DOCR is to work cooperatively with the OAs and other Department components in developing guidance and otherwise carrying out its responsibilities for these external civil rights programs in accordance with statutes, regulations, and executive orders of general applicability and DOT-specific statutes administered by these organizations.

The applicable laws covered by the delegation to the DOCR are numerous and are listed in the delegation. In addition to well recognized civil rights laws such as Titles VI and VII of the Civil Rights Act of 1964, as amended, the delegation covers such laws as the Alcohol, Drug Abuse and Mental Health Administration Reorganization Act, 42 U.S.C. 290dd(b), which provides that no person is to be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the grounds of prior substance abuse, except as otherwise provided; the Equal Pay Act of 1963, which prohibits employers with employees subject to the Fair Labor Standards Act from discriminating against these employees on the basis of sex in the payment of wages; The Department of Transportation Coast Guard Military Justice Manual, CG-488, Part 700-9, which authorizes members of the Coast Guard to file EEO complaints of discrimination; and the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 471 and 476, which provide that no individual shall be subjected to sexual discrimination under any program or activity receiving Federal funds under the Act.

The delegation also covers the following DOT-specific statutes which are administered by the OAs. While the

OAs will continue to administer their respective statutes, including authorities specifically delegated to Administrators pursuant to regulation or DOT Order, the DOCR retains its long-standing authority to provide policy guidance to the OAs concerning the implementation and enforcement of these statutes and to review and evaluate the OAs' programs under these statutes: 49 U.S.C. 47113 and 47123 (formerly section 505(f), 511(a)(17), and 520 of the Airport and Airway Improvement Act of 1982, as amended), which concern nondiscrimination and minority and DBE participation in projects funded under chapter 471 of title 49, United States Code; 49 U.S.C. 47107(e) (formerly sections 511(a)(17) and 511(h) of the Airport and Airway Improvement Act of 1982, as amended), which concerns DBE participation in airport concessions pursuant to an agreement with a sponsor that has received a grant for airport development under chapter 471 of title 49, United States Code; 49 U.S.C. 41705 (formerly the Air Carrier Access Act of 1986, as amended), which prohibits discrimination by an air carrier against any otherwise qualified handicapped individual by reason of such handicap; 49 U.S.C. 5310 (formerly section 16 of the Federal Transit Act, as amended), which concerns planning and design of mass transportation facilities to meet special needs of elderly persons and persons with disabilities; 49 U.S.C. 5332 (formerly section 19 of the Federal Transit Act, as amended), which concerns nondiscrimination in programs or activities receiving financial assistance under chapter 53 of title 49, United States Code; the Federal-Aid Highway Act, as amended, 23 U.S.C. 140 and 324, which concern nondiscrimination in Federally funded highway programs; the Highway Safety Act of 1966, as amended, 23 U.S.C. 402(b)(1)(D), which concerns access for physically handicapped persons at pedestrian crosswalks in state highway safety programs; 49 U.S.C. 306, which prohibits discrimination under any program, project or activity receiving financial assistance under certain provisions of the Regional Rail Reorganization Act of 1973 or the Railroad Revitalization and Regulatory Reform Act of 1976; and the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, 105 Stat. 1919, section 1003, which authorizes the DBE program for surface transportation programs.

Since this rule relates to departmental management, organization, procedure, and practice, notice and public

comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, this rule is effective on the date of its publication.

#### List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies) Organization and functions (Government agencies).

In consideration of the foregoing, and under the authority of 49 U.S.C. 322, Part 1 of Title 49 Code of Federal Regulations is amended as follows:

#### PART 1—[AMENDED]

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

**Authority:** 49 U.S.C. 322; Pub. L. 101-552; 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2).

2. 49 CFR Subtitle A is amended as follows:

a. Section 1.23 is amended by revising paragraph (l) to read as follows:

#### § 1.23 Spheres of primary responsibility.

(l) *Departmental Office of Civil Rights.* The Director of the Departmental Office of Civil Rights serves as the Department's Equal Employment Opportunity (EEO) Officer and Title VI Coordinator. The Director also serves as principal advisor to the Secretary and the Deputy Secretary on the civil rights and nondiscrimination statutes, regulations, and executive orders applicable to the Department, including titles VI and VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Age Discrimination Act of 1975, as amended, section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, and the Equal Pay Act of 1963. The Office of Civil Rights also provides policy guidance to the operating administrations and Secretarial officers on these matters. Also, the Office periodically reviews and evaluates the civil rights programs of the operating administrations to ensure that recipients of DOT funds meet applicable Federal civil rights requirements.

b. Section 1.45 is amended by revising paragraph (a)(10) to read as follows:

#### § 1.45 Delegations to all Administrators.

(10) Exercise the authority of the Secretary to resolve informal allegations of discrimination arising in or relating to their respective organizations through

Equal Employment Opportunity counseling or the Alternative Dispute Resolution process and to develop and implement affirmative action and diversity plans within their respective organizations. With regard to external civil rights programs, each Administrator exercises authority pursuant to statutes, regulations, executive orders, or delegations in subpart C of this Part to carry out these programs, under the general policy guidance of the Director of the Departmental Office of Civil Rights, including conducting compliance reviews and other activities relating to the enforcement of these statutes, regulations, and executive orders.

\* \* \* \* \*

c. Section 1.54 is amended by adding a new paragraph (b)(11) to read as follows:

#### § 1.54 Delegations to all Secretarial Officers.

\* \* \* \* \*

(b) \* \* \*

(11) Exercise the authority of the Secretary to resolve informal allegations of discrimination arising in or relating to their respective organizations through Equal Employment Opportunity counseling or the Alternative Dispute Resolution process and to develop and implement affirmative action and diversity plans within their respective organizations.

d. Section 1.59 is amended as follows:

1. Paragraph (b)(2) is removed and paragraphs (b) (3) through (9) are redesignated as paragraphs (b) (2) through (8) respectively.

2. Redesignated paragraph (b)(4)(ii) is removed and reserved.

3. Paragraph (j) is removed and paragraph (k) through (q) are redesignated as (j) through (p), respectively.

e. A new § 1.70 is added to read as follows:

#### § 1.70 Delegations to the Director of the Departmental Office of Civil Rights.

The Director of the Departmental Office of Civil Rights is delegated authority to conduct all stages of the formal internal discrimination complaint process (including the acceptance or rejection of complaints); to provide policy guidance to the operating administrations and Secretarial officers concerning the implementation and enforcement of all civil rights laws, regulations and executive orders for which the Department is responsible; to otherwise perform activities to ensure compliance with external civil rights programs; and to review and evaluate the operating

administrations' enforcement of these authorities.

These authorities include:

(a) Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. 2000e *et seq.*

(b) Title VI of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. 2000d *et seq.*

(c) Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. 794 and 794a.

(d) Section 501 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. 791.

(e) Age Discrimination in Employment Act of 1967, *as amended*, 29 U.S.C. 621 *et seq.*

(f) Age Discrimination Act of 1975, *as amended*, 42 U.S.C. 6101.

(g) Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified at 42 U.S.C. 12101-121213).

(h) Equal Pay Act of 1963 (enacted as section 6(d) of the Fair Labor Standards Act of 1938, 29 U.S.C. 206(d)).

(i) Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, 42 U.S.C. 290dd(b).

(j) 29 CFR Parts 1600 through 1691 (Equal Employment Opportunity Commission Regulations).

(k) Department of Transportation Coast Guard Military Justice Manual, CG-488, Part 700-9 (Civil Rights Complaints).

(l) Title VIII of the Civil Rights Act of 1968, *as amended*, 42 U.S.C. 3601 *et seq.* (fair housing provisions).

(m) The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 476.

(n) Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681.

(o) Executive Order No. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations. (In coordination with the Assistant Secretary for Transportation Policy.)

(p) 49 U.S.C. 47113, 47107, and 47123 (formerly sections 505(f), 511(a)(17), and 520 of the Airport and Airway Improvement Act of 1982, *as amended*).

(q) 49 U.S.C. 41705 (formerly the Air Carrier Access Act of 1986, *as amended*).

(r) The Federal-Aid Highway Act, *as amended*, 23 U.S.C. 140 and 324.

(s) 49 U.S.C. 306.

(t) 49 U.S.C. 5310, 5332 (formerly sections 16 and 19 of the Federal Transit Act, *as amended*).

(u) The Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, 105 Stat. 1919, section 1003.

(v) The Highway Safety Act of 1966, as amended, 23 U.S.C. 402(b)(1)(D).

Issued at Washington, DC this 5th day of January 1995.

**Federico Peña,**

*Secretary of Transportation.*

[FR Doc. 95-753 Filed 1-11-95; 8:45 am]

BILLING CODE 4910-62-U

## National Highway Traffic Safety Administration

### 49 CFR Part 571

[Docket No. 93-54, Notice 2]

RIN 2127-AE54

### Federal Motor Vehicle Safety Standards; Air Brake Systems; Long-Stroke Brake Chambers

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** Consistent with a recommendation by the National Transportation Safety Board and in response to a petition for rulemaking from the American Trucking Associations (ATA), this final rule amends the reservoir requirements in Standard No. 121, *Air Brake Systems*, for trucks, buses, and trailers equipped with air brakes. The agency believes that the amendments will improve the braking efficiency of such vehicles and reduce the number of brakes found to be out of adjustment during inspections. It will do this by removing a design restriction that tends to discourage the use of long-stroke brake chambers, a technology with potentially significant safety benefits.

**DATES:** *Effective Date:* The amendments become effective on February 13, 1995.

*Petitions for Reconsideration:* Any petitions for reconsideration of this rule must be received by NHTSA no later than February 13, 1995.

**ADDRESSES:** Petitions for reconsideration of this rule should refer to Docket 93-54; Notice 2 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-366-5274).

## SUPPLEMENTARY INFORMATION:

### I. Background

Standard No. 121, *Air Brake Systems*, specifies performance requirements applicable to vehicles equipped with air brakes. The Standard also requires air-braked vehicles to be equipped with various types of equipment, including an air compressor, reservoirs, and a pressure gauge. (See section S5.1) Standard No. 121 does not specify the length of stroke of brake chambers, but it establishes a ratio between the volume of the service reservoirs and the volume of the brake chambers. The reservoirs store energy, in the form of air at high pressure that is used to apply the vehicle's brakes. Without such reservoirs, the vehicle's air compressor could not maintain adequate brake system pressure during successive rapid brake applications. The effect of this ratio is that if the brake chamber stroke is lengthened, thereby increasing its volume, it may be necessary to enlarge the service reservoirs.

With respect to trucks and buses, Section S5.1.2.1 currently specifies that

The combined volume of all service reservoirs and supply reservoirs shall be at least 12 times the combined volume of all service brake chambers at maximum travel of pistons or diaphragms. However, the reservoirs on the truck portion of an auto transporter need not meet this requirement.

Similarly, with respect to trailers, section S5.2.1.1 specifies

The total volume of each service reservoir shall be at least eight times the combined volume of all service brake chambers serviced by that reservoir at the maximum travel of the pistons or diaphragms of those service brake chambers. However, the reservoirs on a heavy hauler trailer and on the trailer portion of an auto transporter need not meet the requirements specified in S5.2.1.1.

These provisions were intended to ensure that a vehicle's braking system has sufficient compressed air to provide adequate brake pressure after a number of brake applications.

Brake chambers with longer strokes are commonly known as "long-stroke" chambers, in reference to the longer piston or pushrod travel that they require. Reports<sup>1</sup> by NHTSA and the National Transportation Safety Board (NTSB) have indicated that long stroke chambers can help improve brake adjustment on heavy vehicles. However, the reports also note that the reservoir requirements in Standard No. 121

<sup>1</sup> *Automatic Slack Adjusters for Heavy Vehicle Brake Systems*, February 1991, DOT HS 724, and the National Transportation Safety Board *Heavy Vehicle Airbrake Performance*, 1992, PB92-917003/NTSB/SS-92/01

would necessitate much larger reservoirs when long-stroke chambers are used. Thus, while the current requirements do not prohibit long-stroke chambers, the requirements for reservoir size significantly discourage their use.

### II. Petition

On March 17, 1992, the American Trucking Associations (ATA) petitioned the agency to amend the reservoir requirements in Standard No. 121 to facilitate the installation of long-stroke chambers. With respect to trucks, buses, and trailers equipped with long-stroke chambers, ATA recommended that the combined volume of all the reservoirs be based on the "rated volume" of the service brake chambers, rather than on the volume of the chambers at the maximum travel of the piston. The "rated volume" of each brake chamber would be determined pursuant to a table of specified values according to the area of the brake diaphragm and the length of the stroke. In other words, under ATA's recommended amendment, if a "type 30" brake chamber (with a diaphragm of approximately 30 square inches) had a full stroke of at least 2.50 inches, then the rated volume of the brake chamber would have to be at least 84 cubic inches. As a practical matter, the use of long stroke chambers should have a minimal effect on reservoir capacity. For other types of brake chambers not presented on the table, the rated volume would be the volume of the brake chamber at maximum travel of the brake pistons or pushrods.

In support of its petition, ATA argued that manufacturers would have to incur unnecessary costs associated with increasing the size of the reservoirs if standard brake chambers were replaced with long-stroke chambers. Along with these additional costs, some vehicle configurations would have to be redesigned due to lack of adequate locations with sufficient space to accommodate large reservoirs. The lack of space is especially significant with short wheel base single unit trucks equipped with extensive accessories (e.g., power-take-off units (PTOs), tail gate lifts, refrigeration units, larger brakes) which compete for undercarriage space.

### III. Notice of Proposed Rulemaking

On August 2, 1993, NHTSA proposed amending Standard No. 121's reservoir requirements for trucks, buses, and trailers to facilitate the introduction of long-stroke brake chambers. (58 FR 41078). Specifically, the agency proposed that the method for calculating air reservoir requirements would be based on the "rated volume"

of the brake chambers rather than on the volume of the brake chambers at the maximum travel of the brake pistons or push rods. The agency tentatively agreed with the petitioner that the proposed amendments would make it easier for vehicle manufacturers to install long-stroke brake chambers on air-braked vehicles, because extremely large reservoirs would no longer be required. The agency stated that it believed that long-stroke chambers would help improve the braking efficiency of vehicles, significantly increase the reserve stroke, reduce the number of brakes found to be out of adjustment during inspections, and reduce the incidence of dragging brakes. NHTSA referenced the Safety Board report, which concluded that “\* \* \* combining a properly installed and maintained automatic slack adjuster with a long-stroke chamber could reduce the percentage of brakes at or past the limit of adjustment from the 26 percent figure for the manual slack adjusters on a regular stroke chamber to the 4 percent figure for the automatic adjusters installed on a long-stroke chamber.”

In the NPRM, NHTSA explained its tentative determination that there would be no safety problem with the amended reservoir requirements. The agency cited tests conducted at NHTSA's Vehicle Research and Test Center (VRTC) that indicated that there is sufficient reserve volume to stop an air-braked vehicle even under worst-case conditions (i.e., the engine was stalled so the compressor was not adding replacement air to the system, the vehicle was equipped with long-stroke brake chambers and antilock brake systems (ABS), and the vehicle was stopped on a very low friction surface). The VRTC tests further indicated that while multiple combination vehicles would experience an additional 10 psi drop in air pressure because of the compressor's need to fill a greater volume when the vehicle is equipped with long-stroke chambers, there would still be adequate air pressure to safely stop a triple trailer combination vehicle with ABS on a wet Jennite surface. The rapid cycling produced by the ABS under this condition places severe demands on reservoir capacity and is therefore a good measure of the reserve pressure available from reservoirs meeting the revised volumes proposed in the NPRM. Notwithstanding its tentative findings, NHTSA requested comment about any potential safety problems that might result from amending the reservoir requirements to

facilitate the introduction of long-stroke brake chambers.

#### IV. Comments to the NPRM

NHTSA received 15 comments in response to the NPRM. Commenters included vehicle manufacturers, brake manufacturers, truck equipment suppliers, ATA, the Heavy Duty Brake Manufacturers Council (HDBMC) and Advocates for Highway and Auto Safety (Advocates).

Commenters addressed both the need for the proposal and recommended various modifications to the proposed regulations.

Midland-Grau, Rockwell, Allied Signal, HDBMC, Freightliner, International Transquip Industries (ITI), MGM Brakes, Ford, and ATA generally believed that the proposal to facilitate the use of long stroke brake chambers is in the interest of safety. In contrast, while WhiteGMC/Volvo, Haldex, Eaton, and Advocates, agreed that long stroke brake chambers could enhance safety, they opposed the agency's specific proposal which they believed would reduce the stringency of the reservoir requirements and thus result in detriment to safety.

#### V. Agency Determination

##### A. Overview

After reviewing the comments in light of the available information, NHTSA has decided to amend Standard No. 121's reservoir requirements for trucks, buses, and trailers to facilitate the introduction of long-stroke brake chambers. Specifically, under today's amendments, the method for calculating air reservoir requirements is now based on either the “rated volume” of the brake chambers or the volume of the brake chambers at the maximum travel of the brake pistons or push rods, whichever is less. As a result of these amendments, it will be easier for vehicle manufacturers to install long-stroke brake chambers on air-braked vehicles, because extremely large reservoirs will no longer be required to meet the reservoir requirements. The agency has determined that long-stroke chambers will help improve the braking efficiency of vehicles, increase the reserve stroke, reduce the number of brakes found to be out of adjustment during inspections, and reduce the incidence of dragging brakes.

NHTSA has decided to modify the proposed Table V “Brake Chamber Rated Volumes” by specifying upper limits to the stroke lengths for which rated volumes may be used. As explained below, the agency has determined that specifying an upper

limit is necessary to preclude manufacturers from extending stroke lengths beyond the point at which adequate air pressure reserves are available to bring a vehicle to a complete stop. Accordingly, the amendment would not affect extremely long stroke chambers, the use of which could adversely affect air reservoir capacity. Specifically, Table V has been modified such that a vehicle manufacturer can use the “rated volume” rather than the actual brake chamber volume, when determining minimum reservoir volume, only when the maximum strokes for long stroke chambers are no more than 20 percent longer than the nominal stroke for standard stroke chambers. In addition, the rated volumes have been increased to reflect the largest volumes of standard stroke air brake chambers that are available.

##### B. Safety Consequences

In the NPRM, NHTSA considered the safety implications of amending the reservoir requirements to facilitate the installation of long-stroke brake chambers. The agency had tentatively determined that relaxing the current reservoir volume requirements would not result in any safety problems. Notwithstanding its tentative findings, the agency requested comment about potential safety problems that might result from decreasing the stringency of the reservoir requirements.

Midland-Grau, Rockwell, Allied Signal, HDBMC, Freightliner, ITI, MGM Brakes, Ford, and ATA generally believed that the proposal to facilitate the use of long stroke brake chambers would have no corresponding safety problems. HDBMC stated that long stroke brake chambers will provide a significant improvement in maintaining a more reliable level of automatic brake adjustment. Freightliner stated that long stroke chambers will improve highway safety by providing additional reserve stroke at force levels that will maintain brake performances under extreme operating conditions. ATA stated that the use of long stroke brake chambers will decrease the number of vehicles with defective brakes and provide for more effective brakes, especially when they are hot. Rockwell stated that the current regulations unnecessarily impede the adoption of long stroke chambers and the potential benefits they offer. It further stated that long stroke chambers would keep the useful stroke of a vehicle's slack adjuster within the acceptable stroke limits, reduce the number of out-of adjustment vehicles, and the number of incidents of dragging brakes.

In contrast, WhiteGMC/Volvo, Haldex, Eaton, and Advocates believed that the proposal would be detrimental to safety, primarily because the proposed amendments would make the reservoir requirements less stringent. WhiteGMC/Volvo stated that the proposal promotes less reservoir volume and extended application times. Advocates had "misgivings about the regulatory approach" in the NPRM which it believed would significantly reduce the total operating reserve volume of the brake reservoirs, thereby allowing manufacturers to install undersized brake reservoirs. Haldex stated that the proposal was ill advised and premature because it would result in a decrease in the reserve air volume. Instead, it favored issuance of a "performance based standard." Eaton was concerned that the proposal was a "quick fix" that would degrade heavy truck brake system performance.

After reviewing testing conducted at VRTC, the comments, and other available information, NHTSA has determined that the amendments to Standard No. 121's reservoir requirements will ensure the safe braking of air-braked vehicles, since it will not adversely affect their reservoir capacity. Specifically, testing conducted at VRTC indicate that today's amendments to Standard No. 121 will not cause a significant reduction in a brake system's maintaining adequate pressure even under adverse conditions, affect its application and release times, or contribute to a vehicle's propensity to jackknife.

With respect to a brake system's air reserves, VRTC and SAE testing indicate that long stroke chambers perform safely, even if the volume of the reservoirs are not increased to reflect the increased volume of the long stroke chambers. In general, long stroke chambers use no more air than standard length brake chambers, if they are properly adjusted. This testing information has been placed in the public docket under "Reservoir Pressure Drop With ABS Cycling" and "SAE J1911 Tractor and Trailer Tests." Similarly, long stroke chambers in SAE J1911 tests show the same air consumption as a conventional brake chamber, when properly adjusted.

The only time a long stroke chamber will consume more air is when the automatic adjuster is not functioning correctly and the stroke is at the outer limit of adjustment. To protect against such situations, the agency has decided to specify an upper limit for the maximum stroke of brake chambers for which a vehicle manufacturer can use the "rated volume" in determining the

minimum reservoir volumes. The agency has specified that the upper limit be 20 percent above the nominal stroke for a normal stroke brake chamber. For instance, Type 9 brakes will be allowed to have a stroke length of between 1.75 and 2.10 inches. The agency has rejected the upper limits recommended by Midland-Grau which in some cases would have increased the stroke length up to 40 percent. The agency believes that using "rated volumes" for such long stroke chambers might undermine the reservoir requirements.

With respect to brake application times, NHTSA has determined that long stroke brake chambers typically do not significantly affect brake apply and release times. The effect of brake adjustment level on timing is discussed in "NHTSA Heavy-Duty Vehicle Brake Research Program Report No. 5: Pneumatic Timing." DOT HS 806 897, December 1985. The one exception is in the highly unusual situation in which all the automatic brake adjusters on a vehicle fail and at the same time all of the units operate at the outer limit of adjustment or beyond. Even under this highly unlikely condition, the apply time would only increase by approximately 0.040 second and the release time by 0.024 second. Moreover, standard stroke chambers would be ineffectual in this situation. This equates to about three additional feet of stopping distance on the apply time and two additional feet on the release time.<sup>2</sup> Any such increases can be minimized, since vehicle manufacturers can change the apply and release times by modifying the valving to adjust or remove air flow restrictions. Similarly, the vehicle manufacturers could remove air flow restrictions to the glad hand and pass the signal faster to the trailer.

With respect to jackknives, NHTSA disagrees with Eaton's claim that equipping vehicles with long stroke chambers would increase the likelihood of jackknives. Jackknives are caused by wheel lockup due to hard brake applications on wet roads or when vehicles are empty or lightly loaded. The presence or absence of long stroke chambers will not affect the underlying foundation brakes. Specifically, VRTC studies<sup>3</sup> show that stroke lengths do not affect brake timing. The agency further notes that long stroke chambers improve brake adjustment and the resulting brake balance between tractors and trailers, thereby improving a

combination vehicle's directional stability and control and decreasing the likelihood of jackknifing.

### C. Changes to Proposed Regulatory Text

Several commenters recommended that the proposed wording of Table V and S5.1.2.1 and S5.2.1.2 be modified to provide greater flexibility to manufacturers. For instance, ATA requested that the words "on CAM Brakes" be deleted from the title in Table V so that it reads—"Brake Chamber Rated Volumes." ATA also requested that the words "brake chamber" be changed to "brake actuator" and that "actuator" be inserted into Table V to clarify that the "type" is a brake actuator classification and not a brake classification. Similarly, ITI recommended that S5.1.2.1 and S5.2.1.2 be revised to permit brake chambers that were not of the sizes specifically listed in Table V. Allied recommended that the wording "maximum travel of pistons or push rod" be replaced with "full stroke of push rods." It also recommended "defining chamber type as being the nominal effective area of a piston or diaphragm."

NHTSA has modified certain provisions in the regulatory text pursuant to the comments. For instance, it has modified the title to Table V to state "Brake Chamber Rated Volumes" instead of "Brake Chamber Rated Volumes on Cam Brakes." The agency agrees with the commenters that including the reference to cam brakes was unnecessarily narrow and might imply exclusion for use of other brake types such as air disc, wedge, and air-over-hydraulic. NHTSA has also incorporated Allied Signal's request for the regulation to indicate that chamber type is the nominal effective area of a piston or diaphragm, by adding this information to the top of column one in Table V.

NHTSA decided not to modify other provisions in the regulatory text, notwithstanding recommendations by commenters to the NPRM. For instance, the agency decided not to adopt ATA's request to change the phrase "brake chamber" to "brake actuator."

There are numerous references to brake chamber throughout Standard No. 121, which are well understood by the technical personnel who rely on the requirements. "Brake actuator" may explain what an air-brake chamber does (i.e., that it actuates the brakes when it fills with air); however, it adds nothing to what is already understood. Similarly, the agency decided not to adopt Allied Signal's request to eliminate the term "piston." While the

<sup>2</sup> NHTSA's Heavy-Duty Vehicle Research Program Report No. 5: Pneumatic Timing. DOT HS 806 897, December 1985.

<sup>3</sup> Id.

commenter apparently believed that the use of the additional word "piston" added nothing because every system has a push rod, the agency nevertheless has decided to include this term to clarify that the necessary measurements of stroke length can be measured at the piston or the push rod. Accordingly, the regulatory text retains this word.

#### D. Future Rulemaking

NHTSA notes that it is considering rulemaking consistent with the draft SAE Recommended Practice J1609X, *Air Reservoir Capacity Performance Guide—Commercial Vehicles*. The purpose of such a rulemaking would be to establish a performance requirement addressing the minimum air storage capacity for air-braked vehicles. If the agency determined that such a performance requirement were appropriate, it would issue a proposal in the **Federal Register** on which the public could comment. A considerable amount of testing needs to be completed before a viable set of performance requirements are established.

#### E. Miscellaneous Issues

Commenters raised a number of issues that were not mentioned in the NPRM. These include testing trucks on downhill grades, the consistency of the amendment to the agency's statutory mandate, marking requirements, and the rule's effective date.

With respect to testing truck descents on downhill grades, NHTSA disagrees with comments by Advocates and Haldex that the air reservoir requirements should be based on such testing and that such testing represents worst-case situations. Braking on ice, snow, and rain covered roads with low coefficient of friction surfaces is more severe than mountain grade braking. The air pressure remaining after a complete antilock cycling stop on ice or wet Jennite is substantially less than that remaining in the air brake system at the bottom of a long mountain grade. Moreover, VRTC studies clearly show that there is sufficient air remaining in the air brake system, after stopping on low coefficient of friction surfaces or mountain grades using either snubbing or steady pressure. Similarly, testing performed by the University of Michigan Transportation Research Institute (UMTRI) shows sufficient air supply reserves on long down hill grades to make a 60 psi full braking stop at the bottom of the grade.<sup>4</sup> Advocates

appears to misunderstand how downhill braking affects an air brake system's reservoirs. Consumption and apply and release times, which are important concerns for long stroke chambers, are not important concerns with downhill braking. The major consideration in downhill braking is overheated brakes and brake fade caused by brakes that are not in adjustment, since improperly adjusted brakes must be applied for longer periods of time. As a result, the vehicle will have either no brakes or very limited braking. The use of long stroke brake chambers together with automatic adjusters will reduce the incidence of out-of-adjustment, and thus not degrade the performance on downhill braking.

Advocates stated that the petitioner's "rated volume" approach to establish the air reservoir volumes is equivalent to the European type approval approach for establishing compliance. Accordingly, it believed that the proposal was inconsistent with the National Traffic and Motor Vehicle Safety Act (now codified as chapter 301 of Title 49, United States Code). NHTSA believes that Advocates has misinterpreted both the proposal and the law. Unlike European type approval, the proposal is not for a single manufacturer's product. Rather, it regulates *all* manufacturers' brake chambers of a specific type. Accordingly, today's requirements are consistent with the law.

Rockwell and HDBMC recommended that the agency require the identification of long stroke chambers through marking requirements. Notwithstanding this request, NHTSA notes that the agency cannot include a marking requirement in this final rule that it did not propose in the NPRM. Nevertheless, the agency will monitor the progress made by the Federal Highway Administration which is working with the SAE, Commercial Vehicle Safety Alliance, and brake equipment manufacturers to establish an acceptable marking system that can easily be identified under the difficult visual conditions on the underside of air braked vehicles. If NHTSA determines that Federal marking requirements are needed, then it would propose marking requirements in a future rulemaking.

The same problem with inadequate notice is relevant to Midland-Grau's recommendation to raise the minimum governor cut-in pressure to 100 psi. The agency may consider such a requirement in a separate rulemaking,

depending on tests to be conducted at VRTC.

In response to requests by Freightliner and ATA for NHTSA to make the final rule effective upon publication, the agency notes that the Administrative Procedure Act generally requires a leadtime of at least 30 days, unless the agency finds "good cause" to issue the rule sooner. Since, NHTSA typically makes a finding of good cause only in emergency situations, the agency cannot accommodate this request. The final rule will take effect 30 days after its publication in the **Federal Register**.

#### Rulemaking Analyses and Notices

##### *Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of this rulemaking action under E.O. 12866, "Regulatory Planning and Review" and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866. This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule will not impose any special requirements on manufacturers. Instead, the rule will facilitate the introduction of a new brake design by removing a design restriction. Therefore, the agency believes that this rulemaking will not result in significant additional costs or cost savings.

##### *Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically do not qualify as small entities. As discussed above, the agency's assessment is that this amendment will have no cost impact to the industry. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles will not be affected by the requirements. Accordingly, no regulatory flexibility analysis has been prepared.

##### *Executive Order 12612 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule will not have sufficient

<sup>4</sup>"The Influence of Braking Strategy on Brake Temperatures in Mountain Descents," March 1992, Federal Highway Administration Report DTFH61-89-C-00106. Report available through the National

Technical Information Service. NTIS accession number PB 93-137032.

Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

*National Environmental Policy Act*

Finally, the agency has considered the environmental implications of this final rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule will not significantly affect the human environment.

*F. Civil Justice Reform*

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended to read as follows:

**PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.121 is amended by revising S5.1.2.1 and S5.2.1.1 to read as follows:

**§ 571.121 Standard No. 121; Air brake systems.**

\* \* \* \* \*  
 S5.1.2.1 The combined volume of all service reservoirs and supply reservoirs shall be at least 12 times the combined volume of all service brake chambers. For each brake chamber type having a full stroke at least as great as the first number in Column 1 of Table V, but no more than the second number in Column 1 of Table V, the volume of each brake chamber for purposes of calculating the required combined

service and supply reservoir volume shall be either that specified in Column 2 of Table V or the actual volume of the brake chamber at maximum travel of the brake piston or pushrod, whichever is lower. The volume of a brake chamber not listed in Table V is the volume of the brake chamber at maximum travel of the brake piston or pushrod. The reservoirs of the truck portion of an auto transporter need not meet this requirement for reservoir volume.

\* \* \* \* \*

S5.2.1.1 The total volume of each service reservoir shall be at least eight times the combined volume of all service brake chambers serviced by that reservoir. For each brake chamber type having a full stroke at least as great as the first number in Column 1 of Table V, but no more than the second number in column 1, the volume of each brake chamber for purposes of calculating the required total service reservoir volume shall be either that number specified in Column 2 of Table V or the actual volume of the brake chamber at maximum travel of the brake piston or pushrod, whichever is lower. The volume of a brake chamber not listed in Table V is the volume of the brake chamber at maximum travel of the brake piston or pushrod. The reservoirs on a heavy hauler trailer and the trailer portion of an auto transporter need not meet this requirement for reservoir volume.

\* \* \* \* \*

**§ 571.121 [Amended]**

3. Section 571.121 is amended to include the following table to be placed after Figure 3.

TABLE V.—BRAKE CHAMBER RATED VOLUMES

Brake chamber type (nominal area of piston or diaphragm in square inches)	Column 1, full stroke (inches)	Column 2, rated volume (cubic inches)
Type 9 .....	1.75/2.10	25
Type 12 .....	1.75/2.10	30
Type 14 .....	2.25/2.70	40
Type 16 .....	2.25/2.70	50
Type 18 .....	2.25/2.70	55
Type 20 .....	2.25/2.70	60
Type 24 .....	2.25/2.70	70
Type 30 .....	2.50/3.20	95
Type 36 .....	3.00/3.60	135

Issued on January 5, 1995.

**Ricardo Martinez,**  
*Administrator.*

[FR Doc. 95-752 Filed 1-11-95; 8:45 am]

BILLING CODE 4910-59-P

**49 CFR Part 572**

[Docket No. 95-01, Notice 1]

RIN 2127-AF48

**Anthropomorphic Test Dummy; Six-Year Old Dummy**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

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

**SUMMARY:** This document makes a minor correction to the thorax assembly and test procedure in NHTSA's regulation for the six-year-old child dummy. This document corrects inconsistencies between the figure in the regulation that illustrates the test set-up for calibrating the dummy's thorax and the regulatory text that describes the calibration test procedure. This action removes potential sources of concern and confusion for manufacturers and users of the dummy about whether a particular six-year-old child dummy meets the specifications of NHTSA's regulation for the dummy (part 572, subpart I).

**EFFECTIVE DATE:** The changes made in this rule are effective January 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stan Backaitis, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-4912.

**SUPPLEMENTARY INFORMATION:** On November 14, 1991, NHTSA published a rule that added specifications for a 6-year-old child test dummy to NHTSA's set of regulations for "Anthropomorphic Test Dummies" (49 CFR part 572). The agency explained in the rule that the 6-year-old child dummy would be used to test child restraint systems for older children. The dummy is instrumented with accelerometers for measuring accelerations in the head and thorax during dynamic testing. The rule adopted performance criteria as calibration checks to assure the repeatability and reproducibility of the dummy's dynamic performance. These specifications for the dummy are set forth in subpart I of 49 CFR part 572.

In February 1994, First Technology Safety Systems, Inc. (First Technology), a manufacturer of test dummies, informed the agency that figure 41 in subpart I appears to have two errors. Figure 41 illustrates the test set-up for calibrating the dummy's thorax (figure 41, "thorax impact test set-up"). Both errors are due to inconsistencies between figure 41 and the regulatory

text in subpart I that describes the test procedure for calibrating the dummy's thorax (49 CFR section 572.74(c)(2)). In the calibration test, the dummy's chest is impacted by a test probe at a specific point and the accelerometer's measurements are evaluated.

First Technology described the first error thusly:

The thorax test procedure [of section 572.74] states that the impact point should be 2.25 inches below the centerline of the clavicle retaining screw. The impact point based on that dimension would fall between the first and second rib. In contrast, figure 41 \* \* \* shows the centerline of the impactor in line with the centerline of the third rib.

The second error relates to how the dummy is positioned for the thorax impact test. Section 572.74(c)(2) specifies that the dummy is adjusted "so that the longitudinal centerline of the No. 3 rib is horizontal." In contrast, an instruction in figure 41 specifies that the dummy is set up with the centerline of the number three rib horizontal " $\pm\frac{1}{2}$  [inch]." First Technology stated in its letter, "[T]he tolerance on figure 41 is  $\pm\frac{1}{2}$  inch, which would result in 14 degrees variation."

#### Technical Amendment

NHTSA has examined First Technology's concerns and agrees that figure 41 and section 572.74 need to be amended so that they are consistent. As to the first error, the correct specification for the location of the impact point for the impactor is in section 572.74, and not in figure 41. The centerline of the impactor and the centerline of the third rib were drawn on figure 41 to be coincident instead of being slightly apart. This makes it appear that the impactor's first contact occurs at the centerline of the third rib, instead of approximately  $\frac{1}{8}$  inch above it, in accordance with section 572.74. NHTSA is correcting figure 41 to depict the centerline for the thorax impactor as being slightly above the depicted centerline of the dummy's third rib.

As to the second error, the instruction in figure 41 that specifies that the dummy is "set up with centerline of #3 rib horizontal  $\pm\frac{1}{2}$  inch" is inconsistent with the instruction in section 572.74(c)(2) concerning dummy set-up. The regulatory text states: "adjust the dummy so that the longitudinal

centerline of the No. 3 rib is horizontal." The " $\pm\frac{1}{2}$  inch" tolerance provided in figure 41 is inconsistent with the regulatory text since the centerline of the No. 3 rib of a dummy adjusted to the allowable limit could be far from horizontal. On the other hand, NHTSA believes that the tolerance should not be altogether eliminated. A 1 degree tolerance in section 572.74(c)(2) would provide some flexibility while ensuring that the centerline of the rib will be essentially, if not exactly, horizontal. Accordingly, NHTSA amends section 572.74(c)(2) to provide for  $\pm 1$  degree of tolerance. In addition, the instruction in figure 41 that specifies the dummy is "set up with centerline of #3 rib horizontal  $\pm\frac{1}{2}$  inch" is revised to provide for the  $\pm 1$  degree of tolerance.

The regulatory text of section 572.74(c)(2) is also revised with regard to its reference to the "longitudinal centerline" of the No. 3 rib as the portion of the dummy that must be horizontal. Using the word "longitudinal" is inaccurate, since "longitudinal" describes a characteristic of a line, while what was actually meant was the alignment of the dummy in a plane. To more accurately describe the positioning of the dummy, the direction in section 572.74(c)(2) that the "longitudinal centerline of the No. 3 rib is horizontal" is changed to "the plane that bisects the No. 3 rib into upper and lower halves is horizontal" ( $\pm 1$  degree). This text is also added to the instruction on positioning the dummy in figure 41.

NHTSA believes this rule is needed to avoid potential sources of complaint and confusion. In the past, dummy manufacturers have urged NHTSA to correct any inconsistency between the part 572 specifications and the actual design and manufacture of the test dummies. (See, e.g., correction of NHTSA's regulation for the side impact test dummy, 59 FR 52089; October 14, 1994.) These manufacturers are concerned that customers could complain that a dummy they purchased does not meet the specifications of the part 572 regulation, even when the problems are with the regulation rather than the dummy, and are relatively minor.

This document does not impose any additional responsibilities on any

vehicle or dummy manufacturer. NHTSA confirmed with several test facilities that they locate the impactor according to section 572.74, and not figure 41. Since this rule does not impose any additional burdens, and because it corrects minor inconsistencies in the regulation and removes potential sources of question for dummy manufacturers, NHTSA finds for good cause that notice and an opportunity for comment on this document are unnecessary, and that this rule should be effective upon publication.

These minor technical amendments were not reviewed under E.O. 12866. NHTSA has considered costs and other factors associated with these amendments, and determined that these amendments do not change any of the conclusions in the November 1991 final rule regarding the impacts of that final rule, including the impacts on small businesses, manufacturers and other entities.

#### List of Subjects in 49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, NHTSA amends 49 CFR part 572 as follows:

#### PART 572—[AMENDED]

1. The authority citation for part 572 is revised to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

#### Subpart I—6-Year-Old Child

2. In § 572.74, paragraph (c)(2) is revised to read as follows:

#### § 572.74 Thorax assembly and test procedure.

\* \* \* \* \*

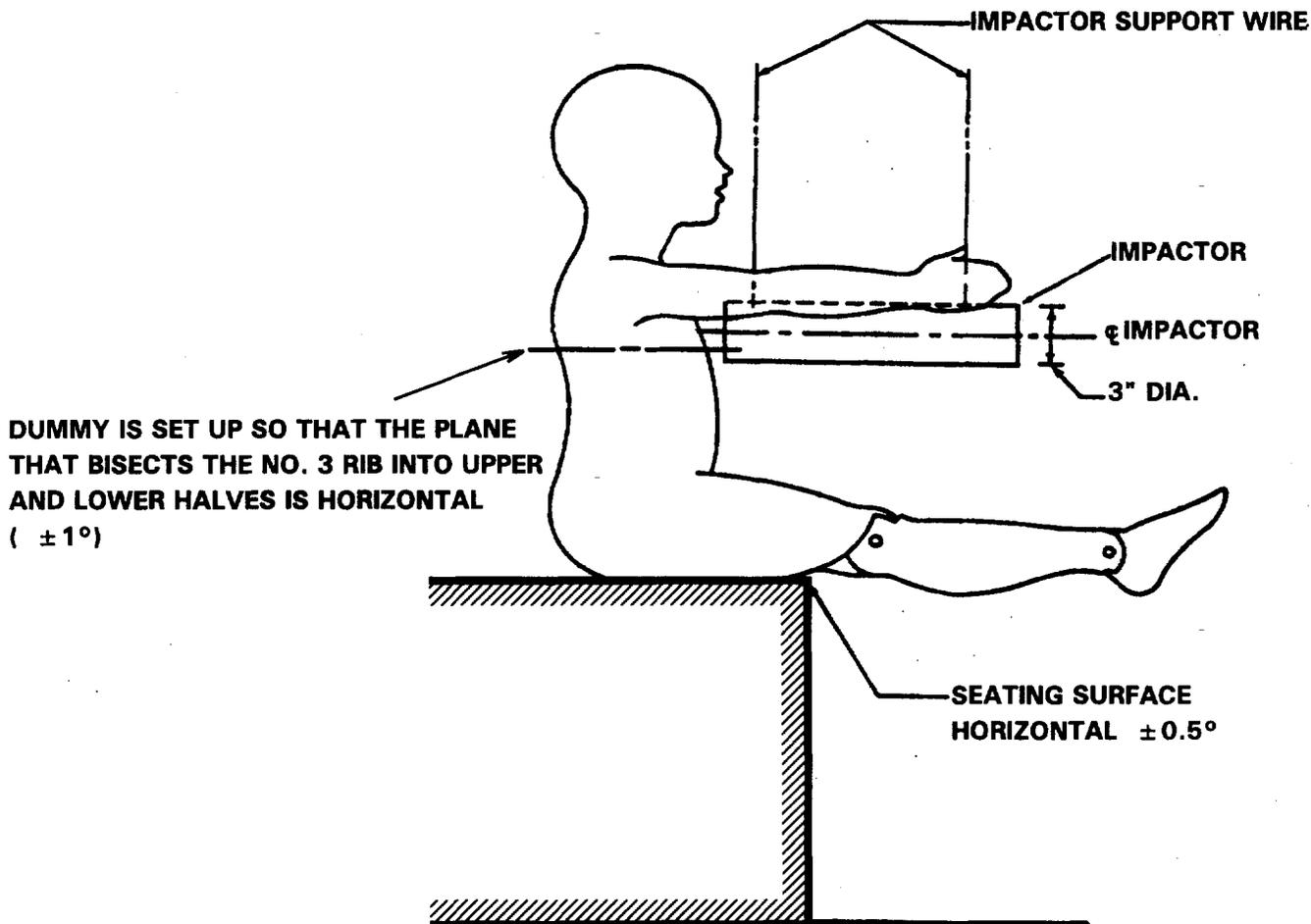
(c) \* \* \*

(2) Establish the impact point at the chest midsagittal plane so that the impact point is 2.25 inches below the longitudinal center of the clavicle retainer screw, and adjust the dummy so that the plane that bisects the No. 3 rib into upper and lower halves is horizontal  $\pm 1$  degree.

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3. Figure 41 in subpart I is revised to read as follows:

**FIGURE 41  
THORAX IMPACT TEST SET-UP**



- NOTES:**
1. DUMMY IMPACT SENSORS NOT USED IN THIS TEST MAY BE REPLACED BY EQUIVALENT DEAD WEIGHTS.
  2. NO EXTERNAL SUPPORTS ARE REQUIRED ON THE DUMMY TO MEET SET-UP SPECIFICATIONS.
  3. THE MIDSAGITTAL PLANE OF THE DUMMY IS VERTICAL WITHIN  $\pm 1$  DEG.
  4. THE MIDSAGITTAL PLANE OF THE THORAX IS CENTERED WITH RESPECT TO THE LONGITUDINAL CENTERLINE OF THE PENDULUM WITHIN 0.12 IN.

Issued on January 5, 1995.

**Ricardo Martinez,**

*Administrator.*

[FR Doc. 95-751 Filed 1-11-95; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AB84

#### Endangered and Threatened Wildlife and Plants; Addition of 30 African Birds to List of Endangered and Threatened Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service adds 30 kinds of birds, found in Africa and on associated islands, to the List of Endangered and Threatened Wildlife. All have restricted distributions and are threatened by habitat destruction, human hunting, predation by introduced animals, and various other factors. All were subjects of petitions from the International Council for Bird Preservation submitted in 1980 and 1991. This rule implements the protection of the Endangered Species Act of 1973, as amended (Act), for these birds.

**EFFECTIVE DATE:** February 13, 1995.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203. Comments may be sent to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, Room 725; U.S. Fish and Wildlife Service; Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles W. Dane, Chief, Office of Scientific Authority (phone 703-358-1708; FAX 703-358-2276).

#### SUPPLEMENTARY INFORMATION:

##### Background

In a petition of November 24, 1980, to the U.S. Fish and Wildlife Service (Service), the International Council for Bird Preservation (ICBP)—now known as Bird Life International—requested the addition of 79 kinds of birds to the U.S. List of Endangered and Threatened Wildlife. Of that number, 58 occurred entirely outside of the United States and its territories. Of those foreign birds, 6 have now been listed and the rest have been covered by petition findings that

their listing is warranted but precluded by other listing activity.

Subsequently, in a petition dated April 30, 1991, and received by the Service on May 6, 1991, the ICBP requested the addition of another 53 species of foreign birds to the List of Endangered and Threatened Wildlife. In the **Federal Register** of December 16, 1991 (56 FR 65207-65208), the Service announced the finding that this petition had presented substantial information indicating that the requested action may be warranted. At that same time the Service initiated a status review of these 53 birds, with the comment period lasting until March 16, 1992.

Section 4(b)(3) of the Endangered Species Act of 1973, as amended in 1982 (Act), requires that, within 12 months of receipt of a petition to list, delist, or reclassify a species, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity. In the case of the 1991 ICBP petition, available information supports listing of all 53 species. With respect to 15 of these species—those occurring in Africa and Madagascar and on associated islands of the Atlantic and Indian Oceans—an ICBP Red Data Book (Collar and Stuart 1985) provides detailed status data. This same source provides data supporting the listing of 13 of the African birds covered by the 1980 ICBP petition, and the Service also possesses sufficient data to support the listing of the other 2 African birds. With respect to the other birds included in the two petitions, data are available from several sources, some of which are unpublished. Compilation of these data is in progress, and a listing proposal will be completed as soon as allowed by the Service's other listing responsibilities.

Considering the above, the Service made the finding that the action requested by the ICBP 1980 and 1991 petitions, with respect to the 30 African birds named below in the "Summary of Factors Affecting the Species," is warranted, and that the action requested by the 1991 petition, with respect to the 38 remaining species covered therein, is warranted but precluded by other listing activity. That finding was incorporated and published together with a proposal in the **Federal Register** of March 28, 1994 (59 FR 14496-14502), to add the 30 birds named below to the List of Endangered and Threatened Wildlife.

#### Summary of Comments and Recommendations

In the proposed rule of March 28, 1994, and associated notifications, all interested parties were requested to

submit information that might contribute to development of a final rule. Cables were sent to United States embassies in countries within the ranges of the subject species, requesting new data and the comments of the governments of those countries. None of the 13 responses opposed the proposal; substantive information provided has been added to the following discussion (as "in litt."). There was one request for classifying the dappled mountain robin and Van Dam's vanga as endangered, rather than threatened as originally proposed. While such a measure will be given future consideration, immediately available scientific data suggest that the threatened category is appropriate. In contrast, data received on the white-breasted guineafowl, originally proposed as endangered, indicate that a threatened classification may more accurately describe its status, and such is now applied.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the following five factors described in Section 4(a)(1): (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. The application of these factors to the 30 African species named below is shown by the appropriate letter in parentheses (information from Collar and Andrew 1988, Collar and Stuart 1985, and Grzimek 1975, unless otherwise noted). Also indicated is the date of the petition covering each species, the classification given in pertinent ICBP Red Data Books, and the U.S. classification that now will apply.

Amsterdam albatross (*Diomedea amsterdamensis*).—1991 petition, ICBP endangered, U.S. endangered; a large sea bird of the family Diomedidae; known to breed only on Amsterdam Island, a French possession in the southern Indian Ocean. Destruction of nesting habitat by fires and introduced cattle (A) and predation by introduced rats and cats (C) have reduced numbers drastically. On the average only five

pairs were known to breed each year during the early 1980s.

Thyolo alethe (*Alethe choloensis*).—1991 petition, ICBP endangered, U.S. endangered; a small, ground-dwelling bird of the family Muscicapidae, related to the Old World robins and thrushes; known only from 13 small patches of submontane evergreen forest in southern Malawi and from 2 such areas in northern Mozambique. Suitable habitat already has been largely destroyed through human clearing and encroachment and remaining sites are at risk of destruction (A). About 1,500 pairs are estimated to survive.

Uluguru bush-shrike (*Malaconotus alius*).—1980 petition, ICBP rare, U.S. threatened; a small predatory bird of the family Laniidae, resembling the true shrikes in structure but utilizing more densely vegetated habitat and dwelling in the forest canopy; known only from the Uluguru Mountains in central Tanzania. Because of its dense forest habitat and evident low numbers, this bird has been difficult to locate and little is known of its status. However, the lower slopes of the mountains on which it lives are being steadily cleared and such activity places the species at risk (A).

Seychelles turtle dove (*Streptopelia picturata rostrata*).—1980 petition, ICBP endangered, U.S. endangered; a member of the family Columbidae, somewhat smaller than the domestic pigeon (*Columba domestica*) and generally dark grayish purple in color (Goodwin 1977); formerly found throughout Seychelles, an island nation off eastern Africa. This subspecies declined through hybridization with the related and more adaptable *S. p. picturata*, which was introduced from Madagascar in the mid-19th century (E). *S. p. rostrata* had become very rare by 1965 and pure individuals may have nearly vanished by 1975 (King 1981). However, according to Dr. Mike Rands, who operates the ICBP Seychelles program, and Ms. Alison Stattersfield (letter of November 11, 1993), also of the ICBP and who recently visited Seychelles, the subspecies *rostrata* does survive and is morphologically distinctive, at least on Cousin Island, though some hybridization probably has occurred. Therefore, even if genetically pure populations of this turtle dove no longer exist—which itself is not yet known with certainty—there are groups that could potentially be salvageable for captive breeding experiments and eventual efforts at restoration of a wild population with the predominant original morphological, behavioral, and ecological characters of the subspecies.

Madagascar sea eagle (*Haliaeetus vociferoides*).—1980 petition, ICBP endangered, U.S. endangered; a fish-hunting species of the family Accipitridae, related to and somewhat smaller than the American bald eagle; confined to the rivers, shorelines, and offshore islands of the west coast of central to northern Madagascar. Its numbers have dropped sharply since the last century, with only 96 individuals being counted during the mid-1980s. Although reasons for the decline are unclear, hunting and nest destruction by people (B) are thought to be partly responsible.

Madagascar serpent eagle (*Eutriorchis astur*).—1980 petition, ICBP endangered, U.S. endangered; a raptor of the family Accipitridae, more closely related to the harrier hawks than to most other eagles; until recently, known only from 11 specimens collected over 50 years ago in the eastern forests of Madagascar. In 1988 an individual was observed and in 1990 a dead specimen was recovered, both in northeastern Madagascar (Raxworthy and Colston 1992). On January 14, 1994, a live bird was captured and released (Peregrine Fund, World Center for Birds of Prey, Press Release of April 6, 1994). Thus, the species is known to survive, but it is apparently dependent on large tracts of undisturbed primary rainforest, and such habitat is rapidly being destroyed or adversely modified by human activity (A).

Mauritius fody (*Foudia rubra*).—1980 petition, ICBP endangered, U.S. endangered; a small weaver of the family Ploceidae, feeding on insects, nectar and small fruits; formerly widespread in the upland forests of the island of Mauritius, a part of the nation of the same name in the Indian Ocean. It now is restricted to the southwestern part of Mauritius, where perhaps only 150 breeding pairs survive. More than half of the population had been wiped out in 1973–1974 during a large-scale forest clearing project (A). The remaining birds are subject to intensive nest predation from rats, macaques, and other introduced animals (C).

Rodrigues fody (*Foudia flavicans*).—1980 petition, ICBP endangered, U.S. endangered; another small insectivorous weaver of the family Ploceidae; occurs only on the island of Rodrigues, a part of Mauritius in the Indian Ocean. Formerly abundant in a variety of habitats on the island, by 1983 only about 100 individuals survived in remnant patches of evergreen forest. The main problem appears to be competition with the related Madagascar fody (*Foudia madagascariensis*), which was introduced by people and which

evidently has adapted better to all habitats except mature forest (E). Since the latter habitat has been largely destroyed by human activity, the range of *F. flavicans* has been greatly reduced (A). In addition, the species is threatened by predation from introduced rats (C) and by the effects of cyclones (E).

Djibouti francolin (*Francolinus ochropectus*).—1991 petition, ICBP endangered, U.S. endangered; a ground-dwelling, partridge-like bird of the family Phasianidae; restricted to highland forest in the country of Djibouti in northeastern Africa. Its restricted habitat is rapidly being destroyed by overgrazing, clearing, and other human activity (A). The total population is thought to have declined from over 5,000 birds in 1978 to fewer than 1,000 today (Dr. Simon D. Dowell, Chairman, ICBP Partridge, Quail and Francolin Specialist Group, in litt.).

Alaotra grebe (*Tachybaptus rufolavatus*).—1991 petition, ICBP endangered, U.S. endangered; a small diving bird of the family Podicipedidae; known primarily from Lake Alaotra and adjacent marshes in northeastern Madagascar. Human alteration of the limited habitat of the Alaotra grebe (A), especially the introduction of exotic fish, resulted in a great increase there of the much more widespread little grebe (*Tachybaptus ruficollis*) and to extensive hybridization between the two species (E). It appears that the resulting genetic introgression of the Alaotra grebe may be irreversible.

White-breasted guineafowl (*Agelastes meleagrides*).—1991 petition, ICBP endangered, U.S. threatened; a medium-sized ground-dwelling bird of the family Numididae, related to turkeys and peacocks; originally occurred throughout the rainforest zone from Sierra Leone to Ghana. This species evidently is dependent on primary forest and is unable to survive in the dense undergrowth of secondary forest. It has disappeared from most of its range, mainly because of timber exploitation (A). It also has been severely affected by human hunting pressure (B). About 50,000 individuals may survive, but these are concentrated at only two restricted sites, Tai National Park in Ivory Coast, with 30,000–40,000, and the Gola Forest of Sierra Leone, with an estimated 7,100 (Dr. Simon D. Dowell, Chairman, ICBP Partridge, Quail and Francolin Specialist Group, in litt.).

Raso lark (*Alauda razae*).—1991 petition, ICBP endangered, U.S. endangered; a songbird of the family Alaudidae, closely related to the common Old World skylark; known only from

Raso, one of the islands in the nation of Cape Verde off the west coast of Africa. This species was once common and widespread on Raso but declined drastically because of a severe drought in the 1960s (E). The population may have fallen to only about 20 individuals in 1981. Numbers subsequently increased, but the species is potentially threatened by climatic fluctuations (E), human settlement (A), and predation by introduced rats, dogs, and cats (C). Approximately 250 breeding pairs are now present (Cape Verde Wildlife Agency, in litt.).

Ibadan malimbe (*Malimbus ibadanensis*).—1991 petition, ICBP endangered, U.S. endangered; another small weaver of the family Ploceidae, about the size of a house sparrow and with red markings; known only from southwestern Nigeria. The restricted range of this species is subject to intensive forest clearing (A). Although considered common when it was first discovered in 1951, it subsequently became very rare and prospects for survival are not favorable.

Algerian nuthatch (*Sitta ledanti*).—1980 petition, ICBP rare, U.S. endangered; a member of the family Sittidae, about the size of a house sparrow but with a compact build, a long beak, and grayish coloration; known only from Mount Babor in northern Algeria. Discovered in 1975, this small arboreal species is dependent on forest habitat, including standing dead wood for nesting. Such habitat is being reduced by lumbering, fire, grazing of domestic livestock, and removal of dead wood for forestry management (A). About 80 pairs were estimated to survive in 1982. A recent survey found about 20 nests in each of three different areas (Algerian Agence Pour La Protection de la Nature, in litt.).

Canarian black oystercatcher (*Haematopus meadewaldoi*).—1980 petition, ICBP extinct, U.S. endangered; a shore bird of the family Haematopodidae, somewhat like a rail but with much stouter bill and legs, generally black plumage; known with certainty only from the eastern Canary Islands, a Spanish possession off northwestern Africa. This species seems always to have been uncommon and there have been no definite records since about 1913, though it was reported regularly in the eastern Canaries until about 1940. It may have disappeared because of human disruption of its limited habitat and harvesting of the mollusks on which it fed (A), and because of predation by introduced cats and rats (C). Four apparently genuine reports of black oystercatchers—two on Tenerife in the western Canaries and

two on the coast of Senegal in West Africa—were made from 1968 to 1981, and give hope that the species still exists. The species is being included in this rule based on the recent reports and on the reasonable prospect of rediscovery. Rare and elusive species are routinely found alive after years, decades, or even centuries of presumed extinction. Indeed, rediscovery of two of the other birds covered by this proposal—the Madagascar serpent-eagle and the Madagascar pochard—was announced while the proposal was being drafted. The October 1993 issue of the journal *Oryx* contains announcements that three species—a bird, a mammal, and a reptile—none of which had been seen for at least 30 years, had all been found alive. The U.S. List of Endangered and Threatened Wildlife already includes many such rediscovered species. Examples are the parma wallaby (*Macropus parma*), which was thought extinct for 33 years; the dibbler (*Antechinus apicalis*), which was thought extinct for 83 years; and the mountain pygmy possum (*Burramys parvus*), which was thought to have disappeared many thousands of years ago in the Ice Age.

Seychelles lesser vasa parrot (*Coracopsis nigra barklyi*).—1980 petition, ICBP endangered, U.S. endangered; a member of the family Psittacidae, generally dark brown in color and about 25 centimeters (10 inches) long; known only from Praslin, one of the islands in Seychelles, a nation off the east coast of Africa. Originally common on the island, this species declined rapidly in the mid-20th century as its palm forest habitat was destroyed by human cutting and burning (A). The one remaining population was estimated to number about 30 to 50 individuals in 1965, though it subsequently may have increased to about 100 after efforts were made to protect it and its remaining habitat (King 1981, Silva 1989).

Madeira petrel or freira (*Pterodroma madeira*).—1991 petition, ICBP endangered, U.S. endangered; a small sea bird of the family Procellariidae (petrels and shearwaters); known to breed only in the mountains of Madeira, an island possession of Portugal in the Atlantic Ocean. It has declined because of human bird and egg collectors (B), predation by introduced rats (C), and possibly natural climatic changes (E). Only 20 breeding pairs may survive.

Mascarene black petrel (*Pterodroma aterrima*).—1980 petition, ICBP endangered, U.S. endangered; a small sea bird of the family Procellariidae; originally found on the islands of Reunion and Rodrigues, which are parts

of Mauritius in the Indian Ocean. It seems to have disappeared from Rodrigues by the 18th century and to have become extremely rare on Reunion. Reasons for the decline are not precisely known, but may involve human hunting (B) and predation by introduced rats and cats (C).

Pink pigeon (*Columba (=Nesoenas) mayeri*).—1980 petition, ICBP endangered, U.S. endangered; a member of the family Columbidae, about the size of the domestic pigeon (*Columba domestica*), but with shorter and more rounded wings and generally pink in color (Goodwin 1977); known only from southwestern Mauritius in the Indian Ocean. This species has declined because of the clearing of its native forest habitat by people (A), human hunting for use as food (B), and predation by introduced rats and macaques (C). Remnant populations also became more vulnerable to the effects of cyclones and natural food shortages (E). The pink pigeon already was rare by the 1830s and currently the single known wild group contains only about 20 birds. Larger numbers exist in captivity.

White-tailed laurel pigeon (*Columba junoniae*).—1980 petition, ICBP rare, U.S. threatened; a large member of the family Columbidae, closely related to the common Old World wood pigeon (*Columba palumbus*); known only from the Canary Islands, a Spanish possession off northwestern Africa. Early reports suggest that this species may once have occurred throughout the Canaries, though it is known with certainty only from the western islands of Tenerife, La Palma, and Gomera. It now is relatively common only on parts of La Palma. Elsewhere it has disappeared or declined in conjunction with human destruction of the endemic Canarian laurel forests (A). Some of the remnant populations appear to be stable, following legal measures to protect them and their forest habitat.

Madagascar pochard (*Aythya innotata*).—1991 petition, ICBP endangered, U.S. endangered; a diving duck of the family Anatidae; apparently confined to freshwater lakes and pools in the northern central plateau of Madagascar. Although still common around 1930, this species subsequently declined drastically because of large-scale hunting by people (B). It may also have been adversely affected by the introduction of exotic fish and accidental capture by people netting the fish (E). It probably is on the brink of extinction; there had been no definite records since 1970, but in August 1991 a specimen was captured alive and placed in the Botanical Garden at Antananarivo (*Oryx*, April 1992, 26:73).

Dappled mountain robin (*Arcanator (=Modulatrix) orostruthus*).—1980 petition, ICBP rare, U.S. threatened; a thrush of the family Muscicapidae; occurs in three isolated patches of montane forest, one in northern Mozambique and two in eastern Tanzania. Much of the rainforest habitat on which the species depends has been cleared for agricultural purposes (A). The population in Mozambique has not been recorded since 1932. The other two populations may number in the hundreds or low thousands.

Marungu sunbird (*Nectarinia prigoginei*).—1991 petition, ICBP endangered, U.S. endangered; a nectar-feeding bird of the family Nectarinidae, characterized by small size and a long bill, somewhat comparable to the hummingbirds superficially; known only from the Marungu Highlands of southeastern Zaire. The remnant riparian forest on which this species probably depends now covers only a small part of the Marungu Highlands and is under severe pressure from logging and from the erosion of stream banks caused by the overgrazing of cattle (A).

Taita thrush (*Turdus olivaceus helleri*).—1991 petition, ICBP endangered, U.S. endangered; a dark-colored, ground-dwelling member of the family Muscicapidae; apparently confined to highlands in southeastern Kenya. This subspecies (formerly considered the full species *Turdus helleri*) occurs at low density and depends on limited forest habitat. Such areas now have been mostly cleared for agricultural purposes or to obtain firewood (A). The only relatively well-known population occupies an area of about 3 square kilometers (1.2 square miles) and may contain several hundred individuals.

Bannerman's turaco (*Tauraco bannermani*).—1991 petition, ICBP endangered, U.S. endangered; a frugivorous parrot of the family Musophagidae, characterized by a generally greenish color and a conspicuous crest; known only from the Bamenda-Banso Highlands in western Cameroon. The montane forest habitat of this species is being rapidly cleared as a result of cultivation, overgrazing by domestic livestock, wood-cutting, and fires (A). An estimated 800–1,200 pairs may survive (Dr. C. R. McKay, Ijim Mountain Forest Project, Bamenda, Cameroon, in litt.).

Pollen's vanga (*Xenopirostris polleni*).—1980 petition, ICBP rare, U.S. threatened; a predatory bird of the endemic Malagasy family Vangidae, somewhat similar to the shrikes; occurs in the rainforests of eastern Madagascar.

Although still widely distributed, this species has declined and become rare as its forest habitat has been destroyed and modified by people (A).

Van Dam's vanga (*Xenopirostris damii*).—1980 petition, ICBP rare, U.S. threatened; another member of the Vangidae; occurs in northwestern Madagascar. Because of deforestation this species appears to have become restricted to a single area of primary deciduous forest at Ankarafantsika (A). However, that area is currently protected and the bird reportedly is present there in fairly good numbers.

Aldabra warbler (*Nesillas alabranus*).—1991 petition, ICBP endangered, U.S. endangered; a small song bird of the family Muscicapidae; restricted to a small part of Aldabra, one of the islands of Seychelles, a nation off the east coast of Africa. The ICBP refers to this warbler as the "rarest, most restricted and most highly threatened species of bird in the world." Discovered only in 1967, it seems to have been confined to an area of approximately 10 hectares (25 acres) of coastal vegetation on Aldabra. This habitat is being destroyed by introduced goats and rats (A), and the latter also prey on nests (C).

Banded wattle-eye (*Platysteira laticincta*).—1991 petition, ICBP endangered, U.S. endangered; a small flycatcher of the family Muscicapidae, characterized by pale plumage and a wattle of bare red skin above the eye; known only from the Bamenda Highlands in western Cameroon. Although this species is considered reasonably common in the remnant montane forests on which it depends, such habitat is being rapidly cleared and fragmented as a result of cultivation, overgrazing by domestic livestock, wood-cutting, and fires (A). An estimated 800–1,200 pairs may survive (Dr. C. R. McKay, Ijim Mountain Forest Project, Bamenda, Cameroon, in litt.).

Clarke's weaver (*Ploceus golandi*).—1991 petition, ICBP endangered, U.S. endangered; a member of the family Ploceidae; known only from a small forested area between Kilifi Creek and the Sabaki River on the southeastern coast of Kenya. Numbers have been estimated at 1,000 to 2,000 pairs, but are declining because of excessive logging (A). At present rates of destruction, all favorable habitat could be eliminated within about 15 years. Even though a portion of the habitat is legally protected, enforcement has not been effective (D).

The decision to add the above 30 kinds of African birds to the List of Endangered and Threatened Wildlife was based on an assessment of the best

available scientific information, and of past, present, and probable future threats to these birds. All have suffered substantial losses in habitat and/or numbers in recent years and are vulnerable to human exploitation and disturbance. If conservation measures are not implemented, further declines are likely to occur, increasing the danger of extinction for these birds. Critical habitat is not being determined, as such designation is not applicable to foreign species.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition and, for those under United States jurisdiction, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR Part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is listed as endangered or threatened and with respect to its designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action within the United States or on the high seas may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such activities are currently known with respect to the species covered by this rule.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

Section 9 of the Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person

subject to the jurisdiction of the United States to take within the United States or on the high seas, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered or threatened wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. For threatened species, there also are permits available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

**National Environmental Policy Act**

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need

not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

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**Author:** The primary author of this rule is Ronald M. Nowak, U.S. Fish and Wildlife Service (OSA), Washington, D.C. 20240 (phone 703-358-1708).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulations Promulgation**

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

- \* \* \* \* \*
- (h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
BIRDS							
*	*	*	*	*	*	*	*
Albatross, Amsterdam.	<i>Diomedea amsterdamensis.</i>	Indian Ocean—Amsterdam Island.	Entire .....	E	571	NA	NA
*	*	*	*	*	*	*	*
Alethe, Thyolo (thrush).	<i>Alethe choloensis</i> ...	Malawi, Mozambique.	Entire .....	E	571	NA	NA
*	*	*	*	*	*	*	*
Bush-shrike, Uluguru	<i>Malaconotus alius</i> ..	Tanzania .....	Entire .....	T	571	NA	NA
*	*	*	*	*	*	*	*
Dove, Seychelles turtle.	<i>Streptopelia picturata rostrata.</i>	Indian Ocean—Seychelles.	Entire .....	E	571	NA	NA
*	*	*	*	*	*	*	*
Eagle, Madagascar sea.	<i>Haliaeetus vociferoides.</i>	Madagascar .....	Entire .....	E	571	NA	NA
*	*	*	*	*	*	*	*
Eagle, Madagascar serpent.	<i>Eutriorchis astur</i> .....	Madagsacar .....	Entire .....	E	571	NA	NA
*	*	*	*	*	*	*	*
Fody, Mauritis .....	<i>Foudia rubra</i> .....	Indian Ocean—Mauritius.	Entire .....	E	571	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* Fody, Rodrigues .....	* <i>Foudia flavicans</i> .....	* Indian Ocean—Mauritius (Rodrigues Island).	* Entire .....	* E	* 571	* NA	* NA
* Francolin, Djibouti ...	* <i>Francolinus ochropectus</i> .	* Djibouti .....	* Entire .....	* E	* 571	* NA	* NA
* Grebe, Alaotra .....	* <i>Tachybaptus rufolavatus</i> .	* Madagascar .....	* Entire .....	* E	* 571	* NA	* NA
* Guineafowl, white-breasted.	* <i>Agelastes meleagrides</i> .	* West Africa .....	* Entire .....	* T	* 571	* NA	* NA
* Lark, Raso .....	* <i>Alauda razae</i> .....	* Atlantic Ocean—Cape Verde (Raso Island).	* Entire .....	* E	* 571	* NA	* NA
* Malimbe, Ibadan (weaver finch).	* <i>Malimbus ibadanensis</i> .	* Nigeria .....	* Entire .....	* E	* 571	* NA	* NA
* Nuthatch, Algerian ...	* <i>Sitta ledanti</i> .....	* Algeria .....	* Entire .....	* E	* 571	* NA	* NA
* Oystercatcher, Canarian black.	* <i>Haematopus meadewaldoi</i> .	* Atlantic Ocean—Canary Islands.	* Entire .....	* E	* 571	* NA	* NA
* Parrot, Seychelles lesser vasa.	* <i>Coracopsis nigra barklyi</i> .	* Indian Ocean—Seychelles (Praslin Island).	* Entire .....	* E	* 571	* NA	* NA
* Petrel, Madeira (=freira).	* <i>Pterodroma madeira</i>	* Atlantic Ocean—Madeira Island.	* Entire .....	* E	* 571	* NA	* NA
* Petrel, Mascarene black.	* <i>Pterodroma aterrima</i> .	* Indian Ocean—Mauritius (Reunion Island).	* Entire .....	* E	* 571	* NA	* NA
* Pigeon, pink .....	* <i>Columba (=Nesoenas) mayeri</i> .	* Indian Ocean—Mauritius.	* Entire .....	* E	* 571	* NA	* NA
* Pigeon, White-tailed laurel.	* <i>Columba junoniae</i> ..	* Atlantic Ocean—Canary Islands.	* Entire .....	* T	* 571	* NA	* NA
* Pochard, Madagascar.	* <i>Aythya innotata</i> .....	* Madagascar .....	* Entire .....	* E	* 571	* NA	* NA
* Robin, dappled mountain.	* <i>Arcanator (=Modulatrix) orostruthus</i> .	* Mozambique, Tanzania.	* Entire .....	* T	* 571	* NA	* NA
* Sunbird, Marungu ....	* <i>Nectarinia prigoginei</i>	* Zaire .....	* Entire .....	* E	* 571	* NA	* NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* Thrush, Taita .....	* <i>Turdus olivaceus helleri</i> .	* Kenya .....	* Entire .....	* E	* 571	* NA	* NA
* Turaco, Bannerman's.	* <i>Tauraco bannermani</i> .	* Cameroon .....	* Entire .....	* E	* 571	* NA	* NA
* Vanga, Pollen's .....	* <i>Xenopirostris polleni</i>	* Madagascar .....	* Entire .....	* T	* 571	* NA	* NA
* Vanga, Van Dam's ..	* <i>Xenopirostris damii</i> .	* Madagascar .....	* Entire .....	* T	* 571	* NA	* NA
* Warbler (Old World), Aldabra.	* <i>Nesillas aldabranus</i>	* Indian Ocean— Seychelles (Aldabra Island).	* Entire .....	* E	* 571	* NA	* NA
* Wattle-eye, banded .	* <i>Platysteira laticincta</i>	* Cameroon .....	* Entire .....	* E	* 571	* NA	* NA
* Weaver, Clarke's .....	* <i>Ploceus golandii</i> .....	* Kenya .....	* Entire .....	* E	* 571	* NA	* NA
* .....	* .....	* .....	* .....	* .....	* .....	* .....	* .....

Dated: December 12, 1994.

**Mollie H. Beattie,**

Director, Fish and Wildlife Service.

[FR Doc. 95-832 Filed 1-11-95; 8:45 am]

BILLING CODE 4310-55-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 625**

[I.D. 010395A]

**Summer Flounder Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, (NOAA), Commerce.

**ACTION:** Notification of commercial quota transfer.

**SUMMARY:** NMFS announces that the State of Maryland is transferring 50,000 lb (22,680 kg) of commercial summer flounder quota to the State of New York. NMFS announces the adjustment of these states' quotas.

**EFFECTIVE DATE:** December 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** Hannah Goodale, 508-281-9101.

**SUPPLEMENTARY INFORMATION:** Regulations implementing Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP) are found at 50 CFR part 625. The

regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process used to set the annual commercial quota, adjust for overages, and the percent allocated to each state is described in § 625.20.

Transfers of commercial quota are authorized under Amendment 5 to the FMP (58 FR 65936, December 17, 1993) which allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS, (Regional Director) to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1) in the evaluation of requests for quota transfers or combinations.

The Regional Director is further required to publish notification in the **Federal Register** advising a state, and notifying Federal vessel permit and dealer permit holders, that effective upon a specific date, a portion of a state's commercial quota has been transferred to or combined with the commercial quota of another state.

The States of Maryland and New York have mutually agreed to transfer 50,000 lb (22,680 kg) of 1994 commercial quota from Maryland to New York, and the Regional Director has concurred.

The Regional Director has determined that the criteria set forth in § 625.20(f) have been met, and publishes this

notification of quota transfer. This action revises the quotas for the calendar year 1994.

**Classification**

This action is taken under 50 CFR part 625 and is exempt from review under E.O. 12866.

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

Dated: January 6, 1995.

**David S. Crestin,**

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

[FR Doc. 94-796 Filed 1-11-94; 8:45 am]

BILLING CODE 3510-22-F

**50 CFR Parts 672 and 675**

[Docket No. 900833-1095; I.D. 010395B]

**Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Bycatch Rate Standards for the First Half of 1995**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Pacific halibut and red king crab bycatch rate standards; request for comments.

**SUMMARY:** NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 1995.

Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

**DATES:** Effective 12:01 a.m., Alaska local time (A.l.t.), January 20, 1995, through 12 midnight, A.l.t., June 30, 1995.

Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., January 23, 1995.

**ADDRESSES:** Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or be delivered to 709 West 9th Street, Federal Building, room 401, Juneau, AK.

**FOR FURTHER INFORMATION CONTACT:** Susan J. Salvesson, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the U.S. fisheries at 50 CFR parts 672, 675, and 676. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

Regulations at §§ 672.26 and 675.26 implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also may not exceed red king crab bycatch standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 675.2). The fisheries included under the incentive program are defined in regulations at §§ 672.26(b) and 675.26(b).

Regulations at §§ 672.26(c) and 675.26(c) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Given that the GOA and BSAI fisheries are closed to trawling from January 1 to January 20 of each year (§§ 672.23(e) and 675.23(d), respectively), the Director, Alaska Region, NMFS (Regional Director), is implementing bycatch rate standards for the first half of 1995 effective from January 20, 1995, through June 30, 1995.

At its September 1994 meeting, the Council reviewed average 1992-94 bycatch rates experienced by vessels participating in the fisheries under the incentive program. Based on this and other information presented below, the Council recommended halibut and red king crab bycatch rate standards for the first half of 1995. These standards were reconfirmed by the Council at its December 1994 meeting after the Council considered new information on the intent of some trawl vessel owners to purchase and use voluntarily large-mesh gear to reduce groundfish discard amounts. The Council's recommended bycatch rate standards are listed in Table 1. As required by §§ 672.26(c) and 675.26(c), the Council's recommended bycatch rate standards for January through June are based on the following information:

1. Previous years' average observed bycatch rates;
2. Immediately preceding season's average observed bycatch rates;
3. The bycatch allowances and associated fishery closures specified under §§ 672.20(f) and 675.21;
4. Anticipated groundfish harvests;
5. Anticipated seasonal distribution of fishing effort for groundfish; and
6. Other information and criteria deemed relevant by the Regional Director.

#### **Bycatch Rate Standards for Pacific Halibut**

The Council's recommended halibut bycatch rate standards for the 1995 trawl fisheries are unchanged from those implemented in 1994. The recommended 1995 standards are based largely on anticipated seasonal fishing effort for groundfish species and 1992-94 halibut bycatch rates observed in the trawl fisheries included under the incentive program. The Council recognized that the 1995 trawl fisheries do not start until January 20.

The recommended standard for the yellowfin sole fishery was maintained at 5.0 kilograms (kg) halibut per metric ton (mt) of groundfish for the first quarter of 1995. Regulations implemented in 1994 (59 FR 38132, July 27, 1994) revised the opening date for the yellowfin sole and "other flatfish" trawl fisheries from May 1 to January 20 of each year. This revision was initially implemented by emergency interim rulemaking on February 7, 1994 (59 FR 6222, February 10, 1994). The small amount of data available on halibut bycatch rates in the yellowfin sole fishery during the first quarter of 1994 show an average bycatch rate of about 2.70 kg halibut/mt of groundfish. This rate approximates the relatively low halibut bycatch rates experienced by vessels fishing in the BSAI joint venture fisheries during the mid to late 1980's (less than 2 kg halibut/mt of groundfish). The Council also recommended that a bycatch rate standard of 5.0 kg halibut/mt of groundfish be maintained for the second quarter of 1995, even though the average halibut bycatch rate experienced by the yellowfin sole fishery during the second quarter of 1994 (5.98 kg halibut/mt groundfish) was slightly higher than the standard.

Although the bycatch rate of halibut in the yellowfin sole fishery during the first half of the year has been as high as 13 kg halibut/mt groundfish (1993 observer data), the Council recommended a 1995 halibut bycatch rate standard of 5.0 kg halibut/mt of groundfish given that the average bycatch rates experienced by the yellowfin sole fishery during the first half of 1991, 1992, and 1994 were only slightly higher or below the recommended standard, indicating that vessel operators are able to fish at halibut bycatch rates lower than those experienced in 1993. Furthermore, a bycatch rate standard of 5 kg halibut/mt of groundfish will continue to encourage vessel operators to take action to avoid excessively high bycatch rates of halibut.

The halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut bycatch restrictions at §§ 672.20(f)(3)(i) and 675.21(c)(1)(iii) prohibit directed fishing for pollock by vessels using non-pelagic trawl gear.

The recommended halibut bycatch rate standards for the BSAI "bottom pollock" fishery continue to approximate the average annual rates observed on trawl vessels participating in this fishery during the past 4 years. The recommended standard for the BSAI "bottom pollock" fishery during the first quarter of 1995 (7.5 kg halibut/mt of groundfish) is set at a level near the average halibut bycatch rate experienced by vessels participating in the "bottom pollock" fishery during the first quarters of 1992 and 1993 (7.58 and 7.59 kg halibut/mt of groundfish, respectively). During the first quarter of 1994, the halibut bycatch rate in this fishery was only 2.71 kg halibut/mt groundfish. However, the average halibut bycatch rate during the second quarter of 1994 was unusually high at almost 30 kg halibut/mt groundfish. This high rate was associated with very little fishing effort because the Bering Sea subarea and Aleutian Islands subarea offshore component pollock fisheries were closed on February 18 and March 1, respectively; and the inshore Bering Sea subarea and Aleutian Islands subarea pollock fisheries were closed on March 2, 1994, and March 18, 1994, respectively. As a result, the second quarter bycatch rate estimated for the 1994 pollock fishery is not considered to be reflective of the rates typically experienced in this fishery. As in past years, the directed fishing allowances specified for the 1995 pollock "A" season likely will be reached before the end of the "A" season on April 15. Directed fishing for pollock is prohibited from the end of the pollock "A" season (April 15) until the beginning of the pollock "B" season (August 15), except by vessels fishing under the Community Development Quota (CDQ) program (50 CFR 675.27).

The Council recommended a 5.0 kg halibut/mt of groundfish bycatch rate standard for the second quarter of 1995 to accommodate any CDQ pollock fishery that may occur during this period. This standard approximates the average halibut bycatch rate experienced by vessels participating in the bottom pollock fishery during the second quarter of 1992 (4.34 kg halibut/mt of groundfish), but is higher than the second quarter rate experienced in 1993 (2.72 kg halibut/mt of groundfish).

A 30 kg halibut/mt of groundfish bycatch rate standard was recommended for the BSAI "other trawl" fishery. This standard has remained unchanged since 1992. The Council recommended a 40 kg halibut/mt of groundfish bycatch rate standard for the GOA "other trawl" fishery, which is the same as for 1994.

The bycatch rate standards recommended for the GOA and BSAI "other trawl" fisheries are based on the Council's intent to simplify the incentive program by specifying a single bycatch rate standard for the aggregate trawl fisheries that are not assigned fishery-specific bycatch rate standards under the incentive program, yet reduce overall halibut bycatch rates in the Alaska groundfish trawl fisheries.

Observer data collected from the 1994 GOA "other trawl" fishery show first and second quarter halibut bycatch rates of 20 and 43 kg halibut/mt of groundfish, respectively. First and second quarter rates from 1993 were 34 and 27 kg halibut/mt of groundfish, respectively. Observer data collected from the 1994 BSAI "other trawl" fishery show first and second quarter halibut bycatch rates of 9 and 20 kg halibut/mt of groundfish, respectively. Observer data from 1992 and 1993 showed similar rates. The average bycatch rates experienced by vessels participating in the GOA and BSAI "other trawl" fisheries are lower than the Council's recommended bycatch rate standards for these fisheries. However, the Council determined that its recommended halibut bycatch rate standards for the "other trawl" fisheries would continue to provide an incentive to vessel operators to avoid unusually high halibut bycatch rates while participating in these fisheries and contribute towards an overall reduction in halibut bycatch rates experienced in the Alaska trawl fisheries. Furthermore, these standards would provide some leniency to those vessel operators that choose to use large-mesh trawl gear in the BSAI rock sole fishery (a component fishery of the BSAI "other trawl" fishery) as a means to reduce groundfish discard amounts. The bycatch rates of halibut and crab could increase for vessels using this gear type, but observer data do not exist on which to base a revised bycatch rate standard for these operations. The Council recommended maintaining the current bycatch rate standard for the BSAI "other trawl" fishery until observer data become available that will provide a basis for bycatch rate standards for vessels using large-mesh trawl gear. At its September and December 1994 meetings, the Council requested that NMFS initiate rulemaking to require large-mesh trawl gear in the rock sole, Pacific cod, and pollock fisheries. As part of that process, the Council requested that NMFS amend regulations implementing the vessel incentive program so that separate bycatch rate standards for the rock sole fishery may be specified that

consider the potential for higher halibut and red king crab bycatch rates under mesh size restrictions.

#### **Bycatch Rates Standards for Red King Crab**

The Council's recommended red king crab bycatch rate standard for the yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the first half of 1995. This standard has remained unchanged since 1992.

With the exception of rock sole, little fishing effort for flatfish has occurred in Zone 1 during recent years, because commercial concentrations of yellowfin sole and "other flatfish" normally occur north of this area, when these fisheries opened on May 1. Because regulations recently have been implemented that revise the opening date for these flatfish fisheries to January 20, limited observer data exist for the yellowfin sole fishery in Zone 1 for the 4-year period of 1991-94. These data indicate average red king crab bycatch rates during the first part of the year between 0.23 and 2.19 crab/mt of groundfish. During this same 4-year period, the first and second quarter bycatch rates of red king crab experienced by vessels participating in the "other trawl" fishery ranged from .02 to 2.39 crab/mt of groundfish. The total bycatch of red king crab by vessels participating in the 1994 trawl fisheries is estimated at 244,634 crab, or about 122 percent of the 200,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. Most of red king crab bycatch (193,016 crab) occurred in the rock sole fishery. At the request of the Council, NMFS is pursuing an emergency trawl closure in Zone 1 to reduce the number of female red king crab taken as bycatch. This action was recommended by the Council in response to conservation concerns ensuing from results of the 1994 NMFS crab trawl survey that showed female crab to be below threshold numbers. The emergency rule would close lucrative fishing grounds used by the rock sole fishery and would change observer coverage requirements to provide NMFS with more thorough and timely data on crab bycatch in Zone 1, so that specified fishery bycatch allowances are not exceeded. Anticipating that fishery bycatch allowances will not be exceeded in 1995 and that the red king crab bycatch limit will restrict bycatch amounts to specified levels, the Council maintained the 2.5 red king crab/mt of groundfish bycatch rate standard. As mentioned above, the Council has requested that NMFS pursue rulemaking that would

allow separate red king crab bycatch rate standards for the rock sole fishery in the event that proposed trawl mesh regulations result in higher crab bycatch rates.

The Regional Director has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under §§ 672.26(c) and 675.26(c). Therefore, the Regional Director concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the first half of 1995 as set forth in Table 1. These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Director pending his consideration of the information set forth at §§ 672.26(c)(2)(v) and 675.26(c)(2)(v).

As required in regulations at §§ 672.26(a)(2)(iii) and 675.26(a)(2)(iii), the 1995 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

- Month 1: January 1 through January 28;
- Month 2: January 29 through February 25;
- Month 3: February 26 through April 1;
- Month 4: April 2 through April 29;
- Month 5: April 30 through June 3;
- Month 6: June 4 through July 1;
- Month 7: July 2 through July 29;
- Month 8: July 30 through September 2;
- Month 9: September 3 through September 30;
- Month 10: October 1 through October 28;
- Month 11: October 29 through December 2; and
- Month 12: December 3 through December 31.

**Classification**

This action is taken under 50 CFR 672.26 and 675.26 and is exempt from review under E.O. 12866.

Information upon which the recommended bycatch rate standards were initially based was reviewed by the Council at its September, 1994, meeting. The Council reconfirmed the recommended bycatch rate standards at its December 1994 meeting after considering new information about the potential effect of voluntary use of large mesh trawl gear in the rock sole fishery on prohibited species bycatch rates. These standards must be effective by the start of the 1995 trawl season on January 20, to avoid a lapse in vessel accountability under the vessel incentive program. Without this accountability, prohibited species bycatch rates could increase in the groundfish trawl fisheries, prohibited species bycatch allowances could be reached sooner, specified groundfish trawl fisheries could be closed prematurely, and owners and operators of groundfish trawl vessels could forego additional revenues. Therefore, in accordance with §§ 672.26(c)(2) and 675.26(c)(2), the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to afford prior notice and opportunity for public comment on this action beyond the start of the 1995 trawl season, or to delay its effective date.

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

Dated: January 6, 1995.

**Richard B. Stone,**

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

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 1995 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

Fishery and quarter	1995 bycatch rate standard
<b>Halibut bycatch rate standards (kilogram of halibut/metric ton of groundfish catch)</b>	
BSAI Midwater pollock:	
Qt 1 .....	1.0
Qt 2 .....	1.0
BSAI Bottom pollock:	
Qt 1 .....	7.5
Qt 2 .....	5.0
BSAI Yellowfin sole:	
Qt 1 .....	5.0
Qt 2 .....	5.0
BSAI Other trawl:	
Qt 1 .....	30.0
Qt 2 .....	30.0
GOA Midwater pollock:	
Qt 1 .....	1.0
Qt 2 .....	1.0
GOA Other trawl:	
Qt 1 .....	40.0
Qt 2 .....	40.0
<b>Zone 1 red king crab bycatch rate standards (number of crab/metric ton of groundfish catch)</b>	
BSAI yellowfin sole:	
Qt 1 .....	2.5
Qt 2 .....	2.5
BSAI Other trawl:	
Qt 1 .....	2.5
Qt 2 .....	2.5

[FR Doc. 95-728 Filed 1-6-95; 4:29 pm]

BILLING CODE 3510-22-W

# Proposed Rules

Federal Register

Vol. 60, No. 8

Thursday, January 12, 1995

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 TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 94-NM-178-AD]

#### Airworthiness Directives; McDonnell Douglas Model DC-10-10 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-10-10 airplanes. This proposal would require repetitive inspections to detect cracking of the upper caps in the front spar of the left and right wing, and repair, if necessary. This proposal is prompted by reports of fatigue cracking in the upper cap of the front spar of the wing in the forward flange area. The actions specified by the proposed AD are intended to prevent progression of fatigue cracking, which could cause reduced structural integrity of the wing front spar and damage to adjacent structures.

**DATES:** Comments must be received by March 7, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-178-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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, Dept. 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, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** John L. Cecil, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard., Long Beach, California 90712-4137; telephone (310) 627-5322; fax (310) 627-5210.

#### 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-178-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-178-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

The FAA has recently received reports of cracking in the upper cap of the front spar of the left and right wing between stations Xos 669 and Xos 789 on McDonnell Douglas Model DC-10-10 airplanes. In one of the reported instances, cracking went from the forward edge of the cap, through a fastener hole, and terminated at the vertical leg of the cap. Subsequent investigation has revealed that the cracking was initiated and propagated by fatigue. This condition, if not corrected, could result in reduced structural integrity of the wing front spar and damage to adjacent structures.

The FAA has reviewed and approved McDonnell Douglas DC-10 Service Bulletin 57-129, dated August 12, 1994, which describes procedures for eddy current test high frequency (ETHF) surface inspections to detect fatigue cracking in the upper cap of the front spar of the wing, and repair of the upper cap, if cracks are found. It also provides procedures for accomplishing a modification to prevent cracking.

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 repetitive ETHF surface inspections to detect fatigue cracking, and repair of the upper cap in the front spar of the wing if any cracking is found. Additional repetitive inspections would be required after any repair of the upper cap. If the preventive modification is installed on an airplane on which no cracks were found during the initial inspection, the repetitive inspections of that airplane may be terminated. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Subsequent to the issuance of the referenced service bulletin, the manufacturer conducted further crack growth analysis. Based on the results of that analysis, the FAA is proposing a shorter compliance time for the initial ETHF inspection than the time specified in the service bulletin. This will provide additional inspection intervals to ensure adequate detection of cracking in the front spar cap in a timely manner.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may

misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

There are approximately 126 Model DC 10-10 airplanes of the affected design in the worldwide fleet. The FAA estimates that 77 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$64,680, or \$840 per airplane, per inspection cycle.

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 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:

**McDonnell Douglas:** Docket 94-NM-178-AD.

**Applicability:** Model DC-10-10 airplanes, as listed in McDonnell Douglas DC-10 Service Bulletin 57-129, dated August 12, 1994, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

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

To prevent reduced structural integrity of the wing front spar and damage to adjacent structures due to fatigue cracking in the upper cap of the front spar of the wing, accomplish the following:

(a) Prior to the accumulation of 10,000 total landings, or within 1,800 landings after the effective date of this AD, whichever occurs later, perform an initial eddy current test high frequency (ETHF) surface inspection to detect cracks in the upper cap of the front spar of the left and right wing between stations Xos 667.678 and Xos 789.645, inclusive, in accordance with McDonnell Douglas DC-10 Service Bulletin 57-129, dated August 12, 1994. Repeat this

inspection thereafter at intervals specified in paragraph (b) or (c) of this AD, as applicable.

(b) For airplanes on which no crack is found: Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 10,000 landings, or accomplish the crack preventative modification in accordance with McDonnell Douglas DC-10 Service Bulletin 57-129, dated August 1994. Accomplishment of that preventative modification constitutes terminating action for the requirements of this paragraph.

(c) For airplanes on which any crack is found that is identified as "Condition II" in McDonnell Douglas DC-10 Service Bulletin 57-129, dated August 12, 1994: Accomplish paragraphs (c)(1) and (c)(2) of this AD in accordance with that service bulletin.

(1) Prior to further flight, perform the permanent repair for cracks in accordance with the service bulletin; and

(2) Within 12,500 landings after the installation of the permanent repair specified in paragraph (c) (1) of this AD, perform an ETHF surface inspection for cracks, in accordance with the service bulletin. Repeat this inspection thereafter at intervals not to exceed 7,000 landings.

(d) For airplanes on which any crack is found that is identified as "Condition III" in McDonnell Douglas DC-10 Service Bulletin 57-129, dated August 12, 1994: Prior to further flight, repair the cracking in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) 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 ACO, FAA. 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.

(f) 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.

Issued in Renton, Washington, on January 6, 1995.

**Darrell M. Pederson,**

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

[FR Doc. 95-791 Filed 1-11-95; 8:45 am]

BILLING CODE 4910-13-U

**AGENCY FOR INTERNATIONAL DEVELOPMENT****22 CFR Part 213****Collection of Debts by Tax Refund Offset**

**AGENCY:** Agency for International Development.

**ACTION:** Proposed rule.

**SUMMARY:** The Agency for International Development proposes to issue regulations to allow the agency to recover delinquent debts owed the United States Government through the offset of tax refunds.

**DATES:** Comments must be submitted on or before February 13, 1995.

**ADDRESSES:** Comments may be mailed to Mr. Jan Miller, Office of the General Counsel, Room 6881, N.S., Agency for International Development, Washington, DC 20523.

**FOR FURTHER INFORMATION CONTACT:** Jan W. Miller, (202) 647-6380.

**SUPPLEMENTARY INFORMATION:** The proposed rule will enable the agency to recover delinquent debts owed the United States Government through the offset of tax refunds. The proposed rule sets forth the procedures to be followed by AID in using tax refund offset.

**Regulatory Flexibility and Impact Analysis**

This action will not have a significant economic impact on a substantial number of small entities including small businesses, small organizational units and small governmental jurisdictions.

This action does not constitute a "major rule" under Executive Order No. 12291.

**Environmental Impact**

This action does not constitute a major Federal action significantly affecting the quality of the human environment.

**List of Subjects in 22 CFR Part 213**

Claims, salary offset.

Accordingly, it is proposed to amend 22 CFR part 213 as follows:

1. The authority citation for part 213 is revised to read as follows:

**Authority:** Sec. 621 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2381; Subpart B also issued under 5 U.S.C. 5514; 5 CFR part 5550, subpart K. Subpart C also issued under 31 U.S.C. 3720A.

2. Part 213 is amended to add a new subpart C as follows:

**PART 213—COLLECTION OF CLAIMS**

\* \* \* \* \*

**Subpart C—Collection of Debts by Tax Refund Offset**

213.21 Purpose.

213.22 Applicability and scope.

213.23 Administrative charges.

213.24 Pre-offset notice.

213.25 Reasonable attempt to notify and clear and concise notification.

213.26 Consideration of evidence and notification of decision.

213.27 Change in conditions after submission to IRS.

**Subpart C—Collection of Debts by Tax Refund Offset****§ 213.21 Purpose.**

This subpart establishes procedures for AID to refer past due debts to the Internal Revenue Service (IRS) for offset against income tax refunds of taxpayers owing debts to AID.

**§ 213.22 Applicability and scope.**

(a) This subpart implements 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past due and legally enforceable debt owed to the United States.

(b) A past due legally enforceable debt referable to the IRS is a debt which is owed to the United States and;

(1) Except for judgement debt or other debts specifically exempt from this requirement, is referred within 10 years after AID's right of action accrues;

(2) In the case of individuals, is at least \$25.00.

(3) In the case of business debtors is at least \$100.00;

(4) In the case of individual debtors, cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a).

(5) Is ineligible for or cannot be currently collected pursuant to the administrative offset provisions of 31 U.S.C. 3716;

(6) Is the debt of a debtor (or in the case of an individual debtor, his or her spouse) for whom AID records do not show debtor has filed for bankruptcy under title 11 of the United States Code or from whom AID can clearly establish at the time of the referral that an automatic stay under 11 U.S.C. 362 has been lifted or is no longer in effect;

(7) Has been disclosed by AID to a consumer reporting agency as authorized by 31 U.S.C. 3711(f); and

(8) With respect to which AID has given notice, considered any evidence, and determined that the debt is past-due and legally enforceable under the provisions of this subpart;

**§ 213.23 Administrative charges.**

All administrative charges incurred in connection with the referral of debts to the IRS will be added to the debt, thus increasing the amount of the offset.

**§ 213.24 Pre-offset notice.**

(a) Before AID refers a debt to the IRS, it will notify or make a reasonable attempt to notify the debtor that:

(1) The debt is past due;

(2) Unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(3) The debtor has at least 60 days from the date of the notice to present evidence that all or part of such debt is not past-due or not legally enforceable; and

(4) AID will consider any evidence presented by the debtor and determine whether any part of such debt is past-due and legally enforceable.

(b) The notice will explain to the debtor the manner in which the debtor may present such evidence to AID.

**§ 213.25 Reasonable attempt to notify clear and concise notification.**

(a) *Reasonable attempt to notify.* AID will have made a reasonable attempt to notify the debtor under § 213.24(a) if it used a mailing address for the debtor obtained from the IRS pursuant to the Internal Revenue Code, 26 U.S.C. 6103(m)(2) or (m)(4), unless AID receives clear and concise notification from the debtor that notices are to be sent to an address different from the address obtained from the IRS.

(b) *Clear and concise notification.* Clear and concise notification means that the debtor has provided AID with written notification including the debtor's name and identifying number (as defined in the Internal Revenue Code, 26 U.S.C. 6109), the debtor's new address, and the debtor's intent to have the notices sent to the new address.

**§ 213.26 Consideration of evidence and notification of decision.**

(a) AID will give the debtor at least 60 days from the date of the pre-offset notice to present evidence. Evidence that collection of the debt is affected by a bankruptcy proceeding involving the debtor shall bar referral of the debt.

(b) If the evidence presented is not considered by an employee of AID but by an entity or person acting for AID, the debtor will have at least 30 days from the date the entity or person decides that all or part of the debt is past-due and legally enforceable to request review by an employee of AID of an unresolved dispute.

(c) AID will provide the debtor with its decision and the decision of any entity or person acting for AID on to whether all or part of the debt is past-due and legally enforceable.

**§ 213.27 Change in conditions after submission to IRS.**

AID will promptly notify the IRS if, after submission of a debt to the IRS for offset, AID:

- (a) Determines that an error has been made with respect to the information submitted to the IRS;
- (b) Receives a payment or credits a payment, other than an IRS offset, to the account of the debtor;
- (c) Receives notice that the debtor has filed for bankruptcy under title 11 of the United States Code or the debt has been discharged in bankruptcy;
- (d) Receives notice that an offset was made at the time when the automatic stay provisions of 11 U.S.C. 362 were in effect;
- (e) Receives notice that the debt has been extinguished by death; or
- (f) Refunds all or part of the offset amount to the debtor.

Dated: November 22, 1994.

**Tony L. Cully,**

*Controller.*

[FR Doc. 95-776 Filed 1-11-95; 8:45 am]

BILLING CODE 6116-01-M

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**ENVIRONMENTAL PROTECTION AGENCY**
**40 CFR Part 52**

[PA 41-1-6288; FRL-5133-5]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Limited Approval/Limited Disapproval of Reasonably Available Control Technology Requirements for Major Sources of VOC and NO<sub>x</sub>**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing three alternative actions in today's notice concerning Pennsylvania's State Implementation Plan (SIP) revision, which contains regulations requiring major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) to implement reasonably available control technology (RACT). The intended effect of this action is to propose and solicit comment on the range of alternative actions regarding the Pennsylvania RACT submittal (Pennsylvania Chapters 129.91 through 129.95 and the associated definitions in Chapter 121). The three alternatives propose either limited approval/limited disapproval or full disapproval of the Pennsylvania regulations. In addition to the specific issues related to the

Pennsylvania submittal, EPA is also specifically taking public comment on the general issue of whether RACT submittals of regulations which allow for future case-by-case SIP revisions meet the RACT requirements of the Clean Air Act and should be approved now, for Pennsylvania, and can be approved in the future for submittals by any state to EPA. EPA's resolution of this issue in this rulemaking will affect its completeness and approvability determinations in future case-by-case SIP revisions meet the RACT requirements of the Clean Air Act and should be approved now, for Pennsylvania, and can be approved in the future for submittals by any state to EPA. EPA's resolution of this issue in this rulemaking will affect its completeness and approvability determinations in future rulemaking on SIP submittals by other states. These actions are being taken under section 110 of the CAA.

**DATES:** Comments must be received on or before February 13, 1995.

**ADDRESSES:** Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Cynthia H. Stahl, (215) 597-9337, at the EPA Region III address.

**SUPPLEMENTARY INFORMATION:** On February 4, 1994, the Pennsylvania Department of Environmental Resources (PA DER) submitted a revision to its State Implementation Plan (SIP) for the control of VOC and NO<sub>x</sub> emissions from major sources (Pennsylvania Chapters 129.91 through 129.95 and the associated definitions in Chapter 121). This submittal was amended with a revision on May 3, 1994 correcting and clarifying the presumptive NO<sub>x</sub> RACT requirements under Chapter 129.93. The Pennsylvania SIP revision consists of new regulations which would require sources which emit or have the potential to emit 25 tons or more of VOC or NO<sub>x</sub> per year in Philadelphia or 50 tons or more of VOC per year in the remainder of the Commonwealth to

comply with reasonably available control technology requirements by May 31, 1995. Outside of the Philadelphia ozone nonattainment area, sources of NO<sub>x</sub> which emit or have the potential to emit 100 tons or more per year are required to comply with RACT by no later than May 31, 1995. While the Pennsylvania regulations contain specific provisions requiring major VOC and NO<sub>x</sub> sources to implement RACT, the regulations under review do not contain specific emission limitations in the form of a specified overall percentage emission reduction requirement or other numerical emission standards. Instead, the Pennsylvania regulations contain technology-based or operational "presumptive RACT emission limitations" for certain major NO<sub>x</sub> sources. For other major NO<sub>x</sub> sources, and all covered major VOC sources, the submittal contains a "generic" RACT provision. A generic RACT regulation is one which does not impose specific upfront emission limitations but instead allows for future case-by-case determinations. This regulation allows DER to make case-by-case RACT determinations which are then submitted to EPA as revisions to the Pennsylvania SIP.

This proposed rulemaking is intended to take comment on whether a generic RACT submittal, such as Pennsylvania's, meets the requirements of sections 172(c), 182(b)(2), and 182(f) of the Clean Air Act. This rulemaking is designed to clarify whether EPA will approve RACT submittals that allow the SIP to be revised with future case-by-case RACT determinations, or will instead require specific and immediately ascertainable emission limitations.

**Background**

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO<sub>x</sub> sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR) which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area

requirements (including RACT as specified in sections 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

### Summary of Regulations

The SIP submittal under review consists of Pennsylvania regulations codified at 25 Pa. Code Chapters 129.91 through 129.95, and the associated definitions in Chapter 121.

#### I. Chapter 121 (Definitions)

The Pennsylvania submittal includes the following new definitions in Chapter 121: Lowest Achievable Emission Rate (LAER), low NO<sub>x</sub> burner with separated overfire air, major NO<sub>x</sub> emitting facility, major VOC emitting facility, marginal ozone nonattainment area, moderate ozone nonattainment area, National Ambient Air Quality Standard (NAAQS), Oxides of Nitrogen (NO<sub>x</sub>), serious ozone nonattainment area, and severe ozone nonattainment area.

#### II. Chapter 129.91

Chapter 129.91 contains the applicability section, and requires owners and operators of covered sources (i.e. all major NO<sub>x</sub> sources and major VOC sources not covered by the source-specific and mobile source RACT requirements of 25 Pa. Code §§ 129.51–129.72, 129.81 and 129.82) to provide PA DER with identification and emission information by May 16, 1994. Covered sources must submit a written RACT proposal to PA DER by July 15, 1994. PA DER is to approve, deny or modify each RACT proposal. Upon notification of approval, covered sources must implement RACT “as expeditiously as practicable” but no later than May 31, 1995.

Following implementation of RACT, certain large combustion units are required to determine emission rates through continuous emissions monitoring or a PA DER approved source testing or modeling program. 25 Pa. Code 129.91(d) provides for the case-by-case RACT determinations to be approved through the SIP revision process.

#### III. Chapter 129.92

Chapter 129.92 details the information required in RACT proposals submitted by these major VOC and NO<sub>x</sub> sources. Except for sources that opt for the presumptive RACT emission limitations, the proposal must include a RACT analysis. The RACT analysis must rank the available control options in descending order of control effectiveness, provide information on

baseline emissions and emission reduction, and evaluate the cost effectiveness of each control option. Cost effectiveness of each control option is required to be calculated using the “OAQPS Control Cost Manual” (Fourth Edition), EPA 450/3–90–006 January 1990 and subsequent revisions. This provision clearly requires sources to provide relevant information in their RACT proposal, including cost factors, but does not limit the consideration of factors which determine what control option is chosen as RACT to cost factors alone. The Pennsylvania regulation also properly does not specify a dollar per ton figure as a threshold over which control options are ineligible for consideration from RACT.

#### IV. Chapter 129.93 (Presumptive NO<sub>x</sub> RACT Requirements)

Chapter 129.93 provides certain major NO<sub>x</sub> sources with an alternative to case-by-case RACT determinations. Chapter 129.93(b)(1) specifies that presumptive RACT for coal-fired combustion units with a rated heat input equal to or greater than 100 million British thermal units per hour (mmBtu/hr) is the installation of low NO<sub>x</sub> burners with separated overfire air. Chapter 129.93(b)(2) provides that presumptive RACT for combustion units with a rated heat input between 20 mmBtu/hr and 50 mmBtu/hr is an annual adjustment or tuneup of the combustion process. Chapter 129.93(b)(4) and (5) provides that owners and operators of oil, gas and combination oil/gas-fired units are required to keep records of fuel certification and to perform annual adjustment in accordance with the EPA document “Combustion Efficiency Optimization Manual for Operators of Oil and Gas-fired Boilers”, September 1983, EPA–340/1–83–023, or equivalent PA DER procedures.

For the following groups of sources, Pennsylvania proposes that RACT is the installation, maintenance and operation of the sources in accordance with manufacturers specifications. These groups as listed in Chapter 129.93(c)(1) through (7), are as follows: (1) boilers and combustion sources with individual rated gross heat inputs of less than 20 mmBtu/hr; (2) combustion turbines with individual heat input rates of less than 25 mmBtu/hr which are used for natural gas distribution; (3) internal combustion engines rated at less than 500 brake horsepower (bhp) which are set and maintaining 4° retarded relative to standard timing; (4) incinerators or thermal/catalytic oxidizers used primarily for air pollution control; (5) any fuel burning equipment, gas turbine or internal combustion engine with an

annual capacity factor of less than 5%, or an emergency standby engine operating less than 500 hours in a consecutive 12-month period; (6) sources that have been approved as meeting LAER for NO<sub>x</sub> emissions since November 15, 1990 with federally enforceable emission limitations; and (7) sources which have been approved as meeting BACT for NO<sub>x</sub> emissions since November 15, 1990 with federally enforceable emission limitations. The last group of sources are required, however, to meet any more stringent category-wide RACT emission limitation promulgated by EPA or Pennsylvania.

#### V. Chapter 129.94 (NO<sub>x</sub> Averaging Provisions)

Chapter 129.94 permits major NO<sub>x</sub> sources to submit a RACT proposal which includes the averaging of emissions at two or more facilities provided several conditions are met and the proposal is approved by EPA as a revision to the Pennsylvania SIP. Among other conditions, the averaging scheme must require emission caps and enforceable emission rates at each participating source, telemetry links between the participating sources, and an agreement that a violation at one of the participating sources is considered a violation at all of the participating sources.

#### VI. Chapter 129.95

Chapter 129.95 is the recordkeeping provision which is applicable to all VOC and NO<sub>x</sub> sources in the Commonwealth. This section clearly requires that records be kept for a period of at least 2 years and that such records must provide sufficient data and calculations so that compliance with the applicable RACT requirements can be demonstrated. This section also requires that sources of VOC and NO<sub>x</sub> which claim exemptions from the RACT requirement maintain records clearly demonstrating their exempt status.

### EPA Analysis

#### I. Definitions

The definitions associated with the Pennsylvania VOC and NO<sub>x</sub> RACT regulation and contained in Chapter 121, with the exception of the definition of low NO<sub>x</sub> burner with separated overfire air, conform to the definitions in the Act and to EPA’s existing requirements located in 40 CFR Part 52. Pennsylvania’s proposed definition of low NO<sub>x</sub> burner with separated overfire air makes the applicability of this technology to the group of sources specified in the regulation as “coal-fired

combustion units" unclear. The sources covered by this requirement include stoker and cyclone combustion units which do not have "burners" as such. It is unclear how the low NO<sub>x</sub> burner requirement would apply to these sources. Pennsylvania may correct this deficiency by clarifying the language in Chapter 129.93 pertaining to "coal-fired combustion units" or by amending its definition (in Chapter 121) of low NO<sub>x</sub> burners with separated overfire air to describe the applicable requirements in the situation where a combustion unit does not have burners.

## II. RACT Proposal Requirements

Chapter 129.92 requires sources to provide information on the emission reduction, technological feasibility, and cost of control option. This requirement is consistent with EPA's definition of RACT as the lowest emission limitation that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. See NO<sub>x</sub> Supplement to the General Preamble on Title I, 57 FR 55620, 55622-23 (Nov. 25, 1992); CTG Supplement to General Preamble on SIP Revisions in Nonattainment areas, 44 FR 53761, 53762 (Sept. 17, 1979); "Guidance for Determining Acceptability of SIP regulations in Non-Attainment Areas," Memorandum of Roger Strelow, Assistant Administrator for Air and Waste Management, December 9, 1976). As noted below, however, the agency believes that there is a significant issue as to whether Pennsylvania's generic RACT provision complies with Clean Air Act requirements.

## III. Generic VOC and NO<sub>x</sub> RACT Requirements

Chapter 129.91 contains Pennsylvania's generic, or "case-by-case," RACT provisions. Under this approach, the covered sources are not subject to specific, "upfront" (i.e., immediately ascertainable) emission limitations. Instead, the regulations establish a process for the state to review and approve individual RACT emission limitations proposed by the sources, which are then to be submitted to EPA as SIP revisions. Since the wood furniture emission standards contained in the existing Pennsylvania regulation have not been federally approved, Chapter 129.91 states that wood furniture sources are required to comply with the RACT requirements of Chapter 129.91.

Pennsylvania believes that the case-by-case approach is consistent with the RACT requirements of the Clean Air

Act. Pennsylvania notes that section 172(c)(1) requires that nonattainment plan provisions "shall provide for the implementation of [RACT] as expeditiously as practicable \* \* \*" Section 182(b)(2) provides that SIP submittals for moderate ozone nonattainment areas shall "include provisions to require the implementation of [RACT]," and further requires that the submittals "provide for the implementation of required measures as expeditiously as practicable, but no later than May 31, 1995." (Emphasis added.) Pennsylvania asserts that its submittal satisfies these requirements, as its generic RACT provision requires approved RACT programs to be implemented by May 31, 1995. Pennsylvania also believes that its case-by-case approach complies with EPA's definition of RACT, which directs states to consider the economic and technological circumstances of the regulated sources.

However, EPA believes that the more reasonable interpretation of the statutory requirements, and the one that accords with EPA's longstanding definition of RACT, is that RACT submittals must include specific, upfront emission limitations for all covered sources, rather than a process leading to the development of emission limitations at some later date. EPA defines RACT as the lowest emission limitation that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. See Memorandum of Roger Strelow, Assistant Administrator for Air and Waste Management, December 9, 1976); NO<sub>x</sub> Supplement to the General Preamble on Title I, 57 FR 55620, 55622-23 (Nov. 25, 1992). Section 302 of the Act in turn defines "emission limitation" as "a requirement \* \* \* which limits the quantity, rate, or concentration of air pollutants on a continuous basis, \* \* \*, and any design, equipment, work practice or operational standard promulgated under this chapter." Under Sections 110(a)(2)(A) and 172(c)(6) of the Act, emission limitations must be "enforceable," and Section 107(d)(3)(E)(iii) further requires that emission reductions be "permanent and enforceable" in order to be creditable for attainment demonstration. Process-oriented generic RACT submittals such as Pennsylvania's, which do not include specific and ascertainable emission limitations, do not by themselves provide enforceable standards. The source becomes subject to federally enforceable requirements only after EPA

approves a subsequent SIP revision incorporating the source-specific RACT regulations promulgated by the state.

Furthermore, EPA believes that the May 31, 1995 RACT implementation deadline specified in Section 182(b)(2) of the Act does not authorize states to delay the promulgation of RACT standards beyond the SIP submittal deadline of November 15, 1992. To the contrary, EPA believes that the extended implementation deadline was designed to give sources an adequate opportunity to understand and comply with newly-promulgated RACT standards, and to give EPA an opportunity to review RACT submittals prior to the implementation date. These objectives may not be served by Pennsylvania's generic RACT provisions, under which the Commonwealth will not be in a position to submit case-by-case RACT emission limitations as SIP revisions until some months after July 15, 1994 (the date that sources are required to submit RACT proposals to PA DER).

## IV. Presumptive NO<sub>x</sub> RACT Requirements

Pennsylvania gives major NO<sub>x</sub> sources the option of complying with the "presumptive RACT emission limitations" of Chapter 129.93 as an alternative to developing and implementing a RACT limit on a case-by-case basis. The proposed presumptive RACT in Chapter 129.93(c)(3) for internal combustion engines, which requires the engines to be set and maintained at 4° retarded relative to standard timing is acceptable to EPA. Standard timing is typically defined as 2 to 6° before top dead center. EPA agrees with Pennsylvania's proposal for internal combustion engines, which is an operation and maintenance requirement and applicable recordkeeping requirement, and believes that this may constitute RACT for these sources. Pennsylvania's operation and maintenance requirements for internal combustion engines, coupled with the applicable recordkeeping requirements, is acceptable to EPA as RACT.

EPA has identified deficiencies in the other presumptive RACT emission limitations of Chapter 129.93. For coal-fired combustion units (100mmBTU/hour or greater), Chapter 129.93(b)(1) provides that presumptive RACT is low NO<sub>x</sub> burners with separated overfire air control technology. Although EPA accepts Pennsylvania's determination that this technology constitutes RACT for this source category, the agency believes it is necessary and appropriate to quantify the emission reduction required to be obtained through this

technology. Pennsylvania may correct this deficiency with an additional SIP submittal including enforceable, numerical emission limitations to be met through the installation of the low NO<sub>x</sub> burner and separated overfire air control technology. Coal-fired combustion units greater than or equal to 100 mmBTU/hr represent a significant portion of the NO<sub>x</sub> emission inventory in Pennsylvania. Establishing specific emission limitations for these sources in the SIP will allow Pennsylvania to quantify and rely on the expected emission reductions from these sources for air quality planning purposes. The proposed presumptive RACT determinations contained in Chapters 129.93(b)(2) and 129.93(c) (1), (2), (4), and (5) are not acceptable to EPA because Pennsylvania has not provided sufficient technical support to justify these presumptions as RACT. With proper technical support and justification, EPA may determine for some sources and source categories that operation and maintenance requirements alone constitute RACT. It is not acceptable, however, for the RACT to be defined, without further elaboration, as "installation, maintenance and operation of the source in accordance with manufacturers specifications." Once approved by EPA, a RACT standard cannot be relaxed by action of a private party. Such a result might occur if RACT is defined simply as compliance with manufacturer's specifications. In order to correct these deficiencies in Chapter 129.93(b)(2), (c)(1), (2), (4), and (5), Pennsylvania must propose and provide adequate technical support for an emission limitation (which may be an operation and maintenance requirement, if appropriate) for these sources.

In Chapter 129.93(c) (6) and (7), Pennsylvania is proposing that for NO<sub>x</sub> sources for which the state has approved NO<sub>x</sub> LAER and BACT determinations since November 15, 1990, the presumptive RACT emission limitation shall be the approved LAER or BACT determinations. These provisions allowing sources with approved NO<sub>x</sub> LAER and BACT determinations are not acceptable because EPA cannot delegate the responsibility of approving RACT determinations to a state. Chapter 129.93(c) (6) and (7) allows all NO<sub>x</sub> sources receiving LAER determinations since November 1990 and all future LAER determinations to be declared RACT without EPA approval via the SIP process. RACT determinations cannot be approved through a permit but rather

must be approved through a SIP revision. EPA cannot agree to LAER determinations as RACT since those determinations are not now before the agency for review. Therefore, Pennsylvania must delete the provisions in Chapter 129.93(c) (6) and (7) pertaining to LAER and BACT determinations in order to correct this deficiency. The presumptive RACT proposals in Chapter 129.93 (b) and (c) which require only annual tune-ups or maintenance procedures simply allow these sources, without adequate technical justification, to maintain the status quo. The CAA requires that states in moderate and worse ozone nonattainment areas and in the OTR control its major NO<sub>x</sub> sources to RACT levels. Since the operation and maintenance and tune-up requirements located in Chapter 129.93 are unsupported, they serve as exemptions from the NO<sub>x</sub> RACT requirement in sections 182 and 184 of the CAA.

The provisions in the CAA for NO<sub>x</sub> exemptions are contained in section 182(f). In order to exempt major NO<sub>x</sub> sources from RACT requirements, Pennsylvania must petition EPA, and receive EPA approval, for such an exemption under 182(f). EPA's guidance on the criteria for approval of NO<sub>x</sub> exemptions under section 182(f) is contained in the EPA document, "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)", December 1993. Pennsylvania has not submitted a petition under section 182(f) but, even if it had, EPA could not approve the exclusion of major NO<sub>x</sub> sources from RACT requirements until approval of such petition under section 182(f) is granted.

#### V. NO<sub>x</sub> Averaging Provision

The NO<sub>x</sub> averaging provision in Chapter 129.94 is acceptable to EPA since there is the opportunity for further refinement of the averaging scheme conditions, and assurance of enforceability, when the individual averaging proposals are submitted to EPA as SIP revisions.

#### VI. Recordkeeping

The recordkeeping requirements of Chapter 129.95 are consistent with EPA requirements.

#### Proposed Action

As noted above, there is considerable controversy about whether generic RACT provisions, such as the one under review, comply with the requirements of Sections 172 (c)(1) and 182 (b)(2). EPA believes that this notice and comment rulemaking would be an

appropriate vehicle to announce a clear agency position on this issue. Accordingly, EPA is proposing three alternative actions in today's notice: two forms of limited approval/limited disapproval, and a full disapproval. Under Options #1 and #2, the limited approval/limited disapproval options, EPA has identified certain deficiencies which prevent granting full approval of this rule under section 110(k)(3) and Part D. Because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule(s) under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rule does not meet the section 182 and 184 requirements of Part D due to the noted deficiencies. EPA is soliciting public comment on each alternative.

In addition, EPA is soliciting public comment on the approvability of generic RACT provisions generally. The outcome of this rulemaking will affect the determination of the completeness and approvability of generic RACT submittals in future rulemaking actions.

#### Option #1

The first proposed action, and EPA's preferred option, is a proposed limited approval/limited disapproval of Pennsylvania VOC and NO<sub>x</sub> RACT regulations, Chapters 129.91 through 129.95 with the associated definitions in Chapter 121. The limited approval would be for the limited purpose of strengthening the SIP, as the Pennsylvania regulation imposes requirements on previously unregulated sources.

The limited disapproval would be based on two separate grounds:

- (1) A determination that the presumptive NO<sub>x</sub> emission limitations cannot be approved as RACT for the reasons described above; and
- (2) A determination that Pennsylvania's generic VOC and NO<sub>x</sub> provisions are deficient because they do not contain specific, immediately ascertainable emission limitations (as defined in Section 302(k) of the CAA) for all applicable sources.

Under Option #1, to correct the deficiencies in the presumptive NO<sub>x</sub> RACT emission limitation provisions, EPA believes that Pennsylvania would have to do the following:

(1) Clarify, and submit as a SIP revision, the applicability of the presumptive RACT requirement for coal-fired combustion units,

(2) Submit SIP revisions to EPA including the specific emission limitations resulting from the application of low NO<sub>x</sub> burners with separated overfire air for those sources choosing to meet RACT requirements through Chapter 129.93(b), and,

(3) Submit SIP revisions to EPA, with adequate technical support, correcting the deficiencies identified in Chapters 129.93 (b)(2), (c)(1), (2), (4), (5), (6) and (7). To the extent that Pennsylvania proposes operation and maintenance requirements for these sources, the state must provide technical support showing that specific numerical emission limitations are impractical, and demonstrating that the proposed operation and maintenance requirements qualify as RACT.

To correct the deficiency with the generic RACT provision under Option #1, Pennsylvania must provide emission limitations, compliance and monitoring requirements (along with adequate technical justification for these requirements) for all major VOC and NO<sub>x</sub> sources required to implement RACT. To ensure that all sources are subject to RACT requirements, Pennsylvania must either (1) submit all case-by-case RACT proposals for all covered sources to EPA for approval as SIP revisions and certify that there are no other sources required to implement RACT, or (2) submit a "default" RACT emission limitation that would apply to all sources subject to the generic provision until EPA approval of a source-specific RACT SIP revision.

EPA has preliminarily determined that this option is correct, but will review public comment on this and other outcomes before making a final determination.

#### *Option #2*

Under the limited approval/limited disapproval option #2, EPA would be determining, for the reasons stated above, that the Pennsylvania regulation with the presumptive control technology requirements can be approved and disapproved in a limited fashion for the same reasons given under option #1. However, EPA would be determining under option #2 that the case-by-case SIP revision provision of the Pennsylvania submittal meets the RACT requirements of section 182(b)(2) of the CAA and provides sufficient safeguards to ensure that RACT is implemented by May 31, 1995. The difference between this option and the first option is that EPA, while expecting

to receive the case-by-case RACT proposals as specified by the Pennsylvania regulation, would not consider the lack of submittal of these proposals at this time to be reason for limited disapproval of the submitted Pennsylvania regulation. Therefore, under this option, Pennsylvania may correct the deficiencies in the regulation by:

(1) Clarifying, and submitting as a SIP revision, the applicability of the presumptive RACT requirement for coal-fired combustion units,

(2) Submitting SIP revisions to EPA including the specific emission limitations resulting from the application of low NO<sub>x</sub> burners with separated overfire air for those sources choosing to meet RACT requirements through Chapter 129.93(b), and

(3) Submitting SIP revisions to EPA, with adequate technical support, correcting the deficiencies identified in Chapters 129.93(b)(2), (c)(1), (2), (4), (5), (6) and (7). To the extent that Pennsylvania proposes operation and maintenance requirements for these sources, the state must provide technical support showing that specific numerical emission limitations are impractical, and demonstrating that the proposed operation and maintenance requirements qualify as RACT.

#### *Option #3*

In its third alternative, EPA is proposing to fully disapprove Chapter 129.91, pertaining to applicability, Chapter 129.92, pertaining to VOC and NO<sub>x</sub> RACT submittals, Chapter 129.93, pertaining to presumptive RACT control technology requirements, Chapter 129.94, pertaining to NO<sub>x</sub> RACT averaging provisions, and Chapter 129.95, pertaining to VOC and NO<sub>x</sub> source recordkeeping requirements. The rationale for full disapproval would be that the deficiencies outlined above pertaining to the presumptive control technology requirements and the case-by-case SIP revision provisions of the Pennsylvania regulation are so significant that limited approval/limited disapproval of the submittal, on the grounds that it strengthens the SIP, is not warranted.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway

funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of a final disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). The sanctions will apply if the Pennsylvania submittal is disapproved fully or in a limited fashion.

If EPA decides to issue a limited approval/limited disapproval pursuant to Options #1 or #2, EPA intends to conduct final limited approval/limited disapproval rulemaking on the Pennsylvania regulation without further proposal. If Pennsylvania chooses to make modifications to their RACT regulation, by correcting definitions and adding default emission limitation requirements for all major VOC and NO<sub>x</sub> sources, EPA will conduct rulemaking appropriate to our preliminary judgment on the approvability of the substance of any subsequent submittal. Under the limited approval/limited disapproval options, to the extent that any subsequent Pennsylvania submittal modifying the February 10, 1994 submittal is made, EPA intends to finalize, without further proposal, limited approval/limited disapproval of the regulation that remains unaffected by the subsequent submittal.

If EPA decides to fully disapprove the regulation pursuant to Option #3, EPA intends to disapprove the submittal without further proposal unless Pennsylvania either (a) submits all case by-case RACT determinations to EPA and certifies that there are no other subject sources, or (b) modifies their regulation to add default emission limitations for all major VOC and NO<sub>x</sub> sources.

If Pennsylvania submits a regulation subsequent to this notice and withdraws the present submittal, EPA intends to propose action on the new submittal.

EPA has proposed three actions and is specifically soliciting comment on these actions and the rationale provided as the basis for each of those actions. A consequence of adopting options #1 or #3 in the final rulemaking is that future RACT submittals with generic provisions may be deemed inadequate to meet the RACT requirements of section 182(b)(2). Such a decision will significantly impact future determinations as to whether such generic RACT regulation submittals meet the completeness criteria in 40 CFR Part 51 Appendix V. Further discussion of the Pennsylvania submittal and rationale for these proposals is contained in the

accompanying technical support document.

Through the first two proposal options, EPA is proposing a limited approval of Chapters 129.91 through 129.95 and the associated definitions in Chapter 121 which was submitted on February 10, 1994, including the corrective revision submitted on May 3, 1994.

As noted, EPA's preliminary review of this submittal indicates that the Pennsylvania generic VOC and NO<sub>x</sub> RACT regulation submitted on February 10, 1994 and the corrective revision submitted on May 3, 1994 should be approved/disapproved in a limited fashion, under the rationale for option #1; to strengthen the Pennsylvania SIP and to allow Pennsylvania to correct the deficiencies in the RACT regulation cited above. EPA has proposed three actions and is specifically soliciting comment on these actions and the rationale provided as the basis for each of those actions. Public comments on the issues discussed in this notice or on other relevant matters will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this notice.

Under the limited approval/limited disapproval options, EPA has identified certain deficiencies which prevent granting full approval of this rule under section 110(k)(3) and Part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule(s) under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule(s) under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rule does not meet the section 182 and 184 requirements of Part D because of the noted deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of Pennsylvania's submitted Chapters 129.91 through 192.95 and associated definitions in Chapter 121 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies, and, as such, the rule does not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission

under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions as discussed above.

Except to the extent that EPA proposes to use this rulemaking as a vehicle to announce an agency policy on generic RACT submittals, nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does

not remove existing requirements and impose any new Federal requirements.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the Pennsylvania SIP revisions, pertaining to the VOC and NO<sub>x</sub> RACT regulations, will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

**Dated:** October 27, 1994.

**W.T. Wisniewski,**

*Acting Regional Administrator, Region III.*

[FR Doc. 95-822 Filed 1-11-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 70

[SD-001; FRL-5137-4]

#### Clean Air Act Proposed Interim Approval of Operating Permits Program; State of South Dakota

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

**ACTION:** Proposed interim approval.

**SUMMARY:** EPA proposes interim approval of the Operating Permits Program submitted by the State of South Dakota for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

**DATES:** Comments on this proposed action must be received in writing by February 13, 1995.

**ADDRESSES:** Comments should be addressed to Laura Farris at the Region 8 address. Copies of the State's submittal and other supporting information used in developing this proposed rule are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency,

Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

**FOR FURTHER INFORMATION CONTACT:**  
Laura Farris, 8ART-AP, U.S.  
Environmental Protection Agency,  
Region 8, Air Programs Branch, 999  
18th Street, suite 500, Denver, Colorado  
80202, (303) 294-7539.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Purpose**

*A. Introduction*

As required under title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 CFR part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. Based on material changes to the State's submission that consisted of regulations changes adopted by the State on November 17, 1994, EPA is extending the review period for an additional 3 months. EPA will act to approve or disapprove the submission by April 11, 1995. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

*B. Federal Oversight and Sanctions*

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the State. Permits issued under a program with interim approval have full

standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim approval, if the State failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the State then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would apply sanctions as required by section 502(d)(2) of the Act, which would remain in effect until EPA determined that the State had corrected the deficiency by submitting a complete corrective program.

If, following final interim approval, EPA were to disapprove the State's complete corrective program, EPA would be required under section 502(d)(2) to apply sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a State has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a State program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for that State upon interim approval expiration.

**II. Proposed Action and Implications**

*A. Analysis of State Submission*

*1. Support Materials*

The Governor of South Dakota's designee, Robert E. Roberts, Secretary of the Department of Environment and Natural Resources, submitted the State of South Dakota Title V Operating Permit Program (PROGRAM) to EPA on November 12, 1993. Amendments to the PROGRAM requested by EPA were received on January 11, 1994. EPA deemed the PROGRAM administratively and technically complete in a letter to the Governor's designee dated January 14, 1994. The PROGRAM submittal includes a legal opinion from the Attorney General of South Dakota

stating that the laws of the State provide adequate legal authority to carry out all aspects of the PROGRAM, and a description of how the State intends to implement the PROGRAM. The submittal additionally contains evidence of proper adoption of the PROGRAM regulations, a permit fee demonstration and a memorandum of agreement which defines how the PROGRAM will be administered by the State and reviewed by EPA.

*2. Regulations and Program Implementation*

The South Dakota PROGRAM, including the operating permit regulation (Administrative Rules of South Dakota (ARSD), Article 74:36, Air Pollution Control Program), substantially meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; §§ 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; § 70.5 with respect to complete application forms (no insignificant activities were identified in the PROGRAM); § 70.7 with respect to public participation and minor permit modifications; and § 70.11 with respect to requirements for enforcement authority.

South Dakota has the authority to issue variances from requirements imposed by State law. Section 34A-1-24 of the South Dakota Codified Laws (SDCL) allows the Board of Minerals and Environment, the permitting board, discretion to grant relief from compliance with State rules and regulations governing the quality, nature, duration or extent of emissions. Succeeding sections of the SDCL specify under what circumstances a variance may be granted or denied. In its review of South Dakota's PROGRAM, EPA has previously taken the position that, in order to gain full approval for its PROGRAM, South Dakota would have to amend SDCL 34A-1-24 to make it clear that variances may not be granted to part 70 sources. EPA has reevaluated its position on this issue. Although EPA would support such an amendment to SDCL 34A-1-24, EPA has not required other states to change similar statutory variance provisions. Thus, EPA believes it would not be appropriate to require South Dakota to amend SDCL 34A-1-24 before full PROGRAM approval is granted. EPA's reasoning is as follows: EPA regards SDCL 34A-1-24 as wholly external to the PROGRAM submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. EPA has no authority to approve provisions of State law, such as the variance provision referred to, which

are inconsistent with part 70. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures.

Part 70 of the operating permit regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under § 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations. The South Dakota PROGRAM will define prompt reporting of deviations in each permit consistent with the applicable requirements.

There are certain provisions of South Dakota's operating permit regulation for which EPA feels it is appropriate to offer clarification to ensure that they are interpreted to be consistent with part 70. These are as follows: (1) The definition of "federally enforceable" which appears at ARSD 74:36:01:01(28) reads as follows:

"Federally enforceable," all limits and conditions that are enforceable by the administrator of EPA pursuant to federal law. These limits and conditions include those requirements developed pursuant to this article, those appearing in 40 CFR 60 and 61 (July 1, 1993), requirements within the state implementation plan and permit requirements established pursuant to this article or 40 CFR 51 Subpart I (July 1, 1993). The use of this term does not impede the Department's authority under state law to enforce these limits and conditions.

This definition could be significant for determining whether a source is subject to the part 70 PROGRAM. Thus, the second sentence of the above definition cannot and should not be read to expand on the first sentence of the definition. For example, requirements developed pursuant to ARSD Article 74:36 might be, but wouldn't necessarily be, Federally enforceable. EPA's interpretation is that the requirements delineated in the second sentence of the definition are only Federally enforceable if they are enforceable by the administrator of EPA pursuant to federal law.

(2) The second sentence of ARSD 74:36:01:08(1) reads as follows: Emissions from any oil exploration or production well and its associated equipment and emissions from any pipeline compressor or pump station may not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

To be consistent with part 70, this sentence must be read as only being applicable to a determination of whether a source is major under section 112 of the Act. This language cannot be applied when determining whether a source is major under other sections of the Act.

Comments noting deficiencies in the South Dakota PROGRAM were sent to the State in a letter dated July 8, 1994. The deficiencies were segregated into those that require corrective action prior to interim PROGRAM approval, and those that require corrective action prior to full PROGRAM approval. In a letter dated August 18, 1994, the State committed to complete the regulatory process to correct both interim and full PROGRAM approval deficiencies related to its PROGRAM regulations, and submit these changes to EPA by approximately December 15, 1994. EPA responded in a letter dated October 3, 1994 that they would review all of the State's corrective actions. However, these corrective actions would be considered a material change to the PROGRAM and the date for final interim approval would be extended. The State adopted the regulatory changes on November 17, 1994, which EPA has reviewed and has determined to be adequate to allow for interim approval.

One remaining issue noted in EPA's July 8, 1994 letter that require corrective action prior to full PROGRAM approval is as follows: The PROGRAM submittal contained an Attorney General's opinion which stated that South

Dakota's criminal enforcement authorities are not equivalent to those required in part 70.11. The State's criminal enforcement statute only allows for a maximum penalty of \$1,000 for failure to obtain a permit and \$500 for violation of a permit condition. The State must adopt legislation consistent with § 70.11 prior to receiving full PROGRAM approval to allow for a maximum criminal fine of not less than \$10,000 per day per violation for knowing violation of operating permit requirements, including making a false statement and tampering with a monitoring device.

Refer to the technical support document accompanying this rulemaking for a detailed explanation of each comment and the corrective actions required of the State.

### 3. Permit Fee Demonstration

The State of South Dakota established an initial fee for regulated air pollutants below the presumptive minimum set in title V, section 502 and part 70, and was required to submit a detailed permit fee demonstration as part of its PROGRAM submittal. The basis of this fee demonstration included a workload analysis, which estimated the annual cost of running the PROGRAM in fiscal year (FY) 1995 to be \$438,215; a fee structure based on the estimated direct and indirect costs of the PROGRAM, the number of part 70 sources permitted, and the actual emissions for the previous year. The fees established for FY 1995 are as follows: rock crushers will be charged a flat fee of \$250.00; an annual administrative fee will be assessed to all major sources (based on actual emissions of each source for one calendar year), excluding rock crushers, consisting of \$100.00 for sources emitting less than 50 tons per year, \$500.00 for sources emitting 50 to less than 100 tons per year, and \$1,000.00 for sources emitting 100 tons per year or greater; and an air emission fee will be assessed to all major sources (excluding rock crushers) of \$6.10 per ton per year based on emissions from calendar year 1992 (the State will not use the 4,000 tons per year per pollutant emissions cap allowed by Act). This fee structure will be reevaluated each year. After careful review, the State of South Dakota has determined that these fees would support the South Dakota PROGRAM costs as required by 40 CFR 70.9(a).

### 4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or commitments for section 112 implementation South Dakota has demonstrated in its

PROGRAM submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in South Dakota's enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow South Dakota to issue permits that assure compliance with all section 112 requirements. EPA is interpreting the above legal authority to mean that South Dakota is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Implementation of 112(g) upon program approval. As a condition of approval of the part 70 PROGRAM, South Dakota is required to implement section 112(g) of the Act from the effective date of the part 70 PROGRAM. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing Federally enforceable restrictions on a source-specific basis. The EPA is proposing to approve South Dakota's combined preconstruction/operating permit program found in section 74:36:05 of the State's regulations under the authority of title V and part 70 for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. South Dakota has combined their preconstruction permitting regulations and their part 70 permitting regulations for all new part 70 sources, except those sources subject to prevention of significant deterioration (PSD) or nonattainment new source review (NSR) permitting. South Dakota will require sources subject to section 112(g) to obtain a title V permit prior to construction, thereby creating a Federally enforceable limit. EPA believes this approval is necessary so that South Dakota has a mechanism in place to establish Federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Section 112(l) provides statutory authority for approval for the use of State air programs to implement section 112(g), and title V and section 112(g) provide authority for this limited approval because of the direct linkage

between implementation of section 112(g) and title V. If South Dakota does not wish to implement section 112(g) through these authorities and can demonstrate that an alternative means of implementing section 112(g) exists, EPA may, in the final action approving South Dakota's PROGRAM, approve the alternative instead. To the extent South Dakota does not have the authority to regulate HAPs through existing State law, the State may disallow modifications during the transition period.

This approval is for an interim period only, until such time as the State is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that South Dakota, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. EPA is proposing here to limit the duration of this approval to 12 months following promulgation by EPA of section 112(g) regulations. Comment is solicited on whether 12 months is an appropriate period considering South Dakota's procedures for adoption of Federal regulations.

c. Program for straight delegation of section 112 standards. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions Subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR Part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. South Dakota has informed EPA that it intends to accept delegation of section 112 standards through incorporation by reference. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

The radionuclide national emission standard for HAPs (NESHAP) is a section 112 regulation and an applicable requirement under the State PROGRAM. Currently the State of South Dakota has no part 70 sources which emit radionuclides. However, sources which are not currently part 70 sources may be

defined as major and become part 70 sources under forthcoming Federal radionuclide regulations. In that event, the State will be responsible for issuing part 70 permits to those sources.

d. Program for implementing title IV of the act. South Dakota's PROGRAM contains adequate authority to issue permits which reflect the requirements of Title IV of the Act, and commits to adopt the rules and requirements promulgated by EPA to implement an acid rain program through the title V permit.

#### B. Proposed Action

EPA is proposing to grant interim approval to the operating permits program submitted by the State of South Dakota on November 12, 1993. If promulgated, the State must make the following change, as discussed in detail above, to receive full PROGRAM approval: The State must adopt legislation consistent with § 70.11 prior to receiving full PROGRAM approval to allow for a maximum criminal fine of not less than \$10,000 per day per violation for knowing violation of operating permit requirements, including making a false statement and tampering with a monitoring device.

Evidence of this statutory change must be submitted to EPA within 18 months of EPA's interim approval of the South Dakota PROGRAM.

Today's proposal to give interim approval to the State's part 70 PROGRAM does not extend to "Indian Country," as defined in 18 U.S.C. 1151, including the following "existing or former" Indian reservations in the State: 1. Cheyenne River; 2. Crow Creek; 3. Flandreau; 4. Lower Brule; 5. Pine Ridge; 6. Rosebud; 7. Sisseton; 8. Standing Rock; and 9. Yankton.

The State has asserted it has jurisdiction to enforce a part 70 PROGRAM within some or all of these "existing or former" Indian reservations and has provided an analysis of such jurisdiction. EPA is in the process of evaluating the State's analysis and will issue a supplemental notice regarding this issue in the future. Before EPA would approve the State's part 70 PROGRAM for any portion of "Indian Country," EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice. This is a complex and controversial issue, and

EPA does not wish to delay interim approval of the State's part 70 PROGRAM with respect to undisputed sources while EPA resolves this question.

In deferring final action on program approval for sources located in "Indian Country," EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Instead, EPA is deferring judgment regarding this issue pending EPA's evaluation of the State's analysis.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

### III. Administrative Requirements

#### A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by February 13, 1995.

#### B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

#### C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

#### List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: December 29, 1994.

**Jack W. McGraw,**

*Acting Regional Administrator.*

[FR Doc. 95-700 Filed 1-11-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 180

[OPP-300374; FRL-4924-9]

RIN 2070-AC18

#### 3,5-Bis(6-Isocyanatoethyl)-2H-1,3,5-Oxadiazine-2,4,6-(3H,5H)-Trione, Polymer with Diethylenetriamine; Tolerance Exemption

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to establish an exemption from the requirement of a tolerance for residues of 3,5-bis(6-isocyanatoethyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine (CAS Reg. No. 87823-33-4), when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops. Miles, Inc., requested this proposed regulation.

**DATES:** Written comments, identified by the document control number [OPP-300374], must be received on or before February 13, 1995.

**ADDRESSES:** By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of

Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Connie Welch, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703) 308-8470.

**SUPPLEMENTARY INFORMATION:** Miles, Inc., 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120-0013, submitted pesticide petition (PP) 4E4416 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of 3,5-bis(6-isocyanatoethyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine (CAS Reg. No. 87823-33-4), when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops under 40 CFR 180.1001(d).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol

dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for 3,5-bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine, will need to be submitted. The rationale for this decision is described below.

1. In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. The chemical 3,5-bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine, conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria that are used to identify low-risk polymers.

The minimum number-average molecular weight of 3,5-bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine, is listed as 1,000,000. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal tract. Chemicals not

absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

2. The chemical 3,5-bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine, is not a cationic polymer, nor is it reasonably expected to become a cationic polymer in a natural aquatic environment.

3. The chemical 3,5-bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine, does not contain less than 32.0 percent by weight of the atomic element carbon.

4. The chemical 3,5-bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine, contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The chemical 3,5-bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine, does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. The chemical 3,5-bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine, is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. The chemical 3,5-bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine, is not manufactured from reactants containing, other than impurities, halogen atoms or cyano groups.

8. The chemical 3,5-bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine, does not contain a reactive functional group that is intended or reasonably expected to undergo further reaction.

9. The chemical 3,5-bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine, is neither designed nor reasonably expected to substantially degrade, decompose, or depolymerize.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful, and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300374]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: December 21, 1994.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

#### § 180.1001 Exemptions from the requirement of a tolerance.

\* \* \* \* \*

(d) \* \* \*

Inert ingredients	Limits	Uses
<p style="text-align: center;">* * *</p> <p>3,5-Bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine (CAS Reg. No. 87823-33-4); minimum number average molecular weight 1,000,000.</p> <p style="text-align: center;">* * *</p>	<p style="text-align: center;">* .....</p> <p style="text-align: center;">* .....</p>	<p style="text-align: center;">* * *</p> <p>Encapsulating agent.</p> <p style="text-align: center;">* * *</p>

\* \* \* \* \*

[FR Doc. 95-818 Filed 1-11-95; 8:45 am]  
 BILLING CODE 6560-50-F

**FEDERAL MARITIME COMMISSION**

**46 CFR Parts 515, 550, 580 and 581**

[Docket No. 95-01]

**Filing of Tariffs by Marine Terminal Operators; Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce; Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States; Service Contracts**

**AGENCY:** Federal Maritime Commission.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Maritime Commission proposes to remove 46 CFR Part 515, *Filing of Tariffs by Marine Terminal Operators*; 46 CFR Part 550, *Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce*; 46 CFR Part 580, *Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States*; and 46 CFR Part 581, *Service Contracts*. These regulations contain the guidelines, standards, and procedures for marine terminal operators ("MTO's") and common carriers by water to file and publish their tariffs and/or service contract essential terms with the Commission in paper format. The Commission believes that these regulations have become unnecessary because its rules now require electronic tariff filing in the Commission's Automated Tariff Filing and Information System ("ATFI").

**DATES:** Comments on or before February 13, 1995.

**ADDRESSES:** Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523-5725.

**FOR FURTHER INFORMATION CONTACT:** Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800

North Capitol Street, NW., Washington, DC 20573, (202) 523-5796.

**SUPPLEMENTARY INFORMATION:** The Commission administers, *inter alia*, the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 801, *et seq.*; the Intercoastal Shipping Act, 1933 ("1933 Act"), 46 U.S.C. app. 843, *et seq.*; and the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701, *et seq.* (collectively "Shipping Acts"), which require or authorize the Commission to require common carriers and MTO's to file with the Commission their tariffs and/or service contract essential terms. Presently, such tariffs and essential terms are required by regulation, in 46 CFR Parts 515, 580 and 581, to be filed in paper format. In February, 1993, the Commission implemented its ATFI system and directed common carriers and MTO's to file such tariffs and essential terms in electronic form into ATFI.<sup>1</sup> This requirement is consistent with Public Law 102-582, the *High Seas Driftnet Fisheries Enforcement Act*, section 502 which directed common carriers to "file electronically with the Commission all tariffs and all essential terms of service contracts required to be filed" by the 1916, 1933, or 1984 Acts.

The ATFI system is now fully operational and the Commission will no longer be accepting tariffs and/or service contract essential terms in paper form. Accordingly, the Commission proposes to remove Parts 515, 550, 580 and 581.

One matter, however, with respect to service contracts requires further discussion. When the Commission implemented its ATFI system, it directed common carriers and MTO's to file an electronic tariff and to cancel the corresponding paper instrument. However, with respect to service contract essential terms, the Commission took a different approach, recognizing that a service contract is a special arrangement between a shipper and a common carrier or a conference of carriers with a specified duration. At the time ATFI was implemented, the Commission had on file and in effect

several thousand service contracts as well as their corresponding essential terms.<sup>2</sup> The Commission did not require carriers to convert the paper version of a service contract into electronic form. Rather, the Commission directed carriers to file, on a prospective basis, the essential terms of all newly executed service contracts into the ATFI system.

Some of the essential terms which were filed in paper form prior to the conversion to ATFI are still in effect. The Commission continues to find it unnecessary to require the conversion of these originally-filed service contract essential terms into electronic format. However, with the proposed cancellation of Part 581 the Commission will no longer accept amendments, in paper form, to these essential terms. Should the parties amend the essential terms of service contracts now in paper form, the Commission will require, consistent with its electronic filing rules in Part 514, the electronic filing of the complete, restated statement of essential terms—as amended—into ATFI.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this Proposed Rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental organizations. "The criteria contained in this section requires the agency head to examine both the degree of impact as well as the dispersion of that impact." S. Rep. No. 878, 96th Cong., 2d Sess. 14 (1980) reprinted at 1980 U.S. Code Cong. and Admin. News, p. 2788 at 2801. The Commission does not believe that the removal of Parts 515, 550, 580 and 581 under the circumstances described above will result in either significant impact or impact upon a substantial number of small entities.

This proposed rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as

<sup>1</sup> On December 29, 1992, the Commission adopted regulations that govern the filing of tariffs and service contract essential terms in electronic format.

<sup>2</sup> The Commission is aware of several contracts in paper form whose terms are of several years duration. One of these contracts has a 10-year term.

amended. Therefore, OMB review is not required.

### List of Subjects

#### 46 CFR Part 515

Freight, Harbors, Reporting and recordkeeping requirements; Warehouses.

#### 46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

#### 46 CFR Part 580

Freight, Maritime carriers, Reporting and recordkeeping requirements.

#### 46 CFR Part 581

Freight, Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; sections 17 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 816, 841(a)); sections 2, 3, 4 and 5 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845(a), 845(b), 847); sections 8, 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707, 1709, 1716); Parts 515, 550, 580 and 581 of Title 46 of the Code of Federal Regulations are proposed to be amended as follows:

#### Part 515—[Removed]

Part 515 is removed.

#### Part 550—[Removed]

Part 550 is removed.

#### Part 580—[Removed]

Part 580 is removed.

#### Part 581—[Removed]

Part 581 is removed.

By the Commission.

**Joseph C. Polking**

Secretary.

[FR Doc. 95-707 Filed 1-11-95; 8:45 am]

BILLING CODE 6730-01-W

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 21 and 74

[MM Docket No. 94-131 and PP Docket No. 93-253, DA 95-18]

### Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, Including Electronic Filing and Competitive Bidding

AGENCY: Federal Communications Commission.

**ACTION:** Proposed rule; extension of time.

**SUMMARY:** This Order grants a request, filed by the Wireless Cable Association International, Inc., for an extension of time to submit comments in the above proceeding. The filing date for comments is currently January 9, 1995, and the date for filing reply comments is currently January 24, 1995. Because of the complex technical issues raised in this proceeding, the Order extends the time afforded for filing comments to January 23, 1995, and the time afforded for filing reply comments to February 7, 1995.

**DATES:** Comments must be received on or before January 23, 1995, and reply comments must be received on or before February 7, 1995.

**ADDRESSES:** Comments and reply comments may be mailed to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Sharon Bertelsen at (202) 416-0892 or Jerianne Timmerman at (202) 416-0881, Video Services Division, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** The complete text of the Order Granting Extension of Time for Filing Comments and Reply Comments follows. It is also available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, at the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, and it may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800. This Order was adopted January 4, and released January 6, 1995.

By the Chief, Mass Media Bureau:

1. On December 1, 1994, the Commission released a Notice of Proposed Rulemaking (Notice), FCC 94-293, 9 FCC Rcd 7665 (1994), 59 FR 63743 (Dec. 9, 1994), in this proceeding, soliciting comment on revisions to our rules and procedures that will improve the Multipoint Distribution Service (MDS) application processes. The filing date for comments is currently January 9, 1995, and the date for filing reply comments is currently January 24, 1995.
2. On January 3, 1995, the Wireless Cable Association International, Inc. (WCAI) filed a request for an extension of time to submit comments in this proceeding. WCAI requests that the time afforded interested parties to submit comments be extended by two weeks, to January 23, 1995, and the time afforded for filing reply comments be extended to

February 7, 1995. WCAI states that the Commission, in this Notice, proposes a wide variety of rule changes to govern the auctioning of MDS licenses and to regulate the provision of MDS services in the future. Of particular concern to WCAI is a possible change in the definition of protected service area for MDS stations. WCAI asserts that it has been working diligently to develop a proposal that will accommodate the Commission's goals without unduly restricting the wireless cable industry, and believes that it will be able to achieve a consensus at a quarterly meeting of the WCAI Board of Directors scheduled for January 10, 1995.

3. Pursuant to Section 1.46 of the Commission's rules, 47 CFR Section 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. However, under the circumstances described above, we believe that this brief extension of time to file comments and reply comments is warranted in light of the complexity of technical issues raised in this proceeding. Accordingly, it is ordered, that the request for extension of time filed by the Wireless Cable Association International, Inc. is granted, the time for filing comments in this proceeding is extended to January 23, 1995, and the time for filing reply comments in this proceeding is extended to February 7, 1995.

4. This action is taken pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 4(i) and 303(r), and Sections 0.204(b), 0.283 and 1.415 of the Commission's rules, 47 CFR Sections 0.204(b), 0.283 and 1.415.

Federal Communications Commission.

**Roy J. Stewart,**

Chief, Mass Media Bureau.

[FR Doc. 95-847 Filed 1-11-95; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF DEFENSE

### 48 CFR Part 231

### Defense Federal Acquisition Regulation Supplement; Internal Restructuring Costs

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

**SUMMARY:** The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement to address the allowability of costs associated with internal restructuring activities.

**DATES:** Comments on the proposed rule should be submitted in writing at the address shown below on or before March 13, 1995, to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric R. Mens, PDUSD(A&T)DP/DAR, IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 94-D007 in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric Mens, (703) 602-0131.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This proposed DFARS rule supplements an interim DFARS rule which the Director of Defense Procurement issued on December 29, 1994, to implement Section 818 of the National Defense Authorization Act for Fiscal year 1995 (Public Law 103-337). The interim DFARS rule imposed restrictions on the allowability of restructuring costs associated with a business combination undertaken by a defense contractor. While the interim rule provided policies and procedures for allowing appropriate contractor costs which involve external restructuring activities, it did not address the allowability of costs associated with internal restructuring activities.

This proposed DFARS rule states that contractor costs associated with internal restructuring activities are unallowable unless allowable in accordance with FAR Part 31 and DFARS Part 231; an audit of projected restructuring costs and savings is performed; and the ACO determines that overall reduced costs should result for DoD and negotiates an advance agreement with the contractor. Unlike restructuring costs associated with external restructuring activities, certification by the Under Secretary of Defense (Acquisition & Technology) concerning projected future savings for DoD is not required for reimbursement of the costs associated with internal restructuring activities.

**B. Regulatory Flexibility Act**

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because most small entities are not subject to the contract cost principles in FAR Part 31 or DFARS Part 231. The contract cost principles normally apply where contract award exceeds \$500,000 and the price is based on certified cost

or pricing data. This proposed DFARS rule applies only to defense contractors which incur restructuring costs coincident to internal restructuring activities and are subject to the contract cost principles. Most contracts awarded to small entities are awarded on a competitive, fixed-price basis. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small business entities and other interested parties. Comments from small entities concerning the affected DFARS Subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94-D007 in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed rule does not impose any additional reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

**List of Subjects in 48 CFR Part 231**

Government Procurement.

**Claudia L. Naugle,**

*Deputy Director, Defense Acquisition Regulations Council.*

Therefore, it is proposed that 48 CFR Part 231 be amended as follows:

1. The authority citation for 48 CFR Part 231 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES**

2. Section 231.205-70 is amended by adding a new paragraph (c) (4) to read as follows:

**231.205-70 Restructuring costs.**

\* \* \* \* \*

(c) Limitations on cost allowability.

\* \* \*

(4) Restructuring costs associated with internal restructuring activities shall not be allowed unless—

(i) Such costs are allowable in accordance with FAR Part 31 and DFARS Part 231;

(ii) An audit of projected restructuring costs and restructuring savings is performed; and

(iii) The cognizant ACO reviews the audit report and the projected costs and projected savings, determines that overall reduced costs should result for

DoD, and negotiates an advance agreement with the contractor.

\* \* \* \* \*

[FR Doc. 95-764 Filed 1-11-95; 8:45 am]

BILLING CODE 5000-04-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 301**

[Docket No. 950106-003-5003-01; I.D. 121994A]

RIN 0648-AH01

**Pacific Halibut Fisheries; Catch Sharing Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule and proposed catch sharing plan.

**SUMMARY:** NMFS proposes to approve and implement a 1995 Catch Sharing Plan (Plan) in accordance with the Northern Pacific Halibut Act of 1982 (Halibut Act) to allocate the total allowable catch (TAC) of Pacific halibut among treaty Indian, non-Indian commercial, and non-Indian sport fisheries off the coasts of Washington, Oregon, and California (International Pacific Halibut Commission (IPHC) Statistical Area 2A). This proposed Plan is based on the recommendations of the Pacific Fishery Management Council (Council). This action is necessary to allocate the harvestable resources among the states in a manner that responds to the dynamics and growth in a sport fishery and growth in a tribal fishery. The action is intended to allocate harvestable resources among user groups under the provisions of the Halibut Act to carry out the objectives of the IPHC and the Council.

**DATES:** Comments on the Plan must be received on or before January 19, 1995; comments on the remainder of the proposed rule must be received on or before February 20, 1995.

**ADDRESSES:** Send comments to William Stelle, Jr., Director, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

**FOR FURTHER INFORMATION CONTACT:** Joe Scordino, 206-526-6140.

**SUPPLEMENTARY INFORMATION:** The Northern Pacific Halibut Act of 1982 at 16 U.S.C. 773c provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out

the Halibut Convention between the United States and Canada, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 773c(c) also authorizes the regional fishery management council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Accordingly, the Council has developed Catch Sharing Plans since 1988 to allocate the TAC of Pacific halibut between treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A off Washington, Oregon, and California.

At its September 1993 public meeting, the Council decided to consider all aspects of the halibut allocation issue and to develop a multiyear Plan for 1995 and beyond. The Council requested that the Halibut Managers Group (HMG) and the Halibut Advisory Subpanel (HAS) develop a complete list of allocation issues for Council consideration. At its November 1993 public meeting, the Council adopted a number of issues identified by the HMG and HAS that would be considered in development of a Plan for 1995 and beyond. The issues adopted for public comment were: (1) Timeframe for the Plan (i.e., 2-5 years), (2) treaty Indian entitlement, (3) bycatch, (4) biomass-based or geographic allocation, (5) individual transferable quotas, (6) allocations within the commercial fishery (i.e., troll allocation), (7) geographic restrictions on the commercial fishery, (8) minimizing quota overages in non-Indian commercial fishery, (9) shifting the commercial fishery to a non-directed (incidental catch) fishery at lower quotas, (10) varying allocation shares based on varying TAC levels (i.e., sliding scale), (11) fixed timeframes for sport seasons based on expected catch (rather than quotas requiring monitoring), and (12) state shaping of sport fisheries. At its March 1994 public meeting, after receiving comments from the HMG, HAS, and the public on the issues and possible options for addressing the issues, the Council adopted a complex of options/alternatives for analysis. The Council also requested an analysis of the profile of the Area 2A halibut fisheries and how they have changed in recent years. This analysis is provided in the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared on the proposed Plan for 1995 and beyond.

A description and analysis of the options/alternatives, along with a description of the fisheries in Area 2A, were presented to the Council at its August 1994 public meeting. After review of the analysis and consideration of public comments, the Council developed four allocation options, three management measures, a tribal fishery structuring, and two sport fishery structuring framework alternatives (one for Washington and one for Oregon/California) for public comment. At its October 1994 public meeting, the Council received comments from the HAS and the public on the options and alternatives and took final action in selecting one allocation option and approving management measures and sport structuring that were combined into a proposed Plan for 1995 and beyond.

The Council considered four options for allocating Pacific halibut among non-Indian fisheries in Area 2A beginning in 1995. The options considered apply only to the non-Indian share of 65 percent of the Area 2A TAC after removing the treaty tribal share of 35 percent. The options, which are described in detail in the EA/RIR, were: (1) To maintain status quo allocation of 50 percent each to commercial and sport fisheries and allocate the sport fishery share 61 percent to areas north of Cape Falcon and 39 percent south, (2) to allocate evenly (one-third each) between the sport fisheries north and south of the Columbia River and the commercial fishery (the commercial fishery would be limited to the area south of the Columbia River), (3) to allocate 50 percent north and south of the Columbia River with differing sliding-scale sharing between sport/commercial fisheries in each area, and (4) to allocate 60 percent to the commercial fisheries and 40 percent to the sport fisheries, with a status quo sharing among the sport fisheries.

The Council adopted a modified Option 2 that divides the non-Indian harvest into three shares with the sport fishery north of the Columbia River receiving 36.6 percent, the sport fishery south of the Columbia River receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery would be confined to the area south of Subarea 2A-1 (south of the treaty Indian tribes' usual and accustomed fishing area). The rationale was to increase the allocation to the sport fisheries off Oregon to provide a better balance in sharing of the harvests between sport fisheries off Oregon and Washington. The commercial fishery allocation was reduced over status quo

by about 12 percent to provide for the increases in the sport fisheries.

The Council took this action to allocate the harvestable resources among the states in a manner that responds to the dynamics and growth in a sport fishery and growth in a tribal fishery. Sport fisheries in both Washington and Oregon have been compressed due to reduced quotas for Area 2A and restrictive allocations that have not provided sufficient access and fishing opportunity for sport users. Sport fisheries consist primarily of small boats and charterboats that are tied to coastal communities. Many of the coastal communities in Washington and Oregon are dependent on revenues generated from sport fisheries. As such, these sport fisheries are not mobile (in contrast to commercial fishing vessels) and cannot move into other areas to conduct fishing operations. The dependence of these coastal communities, in contrast to the mobility of the vessels operating in the commercial fishery, was considered by the Council in reducing the commercial allocation in order to increase and better balance the sport allocations between Washington and Oregon.

The EA/RIR prepared for the Council indicates that the commercial halibut fishery in Area 2A is a small part of the average annual revenues for commercial fishers that have been involved in this fishery and that halibut fishers in Area 2A consist of a highly mobile fleet of vessels that have moved in and out of the Area 2A halibut fishery (of 1,153 commercial vessels that operated in the fishery between 1987 and 1993, only 2.5 percent landed halibut in each of those years), and that relatively few vessels account for most of the catch each year. The commercial fishery was restricted in the northern area to shift harvests to the south to provide a broader distribution of harvests in Area 2A and prevent the higher removals that were occurring in the northern area of Area 2A. In 1994, about 80 percent of the Area 2A harvest occurred off Washington. Commercial fishers that have been active in the Pacific halibut fishery are highly mobile and would have the option of fishing south of Area 2A-1. This shift in the open area for the commercial fishery would also have the effect of providing better control of a reduced harvest level by constraining the fishery to a smaller area. This geographic shifting of non-tribal catch is not intended to prejudice the treaty Indian share. The increased allocation to Oregon sport fisheries and the restriction of the commercial fishery to more southern areas of Area 2A is intended to shift the non-Indian

harvesting effort into southern areas of halibut biomass and is not based on a conservation concern.

The allocations recommended by the Council are intended to continue until new information becomes available such as new information on biomass distribution. Upon receipt of new information, the Council can decide if the information necessitates reconsidering the issue of halibut allocation.

The Council recommended dividing the commercial fishery into two sectors, with 85 percent of the non-Indian commercial fishery allocation for a directed halibut fishery and 15 percent for incidental harvests of halibut during the salmon troll fisheries. The Council acknowledged that salmon trollers traditionally harvested halibut during salmon fisheries, but have been excluded from their traditional halibut fishery because recent years' season structuring limited commercial halibut openings to 1 or 2 days in the summer that did not correspond with salmon troll openings. Therefore, the Council adopted a separate allocation to allow trollers to renew their traditional access to halibut incidentally caught during the May and June salmon troll fishery as described in the proposed Plan at § 301.23. In order to ensure that salmon trollers do not target on halibut and exceed their allocation, the Council adopted a ratio fishery whereby a salmon troller would not be allowed to retain halibut until a specified number of chinook salmon had been caught; the vessel would be limited to landing one halibut per that number of chinook. The initial ratio proposed by the Council is one halibut per 25 chinook, but this ratio would be adjusted annually after halibut and chinook quotas are determined, to ensure the fishery is viable without exceeding the halibut quota. Also, because the chinook quotas and harvest guidelines can affect whether this fishery can be prosecuted, the Council adopted rollover provisions that would allow the transfer of any quota remaining from this fishery on June 30 to the directed halibut fishery, which normally opens in July or August. In addition, if quota remained unharvested from the directed fishery, it would be transferred to the fall salmon troll fisheries.

The Council considered three new management measures that would apply to the commercial and sport fisheries. The first measure would prohibit commercial fishing for halibut from any vessel that participates in the sport fishery for halibut in Area 2A, and vice versa. The basis for this measure was concern that increased numbers of

charterboat vessels and private vessels operating in the sport fishery were obtaining commercial licenses and also participating in the commercial fishery in Area 2A. This "double-dipping" into both commercial and sport allocations was viewed as inconsistent with the Council's allocation intent to provide separate quotas and opportunity for each harvesting sector to utilize its allocation. Therefore, the Council recommended restrictions on the issuance of IPHC licenses to vessels operating in Area 2A.

The second management measure considered by the Council was possession limits on land. The current IPHC regulations on possession limits for halibut in Area 2A stipulate only that the possession limit on the water is the same as the daily bag limit and do not address possession limits on land. Because the three states have different regulations and interpretations on possession limits on land and condition of fish (e.g., frozen, fresh) as they relate to possession limits, enforcement has varied between states and ports. A possession limit on land is intended to restrict the number of halibut trips that sport fishers can make so that the sport allocation is better distributed among sport users. This would allow for longer seasons because the quotas would not be achieved as quickly. The Council adopted a measure that would ensure a consistent application of possession limits in the subareas north and south of Cape Falcon. These possession limits would apply to all halibut possessed, regardless of condition of fish (e.g., frozen, fresh). For the sport fisheries north of Cape Falcon, the Council adopted a possession limit on land of two daily bag limits. Because of the more remote locations of the sport halibut fishing ports (such as Neah Bay) in Washington, the Council adopted a possession limit on land of two daily bag limits to allow fishers more opportunity to fish in those remote locations that require more travel time to access. Further, this possession limit was proposed because it was consistent with Washington sport regulations and would be easier to enforce. For the sport fisheries south of Cape Falcon, the possession limit on land would be the same as the daily bag limit. This possession limit on land of one daily bag limit is consistent with Oregon sport regulations for all other species and would make enforcement easier.

The third management measure considered by the Council was an alternate approach to establishing sport fishery geographic subareas whereby "landing zones" would be created, consisting of the ports in the geographic

area, and regulation of and accounting for catch would be by area of landing rather than area of catch. The landing zone approach would prevent vessels out of other ports from utilizing a subquota intended for another subarea. It also would simplify enforcement and accounting by eliminating the need to verify area of catch. The Council adopted this measure and recommended that all sport fishing in 2A (except for fish caught in the north Washington coast area and landed in Neah Bay) be managed on a "port of landing" basis, whereby any halibut landed into a port would count toward the quota for the area in which that port is located, and the regulations governing the area of landing would apply, regardless of the specific area of catch. Neah Bay is treated differently because, although it is located in the Washington inside waters subarea, it is the principal port used by sport fishers to access the Washington north coast subarea.

The Council considered the structuring of the sport fisheries and suballocations among ports in geographic areas as described in the EA/RIR. The division of the sport allocation among geographic areas is intended to spread the sport fishing opportunity and allow it to occur in a manner that is most beneficial to the sport fishers in those areas. Some areas that have low halibut fishing effort and success are managed for seasons that allow fishers to retain incidental catches throughout the months when sport fishing is accessible, while other areas are characterized by high fishing effort and catch and are managed to allow maximum fishing opportunity while preventing quotas from being achieved too quickly. This approach results in differing bag limits and seasons in each subarea that are designed to maximize the sport fishing opportunity and fishing experience for anglers, based on the specific characteristics of fishing patterns and catches in the respective areas.

The Council divided the sport fisheries into seven areas that represent the principal ports areas that sport fishers use. The seven areas, which are defined below, are: (1) Washington inside waters, (2) Washington north coast, (3) Washington south coast, (4) Columbia River area, (5) Oregon central coast, (6) Oregon south coast, and (7) California coast. The management goals for the sport fishery in each subarea are described in the Plan proposed at § 301.23. The suballocations and season structuring recommended by the Council for each of these areas is as follows.

### **Washington Inside Waters Sport Fishery Subarea (Puget Sound Including Strait of Juan de Fuca).**

The Council considered an allocation for this area that ranged between 17 and 32.5 percent of the Washington sport fishery subquota. In 1994, this area was allocated 32.4 percent of the sport fishery subquota, which equaled 6.42 percent of the Area 2A TAC. The Council recommends an allocation of 28.0 percent of the Washington sport allocation, which equals 6.66 percent of the Area 2A TAC. The Council made no changes to the season structuring approach, bag limits, or the geographic limits of this subarea. Due to inability to monitor the catch in this area inseason, the Council adopted a fixed season management approach, rather than a quota. The season would be established pre-season based on projected catch per day and number of days to achievement of the subquota. No inseason adjustments would be made; estimates of actual catch would be made post season.

### **Washington North Coast Sport Fishery Subarea.**

The Council considered an allocation for this area that ranged between 51 and 62.3 percent of the Washington sport fishery subquota. In 1994, this area was allocated 62.4 percent of the sport fishery subquota, which equaled 12.37 percent of the Area 2A TAC. The Council recommends an allocation of 57.7 percent of the Washington sport allocation, which equals 13.73 percent of the Area 2A TAC. The Council made no changes to the geographic limits of this subarea. The Council recommends a two-tier approach to the season structuring, which would maintain the traditional early May fishery intended to extend through the month; if sufficient quota remained after May 31, an early July fishery would be scheduled for the Fourth of July holiday when sport fishers have requested access to halibut. The Council made no changes to the one-fish with no minimum size bag limit in this area. Also, the Council maintained the closure in the area that is approximately 19.5 nm (36.1 km) southwest of Cape Flattery. High catches of large fish from this area in the past caused the fishery to close early, due to quota attainment. The Council adopted a closure of this area to provide for longer seasons and fishing opportunity in other parts of the sport fishery subarea.

### **Washington South Coast Sport Fishery Subarea.**

The Council considered an allocation for this area that ranged between 10 and 25 percent of the Washington sport fishery subquota. In 1994, this area was allocated 5.2 percent of the sport fishery subquota, which equaled 1.03 percent of the Area 2A TAC. The Council recommends an allocation of 12.3 percent of the Washington sport allocation, which equals 2.93 percent of the Area 2A TAC. The southern limit of this geographic area was changed from Cape Falcon to Leadbetter Point to establish a separate Columbia River area. This area has changed from having a continuous 153-day opening prior to 1993, to a limit of a few days of fishing, due to a shift in fishing strategy to a fishery targeting on halibut as a result of fishers finding productive sport fishing areas. In order to provide longer seasons that start on May 1 as in years prior to 1993, the Council recommends a greater allocation to this subarea and established an area closure in the northern offshore portion of this subarea where high catches have occurred in the last 2 years. However, to allow access to this more productive area without reducing season length, the Council did adopt a provision for an opening in this closed area after September 1, if the fishery is still open as described in the proposed Plan. To maintain a longer season, the bag limit was set by the Council at one fish, with no minimum size limit.

### **Columbia River Sport Fishery Subarea.**

This is a new sport fish subarea for which the Council considered a maximum allocation of 2.5 percent of the Washington sport fishery subquota, plus a maximum of 2.5 percent of the Oregon/California sport fishery subquota. The Council recommends an allocation of 2.0 percent of the Washington sport allocation plus 2.0 percent of the Oregon/California sport allocation, which equals 0.89 percent of the Area 2A TAC. In 1994, this area was included with the Washington south coast area and did not have a separate allocation. Because of high landings of sport catch in the Westport area, the south coast area has been limited to only a few days of fishing in the last 2 years. Sport fishers in the Columbia River area, who have caught halibut incidental to sport fishing for other bottomfish species, requested separation from the Westport area so that longer fixed-season incidental catch fisheries could be maintained for the Columbia River ports. The Council agreed with this need in establishing this new

subarea that extends from Leadbetter Point to Cape Falcon. As described in the proposed Plan, this area would open on May 1 and continue 7 days per week until the subquota is estimated to have been taken, or September 30, whichever is earlier. To maintain a longer season, the bag limit was set by the Council at one fish with a minimum size limit of 32 in (81.3 cm). However, the Council acknowledged that, based on the experience at other ports such as Westport, it is probable that the fishery in this area could shortly evolve into a directed halibut fishery. If so, the season length would need to be shortened considerably or the quota increased.

### **Central Oregon Coast Sport Fishery Subarea.**

The Council considered an allocation for this area that ranged between 55 and 97.4 percent of the Oregon/California sport fishery subquota. In 1994, this area was allocated 97.4 percent of the Oregon/California sport fishery subquota, which equaled 12.35 percent of the Area 2A TAC. The Council recommends an allocation of 88.4 percent of the Oregon/California sport allocation (which is 18.21 percent of the Area 2A TAC) if the Area 2A TAC is 388,350 lb (176.2 mt) and above. At TACs above 388,350 lb (176.2 mt) the Council set the southern geographic limit of this subarea at the Siuslaw River, rather than the California border, so that a south coast subarea can be established. If the Area 2A TAC is below 388,350 lb (176.2 mt), the Council determined that there would be no south coast subarea and the allocation for this subarea, which would extend from Cape Falcon to the California border, would be 95.4 percent of the Oregon/California sport allocation. The Council recommends three seasons for this area: (1) Two periods of fishing opportunity in productive deeper water areas along the coast, principally for charter and larger private boat anglers in May and in August, and (2) a period of fishing opportunity in less productive nearshore waters (inside 30 fathoms (55 m)) in June and July, designed for incidental catches by small boat anglers as described in the proposed Plan. The Council maintained the past daily bag limits for all seasons of two halibut per person, one with a minimum 32-in (81.3 cm) size limit and the second with a minimum 50-in (127.0 cm) size limit.

### **Southern Oregon Coast Sport Fishery Subarea.**

This is a new sport fishery subarea for which the Council considered an allocation that ranged between 5 and 40 percent of the Oregon/California sport

fishery subquota for the area from the Siuslaw River to the California border. In 1994, this area was included with the central Oregon coast sport fishery area. The Council recommends an allocation to this new subarea of 7.0 percent of the Oregon/California sport allocation (which is 1.44 percent of the Area 2A TAC) if the Area 2A TAC is 388,350 lb (176.2 mt) and above. If the Area 2A TAC is below 388,350 lb (176.2 mt), this subarea will be included in the Oregon central sport fishery subarea. The Council agreed to create a south coast subarea to accommodate the needs of both charterboat and private boat anglers in this area to have additional fishing opportunity. In the past, the weather and bar conditions in the southern area often did not allow for access to fishing grounds on days when sport vessels out of Newport were fishing. Because the area quota applied to Newport and this southern area, the fishing opportunity in the southern area has been cut short due to quota achievement caused by vessels operating out of Newport. The Council acknowledged that at lower quotas for the Oregon/California sport fishery (less than 80,000 pounds (36.3 mt)), the quota would not be sufficient to split these two areas and still maintain viable sport fisheries. The Council recommends the same season and bag limits for this area as the central Oregon coast area.

#### California Sport Fishery Subarea.

The Council considered a maximum allocation of 3.0 percent of the Oregon/California sport fishery subquota for this area. In 1994, this area was allocated 2.6 percent of the sport fishery subquota, which equaled 0.33 percent of the Area 2A TAC. The Council recommended an allocation of 2.6 percent of the Oregon/California subquota, which is 0.54 percent of the Area 2A TAC. A separate subquota with a fixed-season fishery has occurred in this area since 1990 to allow for small numbers of halibut to be caught in this area of low halibut abundance incidental to other sport fishing activities throughout the summer. The Council agreed with maintaining this subarea sport fishery and recommends a continuous, fixed season fishery that would be open from May 1 through September 30 with a daily bag limit of one halibut per person with a minimum 32-in (81.3 cm) size limit. Due to inability to monitor the catch in this area inseason, the Council adopted a fixed-season management approach, rather than a quota. The season will be established pre-season based on projected catch per day and number of days to achievement of the

subquota. No inseason adjustments will be made; estimates of actual catch will be made post season.

The Council made no changes to the treaty Indian fisheries, which are allocated 35 percent of the Area 2A TAC. The Council adopted the treaty Indian tribes' request to maintain the 1994 structuring of the tribal commercial and ceremonial and subsistence (C&S) fisheries. These two fisheries are to be managed separately: the commercial fishery will be managed with a quota, and the C&S fishery will be open year round. The tribes will provide an estimate of the C&S harvest; the remainder of the allocation will be for the commercial fishery.

NMFS is publishing the proposed Plan together with the rationale provided by the Council for modifying the allocations and management measures for the halibut fisheries in Area 2A, and is requesting public comments on approval of the Council's recommended Plan for 1995 and beyond. Public comments are requested on the proposed Plan described in § 301.23 and the proposed regulations for implementing the Plan. Comments on the proposed Plan in § 301.23 are requested by January 19, 1995, so that a final Plan can be approved and notification provided to the IPHC prior to its annual meeting on January 23–26, 1995, when the final quotas will be adopted. The comment period on the remainder of the proposed regulations will extend past the IPHC annual meeting and close on February 20, 1995, so that the public will have the opportunity to consider the final Area 2A TAC before submitting comments. The IPHC, consistent with its responsibilities under the international convention, will implement the subquotas stipulated in the Plan based on its final determination of the Area 2A TAC to be made at its annual meeting. The actual amounts of halibut allocated to each group in 1995 will change if the IPHC establishes a TAC that is different from the assumed TAC of 500,000 lb (226.8 mt); however, the percentages specified in the Plan will not change. The proposed regulations also are based on an assumed TAC of 500,000 lb (226.8 mt) and will be modified dependent on the final TAC in accordance with the Plan.

The proposed rule includes all of the regulatory modifications to 50 CFR part 301 that are necessary to implement the proposed Plan at § 301.23. Some of these regulations will be implemented by the IPHC. However, to assist the public in commenting on the proposed Plan and implementing regulations, all of the regulatory changes necessary to

implement the Plan are published here as a proposed rule. After the Area 2A TAC is known, and after NMFS reviews public comments, NMFS and the IPHC will implement final rules for the halibut fishery. The final rule will stipulate which regulations are issued in international regulations and which in domestic regulations. The final ratio of halibut to chinook to be allowed as incidental catch in the salmon troll fishery will be published with the annual salmon management measures.

#### Classification

The EA/RIR prepared by the Council for this proposed Plan indicates that, if approved, though the actions taken under this Plan would reduce the allocation and area available to commercial fisheries, it would not significantly affect a substantial number of commercial fishers because the commercial halibut fisheries in Area 2A are a small part of the average annual harvest for commercial fishers. As such, the Assistant General Counsel for Legislation and Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant economic impact on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act. Copies of the 1995 EA/RIR are available (see ADDRESSES).

This action has been determined to be not significant for purposes of E.O. 12866.

#### List of Subjects in 50 CFR Part 301

Fisheries, Treaties.

Dated: January 6, 1995.

#### Charles Karnella,

*Acting Program Management Officer,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 301 is proposed to be amended as follows:

#### PART 301—PACIFIC HALIBUT FISHERIES

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

**Authority:** 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

2. In § 301.3, new paragraphs (l), (m), and (n) are added to read as follows:

#### § 301.3 Licensing vessels.

\* \* \* \* \*

(l) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(m) A license issued for a vessel operating in the commercial fishery in

Area 2A shall be valid only for either the directed commercial fishery in Area 2A during the season set out in § 301.7(a) or the incidental catch fishery during the salmon troll fishery described in § 301.7(j), but not both.

(n) A vessel operating in a commercial fishery in Area 2A must obtain its license prior to May 1.

3. In § 301.7, paragraph (b) is revised and a new paragraph (j) is added to read as follows:

§ 301.7 Fishing periods.

\* \* \* \* \*

(b) Each fishing period for directed halibut fishing in Area 2A shall begin at 0800 hours and terminate at 1800 hours Pacific Standard or Pacific Daylight Time, as applicable, on the dates set out in the table in paragraph (a) of this section, unless the Commission specifies otherwise.

\* \* \* \* \*

(j) Notwithstanding paragraphs (a) and (b) of this section, an incidental catch fishery is authorized during salmon troll seasons implemented by NMFS. Vessels participating in the salmon troll fishery in Area 2A may retain halibut caught incidentally during authorized periods, in conformance with the NMFS regulations announced in the Federal Register with the annual salmon management measures. NMFS will specify the ratio of halibut to salmon that may be retained during this fishery.

4. In § 301.10, a new paragraph (j) is added to read as follows:

§ 301.10 Catch limits.

\* \* \* \* \*

(j) Notwithstanding paragraph (i) of this section, the catch limit in Area 2A shall be divided between a directed halibut fishery to operate during the fishing periods set out in § 301.7(a) and an incidental halibut catch fishery during the salmon troll fishery in Area 2A described in § 301.7(j). Inseason actions to transfer catch between these fisheries may occur in conformance with § 301.23 of this part.

(1) The catch limit in the directed halibut fishery is 87,550 lb (39.71 mt).

(2) The catch limit in the incidental catch fishery during the salmon troll fishery is 15,450 lb (7.01 mt).

5. In § 301.11, a new paragraph (n) is added to read as follows:

§ 301.11 Fishing period limits.

\* \* \* \* \*

(n) The fishing period limits in Area 2A apply only to the directed halibut fishery.

6. Section 301.20 is revised and implemented as a domestic regulation to read as follows:

§ 301.20 Fishing by U.S. treaty Indian tribes.

(a) Halibut fishing by members of treaty Indian tribes located in the State of Washington shall be governed by this section.

(b) For purposes of this part, treaty Indian tribes means the Hoh, Jamestown Klallam, Lower Elwha Klallam, Lummi, Makah, Port Gamble Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, and Tulalip tribes.

(c) Subarea 2A-1 includes all U.S. waters off the coast of Washington that are north of lat. 46°53'18" N. and east of long. 125°44'00" W., and all inland marine waters of Washington.

(d) Commercial fishing for halibut by treaty Indians is permitted only in subarea 2A-1 from March 1 through October 31, or until 159,000 lb (72.12 mt) is taken by treaty Indians, whichever occurs first.

(e) Commercial fishing periods and management measures to implement paragraph (d) of this section will be set by treaty Indian tribal regulations.

(f) Commercial fishing for halibut by treaty Indians shall comply with the provisions of §§ 301.12, 301.15, and 301.17, except that the 72-hour fishing restriction preceding the opening of a halibut fishing period shall not apply to treaty Indian fishing.

(g) Ceremonial and subsistence fishing for halibut in subarea 2A-1 is permitted with hook-and-line gear from January 1 to December 31, and is estimated to take 16,000 lb (7.3 mt).

(h) No size or bag limits shall apply to the ceremonial and subsistence fishery, except that when commercial halibut fishing is prohibited pursuant to paragraph (d) of this section, treaty Indians may take and retain not more than two halibut per person per day.

(i) Halibut taken for ceremonial and subsistence purposes shall not be offered for sale or sold.

(j) Any member of a U.S. treaty Indian tribe, as defined in paragraph (b) of this section, who is engaged in commercial or ceremonial and subsistence fishing under this part must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974).

(k) The following table sets forth the fishing areas of each of the 12 treaty Indian tribes fishing pursuant to this section. Within subarea 2A-1, boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

TRIBE\*\*\*Boundaries

HOH\*\*\*Between 47°54'18" N. lat. (Quillayute River) and 47°21'00" N. lat. (Quinault River), and east of 125°44'00" W. long.

JAMESTOWN KLALLAM\*\*\*Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown Klallam Tribe may fish under rights secured by treaties with the United States.

LOWER ELWHA

KLALLAM\*\*\*Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha Klallam Tribe may fish under rights secured by treaties with the United States.

LUMMI\*\*\*Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89-08 (W.D. Wash. February 13, 1990) (decision and order re: cross-motions for summary judgement), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.

MAKAH\*\*\*North of 48°02'15" N. lat. (Norwegian Memorial), west of 123°42'30" W. long., and east of 125°44'00" W. long.

PORT GAMBLE KLALLAM\*\*\*Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble Klallam Tribe may fish under rights secured by treaties with the United States.

QUILEUTE\*\*\*Between 48°07'36" N. lat. (Sand Point) and 47°31'42" N. lat. (Queets River), and east of 125°44'00" W. long.

QUINAULT\*\*\*Between 47°40'06" N. lat. (Destruction Island) and 46°53'18" N. lat. (Point Chehalis), and east of 125°44'00" W. long.

SKOKOMISH\*\*\*Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1

and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.

SUQUAMISH\* \* \* Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.

SWINOMISH\* \* \* Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.

TULALIP\* \* \* Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1531-1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.

7. In § 301.21, paragraph (d)(2) is revised and paragraphs (n), (o), (p), and (q) are added to read as follows:

**§ 301.21 Sport fishing for halibut.**

\* \* \* \* \*

(d) \* \* \*

(2) The sport fishing subareas, subquotas, fishing dates, and daily bag limits implemented by NMFS are as follows, except as modified under the inseason actions in paragraph (d)(3) of this section. All sport fishing in 2A (except for fish caught in the North Washington coast area and landed into Neah Bay) is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line from the lighthouse on Bonilla Point on Vancouver Island, British Columbia (48°35'44" N. lat., 124°43'00" W. long.) to the buoy adjacent to Duntze Rock (48°24'55" N. lat., 124°44'50" W. long.) to Tatoosh Island lighthouse

(48°23'30" N. lat., 124°44'00" W. long.) to Cape Flattery (48°22'55" N. lat., 124°43'42" W. long.), there is no subquota. This area is managed by setting a season that is projected to result in a catch of 33,320 lb (15.11 mt).

(A) The fishing season is May 18 through July 22, 5 days a week (closed Tuesdays and Wednesdays).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) In the area off the north Washington coast, west of the line described in paragraph (d)(2)(i) of this section and north of the Queets River (47°31'42" N. lat.), the subquota for landings into ports in this area is 68,663 lb (31.15 mt). Landings into Neah Bay of halibut caught in this area will count against this subquota and are governed by the regulations in this paragraph (d)(2)(ii).

(A) This area has two seasons.

(1) The first fishing season commences on May 2 and continues 5 days a week (Tuesday through Saturday) until May 27 or until 68,663 lb (31.15 mt) are estimated to have been taken and the season is closed by the Commission, whichever occurs first.

(2) If sufficient quota remains for this area, the second season commences on July 1 and continues until September 30, or the quota of 68,663 lb (31.15 mt) for this area is estimated to have been taken and the season is closed by the Commission, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A portion of this area about 19.5 nm (36.1 km) southwest of Cape Flattery is closed to sport fishing for halibut. The closed area is within a rectangle defined by these four corners: 48°17'00" N. lat., 125°10'00" W. long.; 48°17'00" N. lat., 125°00'00" W. long.; 48°05'00" N. lat., 125°10'00" W. long.; and, 48°05'00" N. lat., 125°00'00" W. long.

(iii) In the area between the Queets River, WA and Leadbetter Point, WA (46°38'10" N. lat.), the subquota for landings into ports in this area is 14,637 lb (6.64 mt).

(A) The fishing season commences on May 1 and continues every day through September 30 or until 14,637 lb (6.64 mt) are estimated to have been taken and the season is closed by the Commission, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) The northern offshore portion of this area is closed to sport fishing for halibut. The closed area is west of 124°40'00" W. long. and north of 47°10'00" N. lat. If, on September 1, sufficient quota remains for at least 1 day of fishing, the Commission will, by inseason action as specified at § 301.4 of

this part, remove the geographical restriction on each Tuesday until the fishery is closed.

(iv) In the area between Leadbetter Point, WA and Cape Falcon, OR (45°46'00" N. lat.), the subquota for landings into ports in this area is 4,440 lb (2.01 mt).

(A) The fishing season commences on May 1 and continues every day through September 30 or until 4,440 lb (2.01 mt) are estimated to have been taken and the season is closed by the Commission, whichever occurs first.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 in (81.3 cm).

(v) In the area off Oregon between Cape Falcon and the Siuslaw River (44°01'08" N. lat.), the subquota for landings into ports in this area is 91,052 lb (41.3 mt).

(A) The fishing seasons are:

(1) Commencing May 4 and continuing 3 days a week (Thursday through Saturday) until 65,102 lb (29.53 mt) are estimated to have been taken and the season is closed by the Commission;

(2) Commencing the day following the closure of the season in paragraph (d)(2)(v)(A)(1) of this section, and continuing every day through August 2, in the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until 3,187 lb (1.45 mt) or the area subquota is estimated to have been taken (except that any poundage remaining unharvested after the earlier season will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(3) Commencing August 3 and continuing 3 days a week (Thursday through Saturday) through September 30, or until the combined subquotas for the areas described in paragraphs (d)(2)(v) and (vi) of this section totaling 98,262 lb (44.57 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 in (81.3 cm) and the second with a minimum overall size limit of 50 in (127.0 cm).

(vi) In the area off Oregon between the Siuslaw River and the California border (42°00'00" N. lat.), the subquota for landings into ports in this area is 7,210 lb (3.27 mt).

(A) The fishing seasons are:

(1) Commencing May 4 and continuing 3 days a week (Thursday through Saturday) until 5,768 lb (2.62 mt) are estimated to have been taken

and the season is closed by the Commission;

(2) Commencing the day following the closure of the season in paragraph (d)(2)(vi)(A)(I) of this section, and continuing every day through August 2, in the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until a total of 1,442 lb (0.65 mt) or the area subquota is estimated to have been taken (except that any poundage remaining unharvested after the earlier season will be added to this season) and the area is closed by the Commission, whichever is earlier.

(3) Commencing August 3 and continuing 3 days a week (Thursday through Saturday) through September 30, or until the combined subquotas for the areas described in paragraphs (d)(2)(v) and (vi) of this section totaling 98,262 lb (44.57 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 in (81.3 cm) and the second with a minimum overall size limit of 50 in (127.0 cm).

(vii) In the area off the California coast, there is no subquota. This area is managed on a season that is projected to result in a catch of less than 2,678 lb (1.21 mt).

(A) The fishing season will commence on May 1 and continue every day through September 30.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 in (81.3 cm).

\* \* \* \* \*

(n) The possession limit for halibut on land in Area 2A north of Cape Falcon, OR is two daily bag limits.

(o) The possession limit for halibut on land in Area 2A south of Cape Falcon, OR is one daily bag limit.

(p) A vessel licensed to fish for halibut in the Area 2A sport fishery shall not be used to fish for halibut in the Area 2A commercial fishery in the same calendar year.

(q) A vessel licensed to fish for halibut in the Area 2A commercial fishery shall not be used to fish for halibut in the Area 2A sport fishery during the same calendar year.

8. Sections 301.22 and 301.23 are redesignated 301.24 and 301.25 respectively, and new §§ 301.22 and 301.23 are added to read as follows:

#### § 301.22 Fishery election in Area 2A.

(a) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(1) The recreational fishery under § 301.21;

(2) The commercial directed fishery for halibut during the fishing period(s) established in § 301.7(b); or

(3) The incidental catch fishery during the salmon troll fishery as authorized in § 301.7(j).

(b) No person shall fish for halibut in the recreational fishery in Area 2A under § 301.21 from a vessel that has been used during the same calendar year for commercial fishing in Area 2A or that has been issued a permit for the same calendar year for the commercial fishery in Area 2A.

(c) No person shall fish for halibut in the directed halibut fishery in Area 2A during the fishing periods established in § 301.7(b) from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in § 301.7(j).

(d) No person shall fish for halibut in the directed commercial halibut fishery in Area 2A from a vessel that, during the same calendar year, has been used in the recreational halibut fishery in Area 2A or that is licensed for the recreational halibut fishery in Area 2A.

(e) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under § 301.7(j) taken on a vessel that, during the same calendar year, has been used in the recreational halibut fishery in Area 2A or that is licensed for the recreational halibut fishery in Area 2A.

(f) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under § 301.7(j) taken on a vessel that, during the same calendar year, has been used in the directed commercial fishery during the fishing periods established in § 301.7(b) for Area 2A or that is licensed to participate in the directed commercial fishery during the fishing periods established in § 301.7(b) in Area 2A.

#### § 301.23 Catch sharing plan for Area 2A

(a) This Plan constitutes a framework that shall be applied to the annual Area 2A total allowable catch (TAC) approved by the Commission each January. The framework shall be implemented in both Commission regulations and domestic regulations (implemented by NMFS) as published in the **Federal Register** as rulemaking in §§ 301.1 through 301.22 of this part.

(b) This Plan allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in subarea 2A-1, and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery

(north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The sport fishery in the Columbia River area (Leadbetter Point to Cape Falcon) will receive 2 percent of the Washington sport allocation plus 2 percent of the Oregon/California sport allocation. The California sport fishery is allocated 2.6 percent of the Oregon/California sport allocation.

These allocations may be changed if new information becomes available that indicates a change is necessary and/or the Pacific Fishery Management Council takes action to reconsider its allocation recommendations. Such changes will be made after appropriate rulemaking is completed and published in the **Federal Register**.

(c) The allocations in this Plan are distributed as subquotas to ensure that any overage or underage by any one group will not affect achievement of an allocation set aside for another group. The specific allocative measures in the treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A are described in paragraphs (d) through (f) of this section.

(d) Thirty-five percent of the Area 2A TAC is allocated to 12 treaty Indian tribes in subarea 2A-1, which includes that portion of Area 2A north of Point Chehalis, WA (46°53'18" N. lat.) and east of 125°44'00" W. long. The treaty Indian allocation is to provide for a tribal commercial fishery and a ceremonial and subsistence fishery. These two fisheries are managed separately; any overages in the commercial fishery do not affect the ceremonial and subsistence fishery. The commercial fishery is managed to achieve an established subquota, while the ceremonial and subsistence fishery is managed for a year-round season. The tribes will estimate the ceremonial and subsistence harvest expectations in January of each year, and the remainder of the allocation will be for the tribal commercial fishery.

(1) The tribal ceremonial and subsistence fishery begins on January 1 and continues through December 31. No size or bag limits will apply to the ceremonial and subsistence fishery, except that when the tribal commercial fishery is closed, treaty Indians may take and retain not more than two halibut per day per person. Halibut taken for ceremonial and subsistence purposes may not be offered for sale or sold.

(2) The tribal commercial fishery begins on March 1 and continues through October 31 or until the tribal commercial subquota is taken,

whichever is earlier. Any halibut sold by treaty Indians during the commercial fishing season must comply with Commission regulations on size limits for the non-Indian fishery.

(e) The non-Indian commercial fishery is allocated 20.6 percent of the Area 2A TAC. The commercial fishery is divided into two components: A directed fishery targeting on halibut, and an incidental catch fishery during the salmon troll fisheries off Washington, Oregon, and California.

(1) *Incidental halibut catch in the salmon troll fishery.* Fifteen percent of the non-Indian commercial fishery allocation is allocated to the salmon troll fishery in Area 2A as an incidental catch during the May through June salmon fisheries. The subquota for this incidental catch fishery is 3.1 percent of the Area 2A TAC. One halibut (in compliance with the Commission minimum size limit of 32 in (81.3 cm)) may be landed for each 25 chinook landed by a salmon troller. A salmon troller must have 25 chinook onboard before retaining a halibut. NMFS may adjust this ratio preseason, after the halibut and chinook quotas are established. NMFS will publish adjustments to the ratio annually in the **Federal Register**, along with the salmon management measures. A salmon troller may participate in this fishery or in the directed commercial fishery targeting on halibut, but not in both. Any poundage remaining in the subquota for this fishery after the May through June salmon troll season will be made available inseason to the directed halibut fishery. If the Commission determines that poundage remaining in the subquota for the directed fishery is insufficient to allow an additional day of directed halibut fishing, the remaining directed harvest subquota will be made available inseason for the fall salmon troll fisheries.

(2) *Directed fishery targeting on halibut.* Eighty-five percent of the non-Indian commercial fishery allocation is allocated to the directed fishery targeting on halibut (e.g., longline fishery) in southern Washington, Oregon, and California. The subquota for this directed catch fishery is 17.5 percent of the Area 2A TAC. This fishery is confined to the area south of Subarea 2A-1 (south of Point Chehalis, WA; 46°53'18" N. lat.). The commercial fishery opening date(s), duration, and vessel trip limits for this fishery, as necessary to ensure that the subquota for this fishery is not exceeded, will be determined by the Commission and implemented in Commission regulations. If the Commission determines that poundage remaining in

the subquota for this fishery is insufficient to allow an additional day of directed halibut fishing, the remaining subquota will be made available for incidental catch of halibut in the fall salmon troll fisheries.

(3) *Commercial license restrictions/declarations.* Commercial fishers must obtain a license to fish for halibut in Area 2A by May 1 of each year. Commercial fishers must choose either to operate in the directed commercial fishery in Area 2A, or to retain halibut caught incidentally during the salmon troll fishery. Fishing vessels that are issued Commission licenses to fish commercially in Area 2A are prohibited from obtaining a Commission charterboat license for Area 2A. Sport fishing for halibut is prohibited from a vessel licensed to fish commercially for halibut in Area 2A.

(f) *Sport fisheries.* The non-Indian sport fisheries are allocated 68.3 percent of the non-Indian share, which is 44.4 percent of the Area 2A TAC. The Washington sport fishery (north of the Columbia River) is allocated 53.6 percent of the non-Indian sport allocation and Oregon/California is allocated 46.4 percent. The allocations are further subdivided as subquotas among seven geographic subareas as described in paragraph (f)(1) of this section.

(1) *Subarea management.* The sport fishery is divided into seven sport fishery subareas, each having separate allocations and management measures as follows:

(i) *Washington inside waters subarea.* This sport fishery subarea is allocated 28.0 percent of the Washington sport allocation, which equals 6.66 percent of the Area 2A TAC. This subarea is defined as all U.S. waters east of the Bonilla-Tatoosh line, defined as follows: From Bonilla Point (48°35'44" N. lat., 124°43'00" W. long.) to the buoy adjacent to Duntze Rock (48°24'55" N. lat., 124°44'50" W. long.) to Tatoosh Island lighthouse (48°23'30" N. lat., 124°44'00" W. long.) to Cape Flattery (48°22'55" N. lat., 124°43'42" W. long.), including Puget Sound. The structuring objective for this subarea is to provide a stable sport fishing opportunity and maximize the season length. Due to inability to monitor the catch in this area inseason, a fixed season will be established preseason based on projected catch per day and number of days to achievement of the subquota. No inseason adjustments will be made, and estimates of actual catch will be made post season. The fishery opens on either May 18 or 25 and continues at least through

July 4 until a date established preseason when the subquota is predicted to be taken, or until September 30, whichever is earlier. If May 18 and 25 falls on a Tuesday or Wednesday, the fishery will open on the following Thursday. The season opens

5 days per week (closed on Tuesdays and Wednesdays). The daily bag limit is one fish per person, with no size limit.

(ii) *Washington north coast subarea.* This sport fishery subarea is allocated 57.7 percent of the Washington sport allocation, which equals 13.73 percent of the Area 2A TAC. This subarea is defined as all U.S. waters west of the Bonilla-Tatoosh line, as defined in paragraph (f)(1)(i) of this section, and north of the Queets River (lat. 47°31'42" N.). The structuring objective for this subarea is to maximize the season length for viable fishing opportunity and, if possible, stagger the seasons to spread out this opportunity to anglers who utilize these remote grounds. The fishery opens on May 1 and continues 5 days per week (closed on Sundays and Mondays). If May 1 falls on a Sunday or Monday, the fishery will open on the following Tuesday. The highest priority is for the season to last through the month of May. If sufficient quota remains, the second priority is to establish a fishery that will be open July 1 through at least July 4. If the preseason prediction indicates that these two goals can be met without utilizing the quota for this subarea, the next priority is to open the May fishery 7 days per week and extend it into June as long as possible. No sport fishing for halibut is allowed after September 30. The daily bag limit in all fisheries is one halibut per person with no size limit. A closure to sport fishing for halibut will be established in an area that is approximately 19.5 nm (36.1 km) southwest of Cape Flattery. The size of this closed area may be modified preseason by NMFS to maximize the season length. The closed area is defined as the area within a rectangle defined by these four corners: 48°17'00" N. lat., 125°10'00" W. long.; 48°17'00" N. lat., 125°00'00" W. long.; 48°05'00" N. lat., 125°10'00" W. long.; and, 48°05'00" N. lat., 125°00'00" W. long.

(iii) *Washington south coast subarea.* This sport fishery subarea is allocated 12.3 percent of the Washington sport allocation, which equals 2.93 percent of the Area 2A TAC. This subarea is defined as waters south of the Queets River (47°31'42" N. lat.) and north of Leadbetter Point (46°38'10" N. lat.). The structuring objective for this subarea is to maximize the season length, while providing for a limited halibut fishery. The fishery opens on May 1 for 7 days

per week until the subquota is estimated to have been taken, or September 30, whichever is earlier. The daily bag limit is one halibut per person, with no size limit. Sport fishing for halibut is prohibited in the area south of the Queets River (47°31'42" N. lat.), west of 124°40'00" W. long. and north of 47°10'00" N. lat. This closure may be removed through inseason action by NMFS under § 301.21(b)(3) of this part after September 1, for 1 day each week on Tuesday only, if NMFS determines that sufficient subarea quota remains to allow for 1 day of fishing without geographic restriction.

(iv) *Columbia river subarea.* This sport fishery subarea is allocated 2.0 percent of the Washington sport allocation plus 2.0 percent of the Oregon/California sport allocation, which combined equals 0.89 percent of the Area 2A TAC. This subarea is defined as waters south of Leadbetter Point, WA (46°38'10" N. lat.) and north of Cape Falcon, OR (45°46'00" N. lat.). The structuring objective for this subarea is to provide for a non-directed halibut sport fishery of not more than 5 months duration out of the Columbia River ports. The fishery will open on May 1 and continue 7 days per week until the subquota is estimated to have been taken, or September 30, whichever is earlier. The daily bag limit is one halibut per person, with a 32-in (81.3 cm) minimum size.

(v) *Oregon central coast subarea (Applicable through December 31, 1995).* If the Area 2A TAC is 388,350 lb (176.2 mt) and above, this subarea extends from Cape Falcon to the Siuslaw River at the Florence north jetty (44°01'08" N. lat.) and is allocated 88.4 percent of the Oregon/California sport allocation which is 18.21 percent of the Area 2A TAC. If the Area 2A TAC is below 388,350 lb (176.2 mt), this sport fishery subarea extends from Cape Falcon to the California border and is allocated 95.4 percent of the Oregon/California sport allocation. The structuring objectives for this subarea are to provide one or two periods of fishing opportunity in productive deeper water areas along the coast, principally for charter and larger private boat anglers; and provide a period of fishing opportunity in nearshore waters in June and July, especially for small boat anglers. Any poundage remaining in this subarea quota from earlier seasons will be added to the last season in this subarea. This subarea has three seasons as set out in paragraphs (f)(2)(v)(A) through (C) of this section. The daily bag limit for all seasons is two halibut per person, one with a minimum 32-in (81.3 cm) size limit and the

second with a minimum 50-in (127.0 cm) size limit.

(A) The first season is an all-depth fishery that begins on May 4, and continues 3 days per week (Thursday through Saturday) until 71.5 percent of the subarea quota is taken.

(B) The second season opens the day following closure of the first season, only in waters inside the 30-fathom (55 m) curve, and continues every day until 3.5 percent of the subarea quota is taken, or August 2, whichever is earlier.

(C) The last season begins on August 3, with no depth restrictions, and continues 3 days per week (Thursday through Saturday), until the combined Oregon subarea quotas south of Falcon are estimated to have been taken, or September 30, whichever is earlier.

(vi) *Oregon south coast subarea (Applicable through December 31, 1995).* If the Area 2A TAC is 388,350 lb (176.2 mt) and above, this subarea extends from the Siuslaw River at the Florence north jetty (44°01'08" N. lat.) to the California border (42°00'00" N. lat.) and is allocated 7.0 percent of the Oregon/California sport allocation which is 1.44 percent of the Area 2A TAC. If the Area 2A TAC is below 388,350 lb (176.2 mt), this subarea will be included in the Oregon Central sport fishery subarea. The structuring objective for this subarea is to create a south coast management zone designed to accommodate the needs of both charterboat and private boat anglers in this area where weather and bar conditions very often do not allow scheduled fishing trips. This subarea has three seasons as set out in paragraphs (f)(2)(vi)(A) through (C) of this section. The daily bag limit for all seasons is two halibut per person, one with a minimum 32-in (81.3 cm) size limit and the second with a minimum 50-in (127.0 cm) size limit.

(A) The first season is an all-depth fishery that begins on May 4, and continues 3 days per week (Thursday through Saturday) until 80 percent of the subarea quota is taken.

(B) The second season opens the day following closure of the first season, only in waters inside the 30-fathom (55 m) curve, and continues every day until the subarea quota is estimated to have been taken, or August 2, whichever is earlier.

(C) The last season begins on August 3, with no depth restrictions, and continues 3 days per week (Thursday through Saturday), until the combined Oregon subarea quotas south of Falcon are estimated to have been taken, or September 30, whichever is earlier.

(vii) *California subarea.* This sport fishery subarea is allocated 2.6 percent

of the Oregon/California subquota, which is 0.54 percent of the Area 2A TAC. This area is defined as the area south of the California border (42°00'00" N. lat.). The structuring objective for this subarea is to provide anglers in California the opportunity to fish in a continuous, fixed season that is open from May 1 through September 30. The daily bag limit is one halibut per person, with a minimum 32-in (81.3 cm) size limit. Due to inability to monitor the catch in this area inseason, a fixed season will be established by NMFS, pre-season, based on projected catch per day and number of days to achievement of the subquota; no inseason adjustments will be made, and estimates of actual catch will be made post season.

(2) *Port of landing management.* All sport fishing in Area 2A (except for fish caught in the Washington north coast subarea and landed in Neah Bay) will be managed on a "port of landing" basis, whereby any halibut landed into a port will count toward the quota for the subarea in which that port is located, and the regulations governing the subarea of landing apply, regardless of the specific area of catch. The one exception is for halibut caught west of the Bonilla-Tatoosh line and landed in Neah Bay, which are counted against the Washington north coast subarea quota, and are governed by the regulations governing the Washington north coast subarea.

(3) *Possession limits.* The sport possession limit on land north of Cape Falcon, OR is two daily bag limits, regardless of condition, but only one daily bag limit may be possessed on the vessel. The possession limit on land south of Cape Falcon is the same as the bag limit.

(4) *Ban on sport vessels in the commercial fishery.* Vessels operating in the sport fishery are prohibited from operating in the commercial fishery. Charterboat operators must choose, prior to May 1 of each year, whether they will obtain a charterboat license from the Commission or a commercial license, but cannot obtain both. Sport fishing for halibut is prohibited from a vessel licensed to fish commercially for halibut in Area 2A.

(g) *Procedures for implementation.* Each year, NMFS will publish a proposed rule with any regulatory modifications necessary to implement the Plan for the following year, with a request for public comments. The comment period will extend until after the Commission's annual meeting, so that the public will have the opportunity to consider the final Area 2A TAC before submitting comments.

After the Area 2A TAC is known, and after NMFS reviews public comments, NMFS will implement final rules governing the sport fisheries. The final ratio of halibut to chinook to be allowed as incidental catch in the salmon troll fishery will be published with the annual salmon management measures. Inseason actions in the sport fisheries as stipulated in this Plan will be accomplished in accordance with § 301.21(d)(4).

[FR Doc. 95-805 Filed 1-9-95; 1:32 pm]

BILLING CODE 3510-22-F

## 50 CFR Part 676

[Docket No. 941266-4366; I.D. 121594B]

RIN 0648-AG45

### Limited Access Management of Federal Fisheries In and Off of Alaska; Improve IFQ Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

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

**SUMMARY:** NMFS issues a proposed rule to amend portions of the regulations implementing the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear fisheries in and off of Alaska. This action is necessary because the IFQ Program needs further refinement prior to implementation in 1995, and is intended to improve the ability of NMFS to manage the halibut and sablefish fisheries.

**DATES:** Comments must be received by February 13, 1995.

**ADDRESSES:** Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) for this action may be obtained from the above address.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907-586-7228.

#### SUPPLEMENTARY INFORMATION:

##### Background

The IFQ Program is a regulatory regime designed to promote the conservation and management of the halibut and sablefish fisheries, and to further the objectives of the Magnuson Fishery Conservation and Management Act and the Northern Pacific Halibut Act.

Beginning in 1995, the Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fixed gear fisheries in the areas defined in 50 CFR 676.10 (b) and (c) will be managed in accordance with the regulations codified at 50 CFR part 676. Further information on the implementation of this management program, and the rationale supporting it, is contained in the preamble to the final rule implementing the IFQ program published in the **Federal Register**, November 9, 1993 (58 FR 59375).

This action amends various portions of the regulations implementing the IFQ Program. Some of the changes are intended to clarify regulations that may be ambiguous. Other changes would add provisions intended to increase the efficacy of the IFQ program. All the changes are designed to make the IFQ Program more responsive to the conservation and management goals for the fishery resources.

#### Geographic Locations of Primary Ports

Geographic location descriptions would be added to § 676.17(a)(4) for the listed primary ports where vessel operators can obtain vessel clearances from clearing officers. If a vessel is required to be boarded prior to receiving clearance, the clearing officer will direct the person operating that vessel to a convenient docking facility within a reasonable distance of the geographic location provided in the regulations. When the final rule implemented the IFQ Program, a portion of the regulations was specifically reserved for geographic location descriptions. They would provide vessel operators with notification of the approximate locations where boardings may occur, if these are deemed necessary by a clearing officer.

#### Vessel Clearance in Alaska

Paragraph (a)(5) would be added to § 676.17, requiring a vessel operator to obtain vessel clearance from a clearing officer located at a primary port in the State of Alaska before that vessel operator lands IFQ species in a foreign port. This requirement would provide necessary information to NMFS Enforcement, so that it may thwart the landing of unreported IFQ species in foreign ports. This requirement is especially necessary for the designated Canadian ports, which are located between the primary ports of Ketchikan, AK, and Bellingham, WA. If vessel operators planning to land at the designated Canadian ports were permitted to clear in Bellingham, they would be able to land unreported fish in any Canadian port prior to clearing their

vessel in Bellingham. This potential for nonreporting of IFQ product would be corrected by requiring vessel clearance in an Alaskan primary port prior to landing IFQ species in a foreign port.

#### Canadian Ports

Paragraph (a)(6) would be added to § 676.17, describing Port Hardy, Prince Rupert, and Vancouver, British Columbia, as the only Canadian ports where IFQ species may be landed. Designating these three ports would assist NMFS Enforcement in its task of ensuring that all IFQ species landed are properly recorded. Two issues, the multiplicity of ports on the coast of Canada that will not have enforcement presence, and the similarity between the Canadian Individual Vessel Quota (IVQ) Program and the U.S. IFQ Program, were determining factors in limiting the Canadian landing ports where IFQ species could be landed to three. Also, the three-port limit would be similar to the provisions of the agreement between the United States and Canada pertaining to the IVQ Program, under which IVQ product may be landed only at the following U.S. ports: Ketchikan, AK; Bellingham and Blaine, WA.

#### Definition of Clearing Officer

A definition of "clearing officer" would be added to § 676.11 to mean a NMFS special agent, a NMFS fishery enforcement officer, or a NMFS enforcement aide who is authorized to provide vessel clearances and perform other duties as described in part 676. A clearing officer should not be confused with an authorized officer, as defined in § 620.2 of this title. Changes would be made throughout part 676 consistent with the new definition of a clearing officer. Creating a definition, and using it throughout the regulations, would assist in uniform interpretation of the regulations and consistent behavior based on that interpretation. Also, the proposed term would help prevent confusion with other terms already defined (e.g., authorized officer).

#### Landing Requirements

Paragraph (a)(7) would be added to § 676.17, requiring a vessel operator having any IFQ species onboard to land and weigh all species onboard at the same time and place as the first landing of any species onboard. For example, if a vessel had Pacific halibut (IFQ species), sablefish (IFQ species), and Pacific cod (non-IFQ species) onboard, and the operator wanted to offload the Pacific cod to a tender, the operator also would be required to offload and weigh the Pacific halibut and sablefish. This provision would ensure that all IFQ

species are reported, including IFQ species that might not be intended for sale. Requiring all species to be landed at the same time and place would assist NMFS Enforcement in this task.

#### **Authorization To Board Vessels and Verify Landings**

Section 676.14(b)(2) would be revised to allow persons authorized by the International Pacific Halibut Commission (IPHC) to sample all IFQ halibut landings for biological information. Also, this revision would authorize clearing officers, authorized officers, and observers to verify, inspect, and sample all landings made with IFQ landings and to board vessels making IFQ landings. This authorization would assist NMFS Enforcement in ensuring that all IFQ species are reported and would aid persons authorized by the IPHC to accomplish their task of obtaining age, length, and other biological information for Pacific halibut, one of the IFQ species, by sampling commercial catch.

#### **Definitions of Catcher Vessel, Freezer Vessel, and Trip**

Definitions in § 676.11 of catcher vessel, freezer vessel, and trip would be changed to clarify that the definition of freezer vessel would be based on the capacity to freeze or process, similar to the definition of processor vessel in the groundfish regulations at 50 CFR 672.2 and 675.2, and not based on whether freezing or processing occurs during any given trip. These definition changes would also eliminate the potential for vessel operators to begin new trips by crossing regulatory area boundaries. Eliminating this potential would require vessel operators to land any frozen product onboard, and thereby terminate the trip, prior to using catcher vessel IFQ on a freezer vessel. This requirement would assist in ensuring that all IFQ product is properly recorded as having been harvested with freezer vessel IFQ or catcher vessel IFQ.

#### **Use of Catcher Vessel IFQ on Freezer Vessels**

A provision would be added to § 676.22(i)(3) to clarify that vessel category lengths for vessels using catcher vessel IFQ specified at § 676.20(a)(2) also apply to freezer vessels using catcher vessel IFQ. This provision would state specifically what the Council intended, but what might not have been apparent, because freezer vessels were not categorized by length in the regulations. For example, a person may only use catcher vessel IFQ Category C onboard a freezer vessel if that freezer vessel's length overall (LOA)

is consistent with LOA categories in § 676.20(a)(2)(iii) and the frozen product requirements in § 676.22(i)(3). Clarifying the regulations governing the use of catcher vessel IFQ on freezer vessels is important, because the definitions of freezer vessel and catcher vessel would no longer depend on how a vessel is used on a particular trip.

#### **Underages and Overages of an IFQ Account**

Paragraph (c) would be added to § 676.17 to allow the addition of IFQ underages to a person's IFQ account for the following fishing year. Underages of up to 10 percent of a person's annual IFQ account for the current fishing year would be added to that person's annual IFQ account for the following fishing year. Any amount of the underage exceeding 10 percent would expire at the end of the current fishing year. This underage provision would be added to the IFQ Program to encourage persons not to harvest IFQ species when they are very close to their annual IFQ account limit. Allowing unused IFQ to be placed in the following year's account is intended to provide adequate incentive to encourage this behavior.

Also, revisions to § 676.17(b) would change overage accounting. Subtracting overages from a person's IFQ account for the following fishing year would remain as currently provided for in § 676.17(b). Added to § 676.17 would be paragraph (b)(1), which would include the following two-step test for forfeiture. First, does a portion of the IFQ species landed exceed the number of pounds remaining in the person's annual IFQ account? If yes, then does the portion of the IFQ species landed that exceeds the annual IFQ account also exceed 10 percent of the total number of pounds that was remaining in the person's annual IFQ account prior to the landing? If the answer is again yes, the portion of the IFQ species landed that exceeded the pounds in a person's annual IFQ account would be forfeited. A new paragraph (a)(2) would allow an exception to the forfeiture provision if the IFQ species landed that exceeded the amount of pounds remaining in a person's annual IFQ account was less than 400 lb (181.4 kg). The IFQ Implementation Workgroup, made up of members of the fishing industry selected by the Council, suggested using the 10 percent threshold for the underage carryover limit and overage forfeitures, because that was the percentage used by the Canadian IVQ fishery. Also, the 400-lb (181.4 kg) exception was included to prevent requiring forfeiture when only one fish was caught. For example, a person whose account has 150 lb (68

kg), and who catches a 200 lb (90.7 kg) halibut, would trigger the forfeiture rule (200 lb (90.7 kg)—150 lb (68 kg)=50 lb (22.7 kg); 50 lb (22.7 kg) is greater than 10 percent of 150 lb (68 kg)). A 400 lb (181.4 kg) exception was determined to be sufficient to accommodate situations in which large halibut may be harvested.

#### **Hail Weights for Vessel Clearance**

In § 676.17(a), the requirement that a vessel operator obtaining prelanding written clearance provide an estimated weight of IFQ species onboard would be changed to the requirement that the vessel operator provide the weight of IFQ species onboard. This requirement would apply when a vessel operator is obtaining vessel clearance in a port in Alaska prior to departing waters in, or adjacent to, the State of Alaska and when a vessel operator is reporting to the Alaska Region, NMFS, prior to obtaining vessel clearance at a port in Washington or another state. Providing the weight of the IFQ species onboard would assist NMFS Enforcement in ensuring that all IFQ species are reported. Without this requirement, a vessel operator would be able to land unreported IFQ species in Canadian ports prior to making reported landings elsewhere and there would be insufficient information to monitor this occurrence.

#### **Prior Notice of IFQ Landing**

A provision would be added to § 676.14(a), requiring a vessel operator to provide the Alaska Region, NMFS, with vessel identification, the estimated weight of IFQ species to be landed, and the IFQ cards that will be used to make the landing. This information, together with the name and location of the registered buyer and the anticipated date and time of landing, must be reported no later than 6 hours before landing IFQ species. Reporting the above information would provide NMFS Enforcement with the means necessary to select the most appropriate vessels and ports to monitor.

#### **Product Recovery Rates and Conversion Factors for IFQ Species**

Paragraph (c)(3)(i) would be added to § 676.22, referencing the appropriate product recovery rates (PRR) for sablefish in Table 1 to § 672.20. Also, paragraph (ii) would be added to § 676.22(c)(3), providing the appropriate conversion factors for Pacific halibut. Reference to the PRR for sablefish and the conversion factors for halibut would be included in the IFQ regulations to provide information on how deductions would be made to a person's annual IFQ

account. For sablefish, the debited amount would be the round-weight equivalent. For halibut, the debited amount would be the gutted, head-off weight. Round-weight equivalents and gutted, head-off weights were used to determine quota share (QS) amounts for sablefish and halibut, respectively. They also were the weights used to determine annual total allowable catches for those species.

**Registered Buyer Permit**

Section 676.13(a)(2) would be revised to eliminate the requirement that persons who harvest IFQ species and transfer those IFQ species outside of an IFQ regulatory area must hold a registered buyer permit. In § 676.13(a)(2), the current paragraph (ii) would be removed and paragraph (iii) would be redesignated as paragraph (ii). Section 676.13(a)(2) also would be revised to reflect this change. The current paragraph (ii) would be eliminated to avoid the implication that a registered buyer permit would be needed to harvest and land IFQ species at a shore-based processor located in the State of Alaska, but not located in an IFQ regulatory area.

Also, as a technical change, the last word in the first sentence of § 676.24(j)(4) would be changed from "section" to "part."

**Frameworking for Start of Sablefish Fishery**

Section 676.23(b) would be revised to allow the Director, Alaska Region, NMFS (Regional Director), to establish the start of the IFQ sablefish directed fishery. Currently, paragraph (b) has a fixed date for starting the sablefish directed fishery. Under the framework provision, the Regional Director would take into account the opening date of the Pacific halibut season when determining the opening date for the sablefish directed fishing season. Allowing flexibility in starting the sablefish directed fishery would permit its coordination with the start of the halibut fishery, which is determined by the IPHC. Starting the sablefish and halibut seasons concurrently would benefit persons who harvest IFQ species, as well as the fishery resources. Persons who harvest IFQ species would benefit economically, because they would be able to retain both species, rather than having to discard one species because its season was closed. Also, the fisheries under the IFQ Program would benefit because regulatory discards, and resulting mortality caused by those discards, would be reduced.

**Classification**

An IRFA was prepared for this rule that described and estimated the total number of small entities affected, and analyzed the economic impact on those small entities of the vessel clearance, Canadian port changes, and offloading requirements. It is estimated that more than 20 percent of the 7,200 vessel/owners involved in the IFQ Program will be affected by these changes, which would increase compliance costs. Based on these analyses, it was determined that this action would, if adopted, have a significant economic impact on a substantial number of small entities. Copies of the IRFA can be obtained from NMFS (see ADDRESSES).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

**List of Subjects in 50 CFR Part 676**

Fisheries, Reporting and recordkeeping requirements.

Dated: January 6, 1995.

**Charles Karnella,**

*Acting Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 676 is proposed to be amended as follows:

**PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA**

1. The authority citation for 50 CFR part 676 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. Section 676.11 is amended by revising the definitions of "Catcher vessel", "Freezer vessel", and "Trip"; and by adding the definition of "Clearing officer" to read as follows:

**§ 676.11 Definitions.**

\* \* \* \* \*

*Catcher vessel*, as used in this part, means any vessel that is used to catch, take, or harvest fish that are subsequently iced, headed, gutted, bled, or otherwise retained as fresh, unfrozen, fish onboard.

*Clearing officer* means a NMFS special agent, a NMFS fishery enforcement officer, or a NMFS enforcement aide who performs the function of clearing vessels at one of the primary ports listed in § 676.17(a)(4).

\* \* \* \* \*

*Freezer vessel* means any vessel that can be used to process some or all of its catch.

\* \* \* \* \*

*Trip*, as used in this part, means the period beginning when a vessel operator

commences harvesting IFQ species and ending when the vessel operator lands any species.

3. Section 676.13 is amended by revising the first sentence of (a)(2) introductory text, paragraphs (f)(1), and (f)(2); by removing paragraph (a)(2)(ii), and by redesignating paragraph (a)(2)(iii) as paragraph (a)(2)(ii); and amending paragraph (a)(2)(i) by adding the word "or" to the end of the phrase to read as follows:

**§ 676.13 Permits.**

(a) \* \* \*

(2) Any person who receives IFQ halibut or IFQ sablefish from person(s) that harvested the fish must possess a registered buyer permit, except under conditions of paragraph (a)(2)(i) and (ii) of this section. \* \* \*

\* \* \* \* \*

(f) \* \* \* (1) A legible copy of any IFQ permit issued under this section must be carried onboard the vessel used by the permitted person to harvest IFQ halibut or IFQ sablefish at all times that such fish are retained onboard. Except as specified in § 676.22(d), an individual who is issued an IFQ card must remain onboard the vessel used to harvest IFQ halibut or IFQ sablefish with that card until all such fish are landed, and must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer, clearing officer, or registered buyer purchasing IFQ species.

(2) A legible copy of the registered buyer permit must be present at the location of an IFQ landing, and must be made available for inspection on request of any authorized officer or clearing officer.

\* \* \* \* \*

4. Section 676.14 is amended by revising paragraphs (a), (b)(1), (b)(2), (e), and (f) to read as follows:

**§ 676.14 Recordkeeping and reporting.**

\* \* \* \* \*

(a) *Prior notice of IFQ landings.* The operator of any vessel that makes an IFQ landing must notify the Alaska Region, NMFS, no later than 6 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 6 hours of notification is granted by a clearing officer. Such notification of IFQ landings must be made to the toll-free telephone number specified on the IFQ permit between the hours of 0600 and 2400 Alaska local time. The notification must include the name and location of the registered buyer(s) to whom the IFQ halibut or IFQ sablefish will be landed, the estimated weight of the IFQ halibut or IFQ sablefish that will be landed and the

identification number(s) of the IFQ card(s) that will be used to land the IFQ halibut or IFQ sablefish and the anticipated date and time of the landing.

(b) \* \* \*

(1) IFQ landings may be made only between the hours of 0600 and 1800 Alaska local time unless permission to land at a different time is granted in advance by a clearing officer. An IFQ landing may continue after this time period, if it was started during the period.

(2) All vessels making IFQ landings, and the landings made by those vessels, are subject to verification, inspection, and sampling by authorized officers, clearing officers, and observers. Also, all IFQ halibut landings are subject to sampling for biological information by persons authorized by the IPHC.

\* \* \* \* \*

(e) *Transshipment.* No person may transship processed IFQ halibut or processed IFQ sablefish between vessels without providing at least 24 hours

advance notification to a clearing officer that such transshipment will occur. No person may transship processed IFQ halibut or IFQ sablefish between vessels at any location not authorized by a clearing officer.

(f) A copy of all reports and receipts required by this section must be retained by registered buyers and be available for inspection by an authorized officer or a clearing officer for a period of 3 years.

5. Section 676.17 is amended by revising paragraphs (a) introductory text, (a)(4), and (b), and by adding paragraphs (a) (5) through (7) and (c) to read as follows:

**§ 676.17 Facilitation of enforcement and monitoring.**

\* \* \* \* \*

(a) *Vessel Clearance.* Any person who makes an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must obtain prelanding written clearance of the

vessel on which the IFQ halibut or IFQ sablefish are transported to the IFQ landing location, and provide the weight of IFQ halibut or IFQ sablefish onboard to the clearing officer. For vessels obtaining clearance at a port in the State of Alaska, clearance must be obtained prior to departing waters in or adjacent to the State of Alaska. For vessels obtaining clearance at a port in the State of Washington or another state, the weight of the IFQ halibut or IFQ sablefish onboard and the intended date and time the vessel will obtain clearance at the port in the State of Washington or another state must be reported to NMFS, Alaska Region. Such reports must be submitted prior to departing waters in, or adjacent to, the State of Alaska, and in accordance with the terms of the registered buyer permit.

\* \* \* \* \*

(4) Unless specifically authorized on a case-by-case basis, vessel clearances will be issued only by clearing officers at the following primary ports:

Port	North latitude	West longitude
Akutan .....	54°08'05"	165°46'20'
Bellingham .....	48°45'04"	122°30'02"
Cordova .....	60°33'00"	145°45'00"
Craig .....	55°28'30"	133°09'00"
Dutch Harbor/Unalaska .....	53°53'27"	166°32'05"
Excursion Inlet .....	58°25'00"	135°26'30"
Homer .....	59°38'40"	151°33'00"
Ketchikan .....	55°20'30"	131°38'45"
King Cove .....	55°03'20"	162°19'00"
Kodiak .....	57°47'20"	152°24'10"
Pelican .....	57°57'30"	136°13'30"
Petersburg .....	56°48'10"	132°58'00"
St. Paul .....	57°07'20"	170°16'30"
Sand Point .....	55°20'15"	160°30'00"
Seward .....	60°06'30"	149°26'30"
Sitka .....	57°03'	135°20'
Yakutat .....	59°33'	139°44'

(5) A vessel operator who lands IFQ species in a foreign port must first obtain vessel clearance from a clearing officer located at a primary port in the State of Alaska.

(6) No person shall land IFQ species in Canada at a port other than ports of Port Hardy, Prince Rupert, or Vancouver, British Columbia.

(7) A vessel operator must land and report all IFQ species onboard at the same time and place as the first landing of any species harvested during a fishing trip.

(b) *Overages.* Any person who harvests IFQ halibut or IFQ sablefish must hold sufficient unused IFQ for the harvest before beginning a fishing trip and must not harvest halibut or sablefish using fixed gear in any amount greater than the amount indicated under that person's current IFQ permit. Any

IFQ halibut or IFQ sablefish harvested or landed in excess of a specified IFQ will be considered an "IFQ overage." The Regional Director will deduct an amount equal to the overage from the IFQ allocated in the year following the determination of the overage. An overage deduction will be specific to each IFQ regulatory area for which an IFQ is calculated, and will apply to any person to whom the affected IFQ is allocated in the year following determination of an overage.

Furthermore, penalties may be assessed pursuant to 15 CFR part 904 for exceeding an annual IFQ account.

(1) In addition to penalties that may be assessed for exceeding an annual IFQ account, the portion of the IFQ species landed that exceeds 10 percent of the total amount of pounds remaining in a

person's annual IFQ account prior to a landing will be subject to forfeiture.

(2) An exception is granted to the forfeiture provision in paragraph (b)(1) of this section, if the portion of the landed IFQ species that exceeds the annual IFQ account is less than 400 lb (181.4 kg).

(c) *Underages.* Underages of up to 10 percent of a person's total annual IFQ account for a current fishing year will be added to that person's annual IFQ account in the year following determination of the underage. This adjustment to the annual IFQ allocation will be specific to each IFQ regulatory area for which an IFQ is calculated, and will apply to any person to whom the affected IFQ is allocated in the year following determination of an underage.

6. Section 676.22 is amended by adding paragraphs (c)(3)(i) and (c)(3)(ii),

and by revising paragraph (i)(3) to read as follows:

**§ 676.22 Limitations on the use of QS and IFQ.**

\* \* \* \* \*

(c) \* \* \*  
(3) \* \* \*

(i) The amount of sablefish to be reported to NMFS for debit from an IFQ account will be the round-weight equivalent determined by dividing the initial accurate scale weight of the sablefish product obtained at time of landing by the standard product recovery rates for sablefish in Table 1 to § 672.20 of this chapter.

(ii) The amount of halibut to be reported to NMFS for debit from an IFQ account will be the gutted, head-off weight determined by multiplying the initial accurate scale weight of the halibut obtained at the time of landing by the following conversion factors:

Product code	Product description	Conversion factor
01 .....	Whole fish .....	0.75
04 .....	Gutted, head on .....	0.90
05 .....	Gutted, head off .....	1.00

\* \* \* \* \*

(i) \* \* \*

(3) Catcher vessel IFQ may be used on a freezer vessel, provided that the length of the freezer vessel using the catcher vessel IFQ is consistent with the vessel category of the catcher vessel IFQ, as specified at § 676.20(a)(2)(ii) through (iv), and no frozen or otherwise processed fish products are onboard at any time during a fishing trip on which catcher vessel IFQ is being used. A vessel using catcher vessel IFQ may not land any IFQ species as frozen or otherwise processed product. Processing of fish on the same vessel that harvested those fish using catcher vessel IFQ is prohibited.

\* \* \* \* \*

7. Section 676.23 is amended by revising paragraph (b) to read as follows:

**§ 676.23 IFQ fishing season.**

\* \* \* \* \*

(b) Directed fishing for sablefish using fixed gear in any IFQ regulatory area may be conducted in any fishing year during the period specified by the Regional Director through notification published in the **Federal Register**. The Regional Director will take into account the opening date of the Pacific halibut season when determining the opening date for sablefish for the purposes of reducing bycatch and regulatory

discards between the two fisheries. Catches of sablefish by fixed gear during other periods may be retained up to the directed fishing standards specified at §§ 672.20(g) and 675.20(h) of this chapter if an individual is onboard when the catch is made who has a valid IFQ card and unused IFQ in the account on which the card was issued. Catches of sablefish in excess of the directed fishing standards and catches made without IFQ must be treated in the same manner as prohibited species.

8. Section 676.24 is amended by revising paragraph (j)(4) to read as follows:

**§ 676.24 Western Alaska Community Development Quota Program.**

\* \* \* \* \*

(j) \* \* \*

(4) No person may alter, erase, or mutilate a CDQ permit, card, registered buyer permit, or any valid and current permit or document issued under this part. Any such permit, card, or document that has been intentionally altered, erased, or mutilated will be invalid.

\* \* \* \* \*

[FR Doc. 95-797 Filed 1-11-95; 8:45 am]

BILLING CODE 3510-22-W

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

### Forms Under Review by Office of Management and Budget

January 6, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35 since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250 (202) 690-2118.

#### Revision

- Rural Economic & Community Development Compliance Review (Farmer Cooperatives) Business or other for-profit; 30 responses; 19 hours  
Jack Holston (202) 720-9736

#### Extension

- Rural Economic & Community Development

7 CFR 1951-F, Analyzing Credit Needs and Graduation of Borrowers Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government; 274,620 responses; 123,573 hours  
Jack Holston (202) 720-9736

- Rural Economic & Community Development
- 7 CFR 1965-A, Servicing of Real Estate Security For Farmer, Program Loans and Certain Note-Only Cases FmHA 440-2, 9, 26; 443-16; 465-1, 5; 1965-11, 13, 15  
Individuals or households; Business or other for-profit; Farms; 29,516 responses; 18,971 hours  
Jack Holston (202) 720-9736st

#### New Collection

- Animal and Plant Health Inspection Service  
Animal Welfare—Part 3, Subpart E (Marine Mammals)  
APHIS 7002  
Business or other for-profit; Non-profit institutions; Small businesses or organizations; 39,641 responses; 7,003 hours  
Dr. Richard Crawford (301) 436-7833  
**Donald E. Hulcher,**  
*Deputy Departmental Clearance Officer.*  
[FR Doc. 95-726 Filed 1-11-95; 8:45 am]  
BILLING CODE 3410-01-M

#### Animal and Plant Health Inspection Service

[Docket No. 95-001-1]

#### Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that three applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain

genetically engineered organisms and products.

**ADDRESSES:** Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14 Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested call ahead on (202) 690-2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### FOR FURTHER INFORMATION CONTACT:

Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20783. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436-7612 (Hyattsville); (301) 734-7612 (Riverdale).

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pets," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field Test location
94-342-01 .....	Monsanto Company ..	12/12/94	Potato plants genetically engineered to express a gene from <i>Bacillus thuringiensis</i> subsp. <i>tenebrionis</i> for resistance to Colorado potato beetle, and to express a gene from potato leaf roll virus (PLRV) for resistance to PLRV.	Colorado, Idaho, Maine, Montana, North Dakota, Oregon, Washington, Wisconsin.
94-347-01, renewal of permit 93-090-01, issued on 06/14/93.	AgrEvo .....	12/13/94	Sugar beet plants genetically engineered to express tolerance to the herbicide glufosinate.	California, Colorado, Idaho, Michigan, Minnesota, Nebraska, North Dakota, Oregon.
94-348-01 .....	Upjohn Company .....	12/14/94	Watermelon plants genetically engineered to express resistance to watermelon mosaic virus 2 and zucchini yellow mosaic virus.	Georgia.

Done in Washington, DC, this 6th day of January 1995.

**Lonnie J. King,**

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-809 Filed 1-11-95; 8:45 am]

BILLING CODE 3410-34-M

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review**

**AGENCY:** Import Administration, International Trade 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 Department of Commerce

(the Department) Regulations (19 CFR 353.22/355.22 (1993)), that 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 January 31, 1995, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
<b>Antidumping duty proceedings:</b>	
Brazil: Brass Sheet & Strip (A-351-603) .....	01/01/94-12/31/94
Brazil: Certain Stainless Steel Wire Rods (A-351-819) .....	08/05/93-12/31/94
Canada: Brass Sheet & Strip (A-122-601) .....	01/01/94-12/31/94
Canada: Color Picture Tubes (A-122-605) .....	01/01/94-12/31/94
France: Anhydrous Sodium Metasilicate (A-427-098) .....	01/01/94-12/31/94
France: Certain Stainless Steel Wire Rods (A-427-811) .....	08/05/93-12/31/94
Japan: Color Picture Tubes (A-588-609) .....	01/01/94-12/31/94
Singapore: Color Picture Tubes (A-559-601) .....	01/01/94-12/31/94
Spain: Potassium Permanganate (A-469-007) .....	01/01/94-12/31/94
South Africa: Low-Fuming Brazing Copper Wire and Rod (A-791-502) .....	01/01/94-12/31/94
Taiwan: Certain Stainless Steel Cooking Ware (A-583-603) .....	01/01/94-12/31/94
The People's Republic of China: Potassium Permanganate (A-570-001) .....	01/01/94-12/31/94
The Republic of Korea: Brass Sheet & Strip (A-580-603) .....	01/01/94-12/31/94
The Republic of Korea: Color Picture Tubes (A-580-605) .....	01/01/94-12/31/94
The Republic of Korea: Stainless Steel Cooking Ware (A-580-601) .....	01/01/94-12/31/94
<b>Suspension agreements:</b>	
Canada: Potassium Chloride (A-122-701) .....	01/01/94-12/31/94
Colombia: Miniature Carnations (C-301-601) .....	01/01/94-12/31/94
Colombia: Roses and Other Fresh Cut Flowers (C-301-003) .....	01/01/94-12/31/94
Costa Rica: Fresh Cut Flowers (C-223-601) .....	01/01/94-12/31/94
Hungary: Truck Trailer Axle and Brake Assemblies (A-437-001) .....	01/01/94-12/31/94
<b>Countervailing duty proceedings:</b>	
Argentina: Non-Rubber Footwear (C-357-052) .....	01/01/94-12/31/94
Brazil: Brass Sheet & Strip (C-357-604) .....	01/01/94-12/31/94
Equador: Fresh Cut Flowers (C-331-601) .....	01/01/94-12/31/94
The Republic of Korea: Stainless Steel Cookware (C-580-602) .....	01/01/94-12/31/94
Spain: Stainless Steel Wire Rod (C-469-004) .....	01/01/94-12/31/94
Taiwan: Stainless Steel Cookware (C-583-604) .....	01/01/94-12/31/94
Thailand: Butt-Weld Pipe Fittings (C-549-804) .....	01/01/94-12/31/94

In accordance with §§ 353.22(a) and 355.22(a) of the regulations, an interested party as defined by § 353.2(k) 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 it 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 were 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 or 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-99, U.S. Department of Commerce, Washington, D.C. 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 § 353.31(g) or 355.31(g) of the 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 request received by January 31, 1995. If the Department does not receive, by January 31, 1995, 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 Customer 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: January 6, 1995.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*  
[FR Doc. 95-833 Filed 1-11-95; 8:45 am]

BILLING CODE 3510-DS-M

**North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review**

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On January 4, 1995 Molson Breweries (Western Division), Labatt Breweries of British Columbia, Pacific Western Brewing Company (a Division of Pacific Pinnacle Investments Ltd.) and the Brewers Association of Canada filed a First Request for Panel Review with the Canadian Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the rescission of the injury determination made by the Canadian International Trade Tribunal of Certain Malt Beverages from the United States of America. This determination was published in the Canada Gazette on December 10, 1994, vol. 128, no. 50, p. 4636. The NAFTA Secretariat has assigned Case Number CDA-95-1904-01 to this request.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on January 4, 1995, requesting panel review of the

rescission of the injury determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is February 3, 1995);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is February 20, 1995); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: January 6, 1995.

**James R. Holbein,**

*United States Secretary, NAFTA Secretariat.*  
[FR Doc. 95-835 Filed 1-11-95; 8:45 am]

BILLING CODE 3510-GT-M

**North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review**

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On December 9, 1994 Muehlstein International, Ltd. filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of final antidumping determination made by the Secretaria de Comercio y Fomento Industrial de Mexico respecting Polystyrene and Impact Crystal from the Federal Republic of Germany and the United States of America. This determination was published in the Diario Oficial on November 11, 1994. The NAFTA Secretariat has assigned Case Number MEX-94-1904-03 to this request.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, NAFTA Secretariat, Suite

2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on December 9, 1994, requesting panel review of the final antidumping determination described above.

The Rules provide that:

(a) A Party or interested party may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is January 9, 1995);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is January 23, 1995); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: January 6, 1995.

**James R. Holbein,**

*United States Secretary NAFTA Secretariat.*  
[FR Doc. 95-834 Filed 1-11-95; 8:45 am]

BILLING CODE 3510-GT-M

## Minority Business Development Agency

### Business Development Center Applications: Philadelphia, PA

**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 to operate its Philadelphia Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide 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 client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Philadelphia, Pennsylvania Metropolitan Area. The award number of the MBDC will be 03-10-95007-01.

**DATES:** The closing date for applications is February 15, 1995. Applications must be received in the MBDA Headquarters' Field Coordination Division on or before February 15, 1995.

**ADDRESSES:** U.S. Department of Commerce, Minority Business Development Agency, Office of Operations and Regional Management, Field Coordination Division, 14th and Constitution Avenue, NW., Room 5075, Washington, D.C. 20230, (202) 482-6022.

**FOR FURTHER INFORMATION, CONTACT:** William Fuller, Acting Regional Director at (212) 264-3262.

**SUPPLEMENTARY INFORMATION:** Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from May 1, 1995 to May 31, 1996, is estimated at \$388,898. The total Federal amount is \$330,563 and is composed of \$322,500 plus the Audit Fee amount of \$8,063. The application must include a minimum cost share of 15%, \$58,335 in non-federal (cost-sharing) contributions for a total project cost of \$388,898. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement.

For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or 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 (45 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 (25 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. Periodic 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 the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from \$10 to \$60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA

recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. 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. 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.

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.

**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.

**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, 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 failure to meet cost-sharing requirements; unsatisfactory performance of the 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, and loans and loan guarantees for more than \$150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

**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.

**Buy American-made Equipment or Products**—Applicants are hereby notified that they are encouraged, to the

extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103-121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: January 5, 1995.

**Donald L. Powers,**

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 95-379 Filed 1-11-95; 8:45 am]

BILLING CODE 3510-21-P

### **Business Development Center Applications: Mayaquez, PR**

**AGENCY:** Minority Business Development Agency, Commerce.

**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 to operate its Mayaquez Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide 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 client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Mayaquez, Puerto Rico Metropolitan Area. The award number of the MBDC will be 02-10-95006-01.

**DATES:** The closing date for applications is February 15, 1995. Applications must be received in the MBDA Headquarters' Field Coordination Division on or before February 15, 1995. A pre-application conference will be held on February 1, 1995, at 9:00 a.m., at the Atlanta Regional Office, 401 W. Peachtree Street, N.W., Suite 1715, Atlanta, Georgia 30308-3516, (404) 730-3300.

**ADDRESSES:** U.S. Department of Commerce, Minority Business Development Agency, Office of Operations and Regional Management, Field Coordination Division, 14th and Constitution Avenue, N.W., Room 5075, Washington, D.C. 20230, (202) 482-6022.

**FOR FURTHER INFORMATION CONTACT:**  
Robert Henderson, Regional Director at  
(404) 730-3300.

**SUPPLEMENTARY INFORMATION:**  
Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from May 1, 1995 to May 31, 1996, is estimated at \$198,971. The total Federal amount is \$169,125 and is composed of \$165,000 plus the Audit Fee amount of \$4,125. The application must include a minimum cost share of 15%, \$29,846 in non-federal (cost-sharing) contributions for a total project cost of \$198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or 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 (45 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 (25 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. Periodic

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 the MBDC's performance, the availability of funds and Agency priorities.

MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from \$10 to \$60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. 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. 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.

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.

**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.

**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, 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 failure to meet cost-sharing requirements; unsatisfactory performance of the 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, and loans and loan guarantees for more than \$150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

**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.

**Buy American-made Equipment or Products**—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103-121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: January 5, 1995.

**Donald L. Powers**

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 95-738 Filed 1-11-95; 8:45 am]

BILLING CODE 3510-21-P

**Business Development Center Applications: Salt Lake City, UT**

**AGENCY:** Minority Business Development Agency, Commerce.

**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 to operate its Salt Lake City Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide 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 client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will

provide service in the Salt Lake City, Utah Metropolitan Area. The award number of the MBDC will be 08-10-95005-01.

**DATES:** The closing date for applications is February 15, 1995. Applications must be received in the MBDA Headquarters' Field Coordination Division on or before February 15, 1995. A pre-application conference will be held on January 26, 1995, at 10:00 a.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242.

**ADDRESSES:** U.S. Department of Commerce, Minority Business Development Agency, Office of Operations and Regional Management, Field Coordination Division, 14th and Constitution Avenue, NW., Room 5075, Washington, DC 20230, (202) 482-6022.

**FOR FURTHER INFORMATION, CONTACT:** Demetrice Jenkins at (214) 767-8001.

**SUPPLEMENTARY INFORMATION:** Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from May 1, 1995 to May 31, 1996, is estimated at \$198,971. The total Federal amount is \$169,125 and is composed of \$165,000 plus the Audit Fee amount of \$4,125. The application must include a minimum cost share of 15%, \$29,846 in non-federal (cost-sharing) contributions for a total project cost of \$198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or 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 (45 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 (25 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. Periodic 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 the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from \$10 to \$60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. 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. 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.

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.

**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.

**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, 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 failure to meet cost-sharing requirements; unsatisfactory performance of the 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, and loans and loan guarantees for more than \$150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

**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.

**Buy American-made Equipment or Products**—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103-121, Sections 606 (a) and (b).

11.800 Minority Business Development Center  
(Catalog of Federal Domestic Assistance)  
Dated: January 5, 1995.

**Donald L. Powers,**

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 95-740 Filed 1-11-95; 8:45 am]

BILLING CODE 3510-21-P

### **Native American Business Consultant Applications: Nationwide**

**AGENCY:** Minority Business Development Agency, Commerce.  
**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 to operate its Native American Business Consultant (NABC) Program.

The purpose of the NABC is to provide specialized consultant services to Native American Business Development Centers (NABDC) in areas beyond an NABDC's capacity and/or capability, and provide direct business development services to clients outside of the geographic service area of the NABDC and any other MBDA client service center. The recipient will provide service nationwide. The award number of the NABC will be 98-10-95007-01.

**DATES:** The closing date for applications is February 15, 1995. Applications must be received on or before February 15, 1995. Anticipated processing time of this award is 120 days. A pre-award conference will be held on January 24, 1995, at 9:00 a.m., at the U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 5099C, Washington, DC 20230.

**ADDRESSES:** U.S. Department of Commerce, Minority Business Development Agency, Office of Operations and Regional Management, Field Coordination Division, 14th and Constitution Avenue, NW., Room 5075, Washington, DC 20230, (202) 482-6022.  
**FOR FURTHER INFORMATION, CONTACT:** Joe Hardy at (202) 482-2366.

**SUPPLEMENTARY INFORMATION:** Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from May 1, 1995 to May 31, 1996, is estimated at \$205,000. The total Federal amount is composed \$200,000 plus the Audit Fee amount of \$5,000. The NABC will provide service nationwide.

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.

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 Native American 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 programatically 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 funding.

Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. If an application is selected for funding, MBDA has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of MBDA.

Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. 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 Activities**—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.

Recipients and subrecipients are subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

**Delinquent Federal Debts**—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 negotiated 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 cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the NABC 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, and loans and loan guarantees for more than \$150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

**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.

**Indirect Costs**—The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100% of the total proposed direct costs dollar amount in the application, whichever is less.

**Buy American-Made Equipment or Products**—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution in Public Law 103-121, Sections 606 (a) and (b).

11.801 Native American Program  
(Catalog of Federal Domestic Assistance)

Dated: January 5, 1995.

**Donald L. Powers,**

*Federal Register* Liaison Officer, Minority Business Development Agency.

[FR Doc. 95-741 Filed 1-11-95; 8:45 am]

BILLING CODE 3510-21-P

## National Oceanic and Atmospheric Administration

[I.D. 122294D]

### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of agenda revision.

**SUMMARY:** An agenda for public meetings of the Gulf of Mexico Fishery Management Council (Council) and its committees, which are scheduled for January 16-19, 1995, was published in the **Federal Register** on January 4, 1995, (60 FR 443). The following change is made to the agenda for January 18:

8:45 a.m. - 3:00 p.m.—receive Public Testimony on the Cooperative Texas Shrimp Closure, the Draft Reef Fish Amendment 8 and Recreational Red Snapper Bag Limits (NOTE: Testimony cards must be turned in to staff before the start of public testimony);

All other information originally published remains unchanged.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, telephone: (813) 228-2815.

Dated: January 6, 1995.

**David S. Crestin,**

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

[FR Doc. 95-730 Filed 1-11-95; 8:45 am]

BILLING CODE 3510-22-F

### Monterey Bay National Marine Sanctuary Advisory Council; Meetings

**AGENCY:** Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Monterey Bay National Marine Sanctuary Advisory Council open meeting.

**SUMMARY:** The Advisory Council was established in December 1993 to advise NOAA's Sanctuaries and Reserves Division regarding the management of the Monterey Bay National Maritime Sanctuary.

**TIME AND PLACE:** Friday, January 20, 1995, from 8:30 until 5:00. The meeting will be held at the Pacific Grove Natural History Museum, 165 Forest Avenue (intersection of Forest Avenue and Central Avenue), Pacific Grove, California.

**AGENDA:** General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed, including strategic planning, the ATOC Project Draft Environmental Impact Statement, and shark chumming.

**PUBLIC PARTICIPATION:** The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

**FOR FURTHER INFORMATION CONTACT:** Scott Kathey at (408) 647-4201 or Elizabeth Moore at (301) 713-3141.

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program

Dated: January 9, 1995.

**W. Stanley Wilson,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 95-762 Filed 1-11-95; 8:45 am]

BILLING CODE 3510-08-M

[I.D. 122794B]

### Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of Modification 3 to Scientific Research and Enhancement Permit 848 (P507D).

On October 27, 1994, an application was filed by the Washington Department of Fish and Wildlife (WDFW) for a modification to their scientific research and enhancement Permit 848. Permit 848 authorizes WDFW to collect adult, listed, Snake River spring chinook salmon (*Oncorhynchus tshawytscha*) from the Tucannon River for a captive broodstock program and to release the progeny of the listed adult salmon collected for broodstock.

For Modification 3 to Permit 848, WDFW requested an alteration of their annual release strategy for the hatchery progeny of the listed adult salmon collected for broodstock as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222). WDFW proposes to voluntarily release one third to one half of 45,000 - 64,000 presmolts or smolts from the hatchery and to outplant the remainder several miles upstream of the hatchery into the upper Tucannon River watershed during February through April of each year. WDFW had previously been authorized to scatter-plant up to 64,000 hatchery salmon fry in or near October of each year.

Notice is hereby given that on December 30, 1994, as authorized by the provisions of the ESA, NMFS issued Modification 3 to Permit 848 for the above taking, subject to certain conditions set forth therein.

Issuance of this modification, as required by the ESA, was based on a finding that such modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of the permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This modification was also issued in accordance with and is subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401); and

Environmental and Technical Services Division, NMFS, NOAA, 525 North East Oregon St., Suite 500, Portland, OR 97232 (503-230-5400).

Dated: January 5, 1995.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 95-729 Filed 1-11-95; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 121294A]

### Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of modification to permit Nos. 704 (P77#39), 684 (P77#35), 591 (P77#26), and 711 (P77#43).

**SUMMARY:** Notice is hereby given that on December 22, 1994, the above permits issued to the Southwest Fisheries Science Center, NMFS, NOAA, P.O. Box 271, La Jolla, CA 92038-0271, were modified to extend the expiration dates through December 31, 1995.

**ADDRESSES:** The modifications and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (310/980-4015).

**SUPPLEMENTARY INFORMATION:** The subject modifications have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this permit, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act.

Dated: December 22, 1994.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 95-731 Filed 1-11-95; 8:45 am]

BILLING CODE 3510-22-F

## National Technical Information Service

### NTIS Advisory Board Meeting

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the "Board") will meet on Monday, February 27, 1995, from 9:00 a.m. to 4:00 p.m. and on Tuesday, February 28, 1995, from 9:00 a.m. to 4:00 p.m. The session on February 28, 1995 will be closed to the Public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include a progress report on NTIS activities, an update on NTIS plans to assist Depository Libraries, an update on the progress of FedWorld, and a discussion of NTIS' long range plans. The closed session discussion is

scheduled to begin at 9:00 a.m. and end at 4:00 p.m. on February 28, 1995. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plan.

**DATES:** The meeting will convene on February 27, 1995 at 9:00 a.m. and adjourn at 4:00 p.m. and convene again on February 27, 1995 at 9:00 a.m. and adjourn at 4:00 p.m.

**ADDRESSES:** The meeting will be held in Room 2029, U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161.

**PUBLIC PARTICIPATION:** The meeting will be open to public participation on February 27, 1995 and closed on February 28, 1995. Approximately thirty minutes will be set aside on February 27, 1994 for comments or questions as indicated in the agenda. Seats will be available for the public and for the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes, of the open session meeting, will be available within thirty days of the meeting from the address given below.

**FOR FURTHER INFORMATION CONTACT:** Barbara Higgins, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Telephone: (703) 487-4612; Fax (703) 487-4093.

Dated: January 6, 1995.

**Donald R. Johnson,**

*Director.*

[FR Doc. 95-836 Filed 1-11-95; 8:45 am]

BILLING CODE 3510-04-M

## COMMISSION OF FINE ARTS

### 1995 National Capital Arts and Cultural Affairs Program

Notice is hereby given that Public Law 99-190, as amended, authorizing the National Capital Arts and Cultural Affairs Program, has been funded for 1995 in the amount of \$7,500,000. All requests for information and applications for grants should be addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, Pension Building, Suite 312, 441 F Street NW., Washington, DC 20001, Phone: 202-504-2200.

Deadlines for receipt of submission of grants applications is 15 February 1995.

This program provides grants for general operating support of

organizations whose *primary* purpose is performing, exhibiting, and/or presenting the arts. To be eligible for these grants, organizations must be located in the District of Columbia, must be not-for-profit, non-academic institutions of demonstrated national repute, and must have annual income, exclusive of federal funds, in excess of one million dollars for the current year and for the past three years.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 95-771 Filed 1-11-95; 8:45 am]

BILLING CODE 6330-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Theater Missile Defense Extended Test Range Final Environmental Impact Statement

**AGENCY:** Ballistic Missile Defense Organization (BMDO).

**ACTION:** Notice of availability.

**SUMMARY:** The Final Environmental Impact Statement (EIS) for the Theater Missile Defense (TMD) Extended Test Range proposal is now available. The Final EIS incorporates findings and public comment information from the Draft EIS (January 1994) and from the Supplement to the Draft EIS (July 1994) that was prepared to analyze additional booster drop zones associated only with the White Sands Missile Range (WSMR) extended test range alternative.

The Final EIS assessed potential impacts associated with conducting missile defense tests and associated sensor system tests at four alternative extended test range areas: Eglin Air Force Base, Florida; White Sands Missile Range, New Mexico; Western Range (Vandenberg AFB, San Nicholas Island, and San Clemente Island), California; and Kwajalein Missile Range in the mid-Pacific. The TMD program allows for the development of a means to protect deployed U.S. forces, as well as U.S. friends and allies around the world, against attacks by short- and medium-range ballistic, cruise, or air-to-surface missiles armed with conventional, nuclear, biological, or chemical warheads.

These tests would consist of multiple demonstration and developmental missile launches along proposed flight paths from off-range locations, with intercepts of targets over existing range areas or open sea areas located within and outside of the United States. Surface-to-surface missile tests were also considered. These flights would

validate system design and operational effectiveness.

The Final EIS addresses the potential environmental impacts that would result from test site modifications, launch preparation requirements, missile flights along the proposed flight paths, and intercepts of targets over existing ranges or open sea areas. It also identifies mitigation measures that would lessen the impacts.

Environmental resource topics evaluated include: health and safety, air quality, airspace, noise, geology and soils, water resources, socioeconomic, hazardous materials and waste, land use, infrastructure and transportation, and biological and cultural resource stewardship.

**EIS LEAD AGENCY:** U.S. Army Space and Strategic Defense Command.

**COOPERATING AGENCIES:** Ballistic Missile Defense Organization, United States Air Force, United States Navy, and Federal Aviation Administration.

**PROPOSED ACTION:** The action is to conduct defensive missile tests and associated sensor tests at one or more of four extended test ranges. The tests involve target missile launches and defensive missile launches from existing test ranges and from off-range locations. Potential off-range launch locations included land areas and sea-based platforms. Missile-to-missile intercepts will occur over existing test range areas or over open sea areas. Up to approximately 100 flight tests could occur during the period 1995 to 2000, from more than one off-range location, and potentially from more than one test range area. These test may continue well beyond 2000.

Alternatives for conducting these missile flight tests and intercepts, evaluated in the TMD Extended Test Range EIS, are:

1. White Sands Missile Range (WSMR), NM. This alternative includes defensive missile launches and associated sensor testing at WSMR and Fort Bliss, TX, with off-range target missile launches from Fort Wingate Depot Activity, NM, and the Green River Launch Complex, UT.

2. Eglin Air Force Base (AFB), FL. This alternative includes defensive missile launches and associated sensor testing at Eglin AFB on Santa Rosa Island and at Cape San Blas, with off-range target missile launches from a sea-based platform in the Gulf of Mexico.

3. The Western Range, CA. This alternative includes defensive missile launches and associated sensor testing at Vandenberg AFB, San Nicholas Island, and San Clemente Island, with

off-range target missile launches from a sea-based platform in the Pacific Ocean.

4. Kwajalein Missile Range (KMR), U.S. Army Kwajalein Atoll, Republic of the Marshall Islands. This alternative includes defensive missile launches and associated sensor testing at KMR and Wake Island with off-range target missile launches from a sea-based platform in the Pacific Ocean.

**FOR FURTHER INFORMATION CONTACT:** Major Thomas LaRock, OATSD/PA, Washington, DC 20301-1400, (703) 697-5131.

Dated: January 9, 1995.

**Patricia L. Toppings,**

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

[FR Doc. 95-842 Filed 1-11-95; 8:45 am]

**BILLING CODE 5000-04-M**

## Department of the Army

### Corps of Engineers

#### Availability of Guidance on Design-Build for Military Construction

**AGENCY:** Army Corps of Engineers, DOD.

**ACTION:** Notice.

**SUMMARY:** Interested individuals may obtain copies of the Design-Build Instructions (DBI) For Military Construction, dated 29 October 1994. The purpose of the DBI is to serve as a practical guide for U.S. Army Corps of Engineers offices to consistently and efficiently plan, develop, and execute design-build contracts.

**ADDRESSES:** Copies of the DBI may be obtained from two sources; printed copies (as quantities last) from the Huntsville Division Engineer Office (CEHND-ED-ES), P.O. Box 1600, Huntsville, AL 35807-4301; or automated copies on the compact disk (CD-ROM), January 1995 issue of the Construction Criteria Base (CCB), from the National Institute of Building Sciences (NIBS), 1201 L Street, N.W. Suite 400, Washington, D.C. 20005-4024, (202) 289-7800, FAX (202) 289-1092. Written suggestions for improving the DBI may be submitted before 30 June 1995 to HQUSACE, ATTN: CEMP-EA, 20 Massachusetts Avenue NW., Washington, D.C. 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel W. Duncan, Architectural and Planning Branch, Directorate of Military Programs, (202) 272-0437.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 95-772 Filed 1-11-95; 8:45 am]

**BILLING CODE 3710-92-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, Dr. Sol Pearlstein. This Notice satisfies the requirements of 10 CFR Part 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 evacuation 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 the Fall of 1992, the Board recognized an urgent need for technical expertise in evaluating nuclear physics data, particularly in the area of nuclear applications. While the Board had been engaged in extensive recruiting efforts, it had been unsuccessful in identifying an individual with the required expertise, experience, and knowledge to satisfy this need. Consequently, the Board offered Dr. Sol Pearlstein, an employee of Brookhaven National Laboratory (BNL) a full-time two year appointment as Physicist on its staff. Following BNL's agreement to grant Dr. Pearlstein a twenty-four month unpaid leave of absence, he accepted the Board's offer and began work on October 1, 1992. Additionally, recognizing that a potential conflict of

interest existed with this employment arrangement, the Chairman of the Board approved a waiver of this potential conflict and published a Notice in the **Federal Register**. Upon the expiration of the two year appointment on September 30, 1994, Dr. Pearlstein returned to BNL and entered a gradual retirement program which allows employees to work on a part-time basis until they decide to end their association with the Laboratory completely.

Based on a continued need for his unique expertise, the Board has decided to establish a contract directly with Dr. Pearlstein. Specifically, Dr. Pearlstein will be asked to provide technical assistance in criticality safety and other related fields including nuclear and reactor physics, and accelerator production of tritium. The proposed effort, which will require his support on an intermittent basis, will include his participation in the review of safety analysis reports, DOE facility visits, presentation of lectures on criticality and related technical subjects to the staff, the development of specialized nuclear information or data bases for Board applications, and assisting the staff in monitoring DOE performance on specific issues or Board Recommendations. The Board has also recognized that the proposed contractual relationship with Dr. Pearlstein will result in a potential conflict of interest situation due to his simultaneous relationship with BNL, a DOE National Laboratory, and the Board. However, while the Board avoids these situations wherever possible, it believes that the need for Dr. Pearlstein's services coupled with the low probability that a direct conflict of interest or biased work product will result from this engagement, justifies this proposed acquisition and waiver based on the following.

First, Dr. Pearlstein possesses outstanding credentials in this technical area and has extensive direct experience through his numerous years at BNL. There is presently no one else on the Board's technical staff who has a broad and extensive background in evaluating nuclear physics data, particularly in the area of nuclear applications as Dr. Pearlstein possesses. He has extensive experience with examining physics data and evaluating its integrity, and has the ability to synthesize scientific data from multiple sources to find solutions to complex and novel problems. Dr. Pearlstein's expertise is important in facilitating the accomplishment of the Board's mission, particularly in the area of nuclear physics. Additionally, during his two year appointment with the Board, Dr. Pearlstein developed a

unique and intimate understanding of the Board's mission, internal operations, and the major technical issues being addressed by the staff. Consequently, while there are other individuals with similar technical backgrounds, Dr. Pearlstein's blend of experience gained through his long association with BNL, and most recent work as a member of the Board's staff, makes him a unique source of technical support to the Board. Through this combination of experience, Dr. Pearlstein can provide immediate support to the Board on a variety of complex technical issues which require prompt resolution, without the need for the extensive and time consuming preparatory efforts others would require.

Second, the Board does not believe that a direct conflict between Dr. Pearlstein's technical work for the Board and BNL will develop for the following reasons. BNL is a multi-program, DOE Laboratory whose missions include scientific and medical research, energy technology development, and associated support functions. These activities are mostly related to DOE's non-defense mission and have little relationship with the defense nuclear facilities or oversight responsibilities of the Board. Further, Dr. Pearlstein has advised the Board that he will be assigned to BNL's Engineering Research and Applications Division in the Department of Advanced Technology which is involved in work ranging from structural analysis to radiological engineering. Therefore, based on the significant differences in technical efforts and missions between the Board and BNL, no direct conflict with the proposed effort is anticipated or with Dr. Pearlstein's ability to provide the Board with impartial, objective work products.

Finally, as the Board is required under its OCI Regulations, where reasonably possible, to initiate measures which attempt to mitigate an OCI, the Board will stay abreast of Dr. Pearlstein's technical work at BNL to insure no problems arise during contract performance. Also, the efforts of Dr. Pearlstein 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.

Accordingly, on the basis of the determination described above and pursuant to the applicable provisions of 10 CFR 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 Dr. Sol Pearlstein that

might arise out of his existing relationship with BNL.

Dated: January 9, 1995.

**Kenneth M. Pusateri,**  
General Manager.

[FR Doc. 95-804 Filed 1-11-95; 8:45 am]

BILLING CODE 6820-KD-M

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### Privacy Act; Systems of Records

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Annual notice of systems of records.

**SUMMARY:** Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. 552a, to publish annually a description of the systems of records it maintains containing personal information. In this notice the Board provides the required information on five previously-noticed systems of records.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901, (202) 208-6387.

**SUPPLEMENTARY INFORMATION:** The Board currently maintains five systems of records under the Privacy Act. Each system is described below.

#### DNFSG-1

**SYSTEM NAME:**

Personnel Security Files.

**SECURITY CLASSIFICATION:**

Unclassified materials.

**SYSTEM LOCATION:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Washington, DC 20004-2901.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees and applicants for employment with DNFBSB and DNFBSB contractors; consultants; other individuals requiring access to classified materials and facilities.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Personnel security folders and requests for security clearances, Forms SF 86, 86A, 87, 312, and DOE Forms 5631.18, 5631.29, 5631.20, and 5631.21. In addition, records containing the following information:

- (1) Security clearance request information;
- (2) Records of security education and foreign travel lectures;
- (3) Records of any security infractions;

(4) Names of individuals visiting DNFSB;

(5) Employee identification files (including photographs) maintained for access purposes.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

DNFSB—to determine which individuals should have access to classified material and to be able to transfer clearances to other facilities for visitor control purposes.

DOE—to determine eligibility for security clearances.

Other Federal and State agencies—to determine eligibility for security clearances.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records, magnetic disk, and computer printouts.

**RETRIEVABILITY:**

By name, social security number, and numeric code.

**SAFEGUARDS:**

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area.

**RETENTION AND DISPOSAL:**

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

**SYSTEM MANAGER AND ADDRESS:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Attention: Security Management Officer.

**NOTIFICATION PROCEDURE:**

Requests by an individual to determine if DNFSB-1 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Required identifying information: Complete

name, social security number, and date of birth.

**RECORD ACCESS PROCEDURE:**

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

**CONTESTING RECORD PROCEDURE:**

Same as Record Access procedure.

**RECORD SOURCE CATEGORIES:**

Subject individuals, Questionnaire for Sensitive Positions (SF-86), agency files, official visitor logs, contractors, and DOE Personnel Security Branch.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**DNFSB-2**

**SYSTEM NAME:**

Administrative and Travel Files.

**SYSTEM CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Defense Nuclear Facilities Safety Board, 625 Indiana Ave., NW, Washington, DC 20004-2901.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees and applicants for employment with DNFSB, including DNFSB contractors and consultants.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records containing the following information:

- (1) Time and attendance;
- (2) Payroll actions and deduction information requests;
- (3) Authorizations for overtime and night differential;
- (4) Credit cards and telephone calling cards issued to individuals;
- (5) Destination, itinerary, mode and purpose of travel;
- (6) Date(s) of travel and all expenses;
- (7) Passport number;
- (8) Requests for advance of funds, and voucher with receipts;
- (9) Travel authorizations;
- (10) Name, address, social security number and birth date;
- (11) Employee parking permits;
- (12) Employee public transit subsidy applications and vouchers.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Treasury Department—To collect withheld taxes, print payroll checks, and issue savings bonds.

Internal Revenue Service—To process Federal income tax.

State and Local Governments—To process state and local income tax.

Office of Personnel Management—Retirement records and benefits.

Social Security Administration—Social Security records and benefits.

Department of Labor—To process Workmen's Compensation claims.

Department of Defense—Military Retired Pay Offices—To adjust Military retirement.

Savings Institutions—To credit accounts for savings made through payroll deductions.

Health Insurance Carriers—To process insurance claims.

General Accounting Office—Audit—To verify accuracy and legality of disbursement.

Veterans Administration—To evaluate veteran's benefits to which the individual may be entitled.

States' Department of Employment Security—To determine entitlement to unemployment compensation or other state benefits.

Travel Agencies—To process travel itineraries.

**POLICIES AND PRACTICES FOR STRONG, RETRIEVING ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records, magnetic disk, and computer printouts.

**RETRIEVABILITY:**

By name, social security number, travel dates, and alphanumeric code.

**SAFEGUARDS:**

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

**RETENTION AND DISPOSAL:**

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, D.C. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

**SYSTEM MANAGER AND ADDRESS:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901, Attention: Chief Administrative Officer.

**NOTIFICATION PROCEDURE:**

Requests by an individual to determine if DNFSB-2 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004-2901. Required identifying information: Complete name, social security number, and date of birth.

**RECORDS ACCESS PROCEDURE:**

Same as Notification procedures above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

**CONTESTING RECORD PROCEDURE:**

Same as Record Access procedure.

**RECORD SOURCE CATEGORIES:**

Subject individuals, timekeepers, official personnel records, GSA for accounting and payroll, OPM for official personnel records, IRS and State officials for withholding and tax information, and travel agency contract.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**DNFSB-3****SYSTEM NAME:**

Drug Testing Program Records—DNFSB.

**SYSTEM CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Primary System: Division of Personnel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Washington, DC 20004-2901. Duplicate Systems: Duplicate systems may exist, in whole or in part, as contractor testing laboratories and collection/evaluation facilities.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

DNFSB employees and applicants for employment with the DNFSB.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

These records contain information regarding results of the drug testing program; requests for and results of initial, confirmatory and follow-up testing, if appropriate; additional information supplied by DNFSB employees or employment applicants in challenge to positive test results; information supplied by individuals concerning alleged drug abuse by Board employees or contractors; and written statements or medical evaluations of

attending physicians and/or information regarding prescription or nonprescription drugs.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

- (1) Executive Order 12564; September 15, 1986.
- (2) Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. section 7301 note (1987).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Information in these records may be used by the DNFSB management:

- (1) To identify substance abusers within the agency;
- (2) To initiate counselling and rehabilitation programs;
- (3) To take personnel actions;
- (4) To take personnel security actions; and
- (5) For statistical purposes.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Records are maintained on paper in file folders. Additionally, records used for initiating a random drug test are maintained on the Random Employee Selection Automation System. This is a stand-alone system resident on an IBM PS/2 computer and is password-protected.

**RETRIEVABILITY:**

Records maintained in file folders are indexed and accessed by name and social security number. Records maintained for random drug testing are accessed by using a computer data base which contains employees' names, social security numbers, and job titles. Employees are then selected from the available pool by the computer, and a list is given to the Drug Program Coordinator of employees and alternates selected for drug testing.

**SAFEGUARDS:**

Access to and use of these records is limited to those persons whose official duties require such access, with records maintained and used with the highest regard for personal privacy. Records in the Division of Personnel are stored in an approved security container under the immediate control of the Director, Division of Personnel, or designee. Records in laboratory/collection/evaluation facilities will be stored under appropriate security measures so that access is limited and controlled.

**RETENTION AND DISPOSAL:**

- (1) Test results, whether negative or positive, and other drug screening

records filed in the Division of Personnel will be retained and retrieved as indicated under the Retrievability category. When an individual terminates employment with the DNFSB, negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the conclusion of any administrative or judicial proceedings, at which time they will be destroyed by shredding, or by other approved disposal methods.

(2) Test results, whether negative or positive, on file in contractor testing laboratories, ordinarily will be maintained for a minimum of two years in the laboratories. Upon instructions provided by the Division of Personnel, the results will be transferred to the Division of Personnel when the contract is terminated or whenever an individual, previously subjected to urinalysis by the laboratory, terminates employment with the DNFSB. Records received from the laboratories by the Division of Personnel will be incorporated into other records in the system, or if the individual has terminated, those records reflecting negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the conclusion of any administrative or judicial proceedings, at which time they will be destroyed by shredding, or by other approved disposal methods.

(3) Negative specimens will be destroyed according to laboratory/contractor procedures.

(4) Positive specimens will be maintained through the conclusion of administrative or judicial proceedings.

**SYSTEM MANAGER AND ADDRESS:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901, Attention: Director of Personnel.

**NOTIFICATION PROCEDURE:**

Requests by an individual to determine if DNFSB-3 contains information about him/her should be directed to Director of Personnel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Required identifying information: Complete name, social security number.

**RECORD ACCESS PROCEDURE:**

Same as Notification procedures above, except individual must show official photo identification, such as driver license or government identification before viewing records.

**CONTESTING RECORD PROCEDURE:**

Same as Notification procedures above.

**RECORD SOURCE CATEGORIES:**

DNFSB employees and employment applicants who have been identified for drug testing, who have been tested, or who have admitted abusing drugs prior to being tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; individuals providing information concerning alleged drug abuse by Board employees or contractors; DNFSB contractors for processing, including but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and DNFSB staff administering the drug testing program to ensure the achievement of a drug-free workplace.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to 5 U.S.c. 552a(k)(5), the Board has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(C), (H), and (J), and (f). The exemption is invoked for information in the system of records which would disclose the identity of a person who has supplied information on drug abuse by a Board employee or contractor.

**DNFSB-4****SYSTEM NAME:**

Personnel Files.

**SYSTEM CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Defense Nuclear Facilities Safety board, 625 Indiana Ave., NW, Washington, DC 20004-2901.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees and applicants for employment with the DNFSB, including DNFSB contractors and consultants.

**CATEGORIES OF RECORD IN THE SYSTEM:**

Records concerning the following information:

- (1) Name, social security number, sex, date of birth, home address, grade level, and occupational code.
- (2) Official Personnel Folders (SF-66), Service Record Cards (SF-7), and SF-171.
- (3) Records on suggestions, awards, and bonuses.
- (4) Training requests, authorization data, and training course evaluations.
- (5) Employee appraisals, appeals, grievances, and complaints.
- (6) Employee disciplinary actions.

- (7) Employee retirement records.
- (8) Records on employment transfer.
- (9) Applications for employment with the DNFSB.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

GSA—Maintains official personnel records for DNFSB.

Office of Personnel Management—Transfer and retirement records and benefits, and collection of anonymous statistical reports.

Social Security Administration—Social Security records and benefits.

Federal, State, or Local government agencies—For the purpose of investigating individuals in connection with, security clearances, and administrative or judicial proceedings.

Private Organizations—For the purpose of verifying employees' employment status with the DNFSB.

**POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Paper records, magnetic disk, and computer printouts.

**RETRIEVABILITY:**

By name and social security number.

**SAFEGUARDS:**

Access is limited to employees having a need-to-know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

**RETENTION AND DISPOSAL:**

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, D.C. Records within DNFSB are destroyed by shredding or burning, as appropriate.

**SYSTEM MANAGER AND ADDRESS:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901, Attention: Director of Personnel.

**NOTIFICATION PROCEDURE:**

Requests by an individual to determine if DNFSB-4 contains information about him/her should be directed to Director of Personnel,

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Required identifying information: Complete name, social security number, and date of birth.

**RECORD ACCESS PROCEDURE:**

Same as Notification procedures above, except individual must show official photo identification, such as driver license or government identification before viewing records.

**CONTESTING RECORD PROCEDURE:**

Same as Notification procedures above.

**RECORD SOURCE CATEGORIES:**

Subject individuals, official personnel records, GSA, OPM for official personnel records, State employment agencies, educational institutions, and supervisors.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**DNFSB-5****SYSTEM NAME:**

Personnel Radiation Exposure Files.

**SECURITY CLASSIFICATION:**

Unclassified materials.

**SYSTEM LOCATION:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Washington, DC 20004-2901.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

DNFSB employees, contractors, and consultants.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Personnel folders containing radiation exposure and whole body count, including any records of mandatory training associated with site work or visits.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

DNFSB—to monitor radiation exposure of its employees and contractors.

DOE—to monitor radiation exposure of visitors to the various DOE facilities in the United States.

Other Federal and State Health Institutions—To monitor radiation exposure of DNFSB personnel.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records, magnetic disk, and computer printouts.

**RETRIEVABILITY:**

By name, social security number, and numeric code.

**SAFEGUARDS:**

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area.

**RETENTION AND DISPOSAL:**

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, D.C. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

**SYSTEM MANAGER AND ADDRESS:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Attention: Security Management Officer.

**NOTIFICATION PROCEDURE:**

Requests by an individual to determine if DNFSB-5 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Required identifying information: Complete name, social security number, and date of birth.

**RECORD ACCESS PROCEDURE:**

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

**CONTESTING RECORD PROCEDURE:**

Same as Record Access procedure.

**RECORD SOURCE CATEGORIES:**

Subject individuals, previous employee records, DOE contractors' film badges, whole body counts, bioassays and dosimetry badges.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

Dated: January 9, 1995.

**John T. Conway,**  
*Chairman.*

[FR Doc. 95-803 Filed 1-11-95; 8:45 am]

BILLING CODE 6820-KD-M

**DEPARTMENT OF EDUCATION**

**Jacob K. Javits Gifted and Talented Education Program—National Research and Development Center**

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed priority, selection criteria, and post-award requirements.

**SUMMARY:** The Secretary proposes a priority, selection criteria, and post-award requirements for an award to support a national research and development center to study the education of gifted and talented children and youth. The work of the center is intended to increase knowledge related to improving educational practices so that the nation's most gifted and talented children and youth may better contribute to the national welfare.  
**DATES:** Comments must be received on or before February 27, 1995.

**ADDRESSES:** All comments concerning this proposed priority should be addressed to Judith Anderson, U.S. Department of Education, 555 New Jersey Avenue NW., Room 611b, Washington, DC 20208-5573. Comments may also be sent through the internet to "Javits-Center@ed.gov."

**FOR FURTHER INFORMATION CONTACT:** Judith Anderson. Telephone: (202) 219-2079. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Secretary seeks to improve the education of gifted and talented children and youth and to use the methods and materials developed in gifted and talented education programs to improve education for all children. This is an integral part of advancing the National Education Goals and GOALS 2000, which require that all students must attain high standards of academic excellence. Gifted and talented education programs and methods can contribute to systemic reform, in which schoolwide efforts are used to coordinate high standards, assessments, challenging curricula, and teacher preparation to improve the education of all students. The Secretary also believes

that the educational needs of gifted and talented students from populations historically underserved by gifted education programs deserve particular attention.

Under the Jacob K. Javits Gifted and Talented Students Education Act of 1994 (Javits Act) as authorized by the Elementary and Secondary Education Act of 1965 as amended, the Secretary seeks to provide support for a national research and development center designed to conduct sound and coherent education research programs on methods and techniques for gifted and talented education. A deliberate, sustained, and coordinated initiative must be undertaken to carry out research and development activities related to improving the education of gifted and talented students.

The Secretary plans to make the award under this competition as a cooperative agreement. Applicants for the award must be institutions of higher education, State educational agencies, or a combination of these entities. The Secretary believes that this center can strengthen its capacity to accomplish the work of its mission by involving partners such as historically black colleges and universities, community colleges, or state and local education research organizations. As described in the Javits Act, the purpose of the center is to increase the understanding of how to improve the education of gifted and talented students, including those who may not be identified or served through traditional assessment methods and programs, such as economically disadvantaged individuals, individuals of limited-English proficiency, and individuals with disabilities. Furthermore, the Secretary believes that the experience and knowledge gained in developing and implementing programs for gifted and talented students can and should be used as a basis to develop rich and challenging curricula for all students, and to design instructional strategies and other means to improve all students' education. Finally, the Secretary believes that educators should consider the schoolwide impact of gifted and talented programs.

**Proposed Priority**

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund only applications that meet this absolute priority:

Each project must propose plans to establish a national research and development center that—

- Conducts research and development activities concerning the

educational needs of children and youth who give evidence of high performance capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities;

- Contributes to increasing the capacity of educational systems to provide all students with equal opportunities to learn to high standards and achieve educational success;

- Uses research methods in at least some of its studies that involve advanced or innovative quantitative or qualitative techniques of sampling, data gathering, conceptualization and measurement of variables, data analyses, and interdisciplinary perspectives;

- Conducts one or more definitive research studies that have national implications and that will inform policy or practice across the nation; i.e., use large representative samples and rigorous scientific techniques that preclude biased results and support generalizable, replicable findings concerning the education of sizable populations of children or youth;

- Includes research and development activities related to the following topics:

- (a) Identifying, teaching, and serving gifted and talented students;

- (b) Improving the education of gifted and talented students who may not be identified and served through traditional assessment methods and programs, (including economically disadvantaged individuals, individuals of limited-English proficiency, and individuals with disabilities);

- (c) Using knowledge and experience gained in developing and implementing gifted and talented programs and methods to serve all students; and

- (d) Understanding the effects of gifted education programs on the educational achievement of students schoolwide; and

- Documents, reports, and disseminates its research activities in ways that will allow others to use the research results.

### Proposed Selection Criteria

The Secretary proposes not to use the selection criteria set forth in the Javits Gifted and Talented Program regulations, 34 CFR 791.21. The Secretary proposes to use selection criteria set forth in this notice to evaluate an application for the center award. The proposed criteria are consistent with the provisions of the Educational Research, Development, Dissemination and Improvement Act of 1994.

*Selection Criteria:* The Secretary plans to use the following selection criteria to evaluate applications when a competition is announced. The maximum score for all these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

#### (a) *Research Mission and Technical Soundness.* (40 points)

The Secretary reviews each application to determine the quality and significance of the center's overall research agenda, definitive study or studies, and other individual research projects, including—

- (1) The coherence, significance, and technical merits of the center's research projects and agenda, in the context of the current state of the field; and

- (2) The importance, quality of design and methodological rigor of the center's definitive study or studies.

#### (b) *Personnel.* (30 points)

The Secretary reviews each application to determine the qualifications and time commitments of the center's personnel, including—

- (1) The time commitment, experiences, and expertise of the primary researchers enabling them to achieve the center's mission; and

- (2) The qualifications of the Director and support staff, and whether they will commit at least a majority of their time to center activities.

#### (c) *Institutional Arrangements.* (30 points)

The Secretary reviews each application to evaluate the capacity of the center's institutional structure and arrangements to support the center's projects and objectives, including—

- (1) The center's ability to respond to and provide leadership for those who can use or benefit from the center's research;

- (2) The center's plans to support, monitor, and complete research projects that meet the highest standards of professional excellence; and

- (3) The center's ability to disseminate useful research findings and other information to appropriate audiences in ways that will maximize the benefits of its work.

**PROPOSED POST-AWARD REQUIREMENTS:** The Secretary proposes the following post-award requirements consistent with the Educational Research, Development, Dissemination and Improvement Act of 1994. A grantee receiving a center award shall—

- (a) Provide OERI with information about center projects and products and other appropriate research information so that OERI can monitor center progress and maintain its inventory of

funded research projects. This information must be provided through media that include an electronic network;

- (b) Conduct and evaluate research projects in conformity to the highest professional standards of research practice; and

- (c) Reserve five percent of each budget period's funds to support activities that fall within the center's mission, are designed and mutually agreed to by both the center and OERI, and enhance OERI's ability to carry out its mission. Such activities may include developing research agendas, conducting research projects, collaborating with other federally-supported entities, and engaging in leadership and dissemination activities.

The Secretary believes that use of the proposed selection criteria will improve the quality of applications, and that the proposed post-award requirements will enhance the quality of the center's research, development, and dissemination activities.

The Secretary will announce the final priority, selection criteria, and post-award requirements in a notice in the **Federal Register**. The final priority, selection criteria and post-award requirements will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project will depend on the availability of funds, the nature of the final priority, and the quality of the applications received.

**Note:** This notice does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority, selection criteria, and post-award requirements.

**Program Authority:** P.L. 103-382, Title X, Part B

(Catalog of Federal Domestic Assistance Number 84.206, Jacob K. Javits Gifted and Talented Students Education Act of 1994)

Dated: January 5, 1995.

**Sharon P. Robinson,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 95-714 Filed 1-11-95; 8:45 am]

BILLING CODE 4000-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Project Nos. 10100-000, 4437-006, 4376-001, 3913-001, 9787-000, 6984-000, 10311-002, 10269-002, & 10416-003]

**Cascade River Hydro, et al; Extending Time To Comment on Draft EIS**

January 6, 1995.

The Federal Energy Regulatory Commission (FERC) issued a Draft Environmental Impact Statement (DEIS) for 9 proposed projects in the Skagit River Basin, Washington. The Notice of Availability of the DEIS appeared in the **Federal Register** on December 2, 1994, 59 FR 61894.

In response to a letter filed by the Washington Department of Ecology, FERC is extending the comment period on the DEIS from January 30, 1995, until March 1, 1995.

Anyone wishing to comment in writing on the DEIS must do so no later than March 1, 1995. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Written correspondence should clearly show the following caption on the first page: Skagit River Basin Docket No. EL85-19-119.

For further information, please contact John McEachern at (202) 219-3056.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-722 Filed 1-11-95; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3721-001; Project No. 4270-001; Project No. 4282-001; Project No. 4312-001; Project No. 4628-001; Project No. 4738-002; Project No. 9231-000]

**Puget Sound Power & Light Company; Mountain Rhythum Resources; Mountain Water Resources; Watersong Resources; McGrew & Associates; McGrew, McMaster, Koch, Scott Paper Company; Notice of Extending Time To Comment on Draft EIS**

January 6, 1995.

The Federal Energy Regulatory Commission (FERC) issued a Draft Environmental Impact Statement (DEIS) for 7 proposed projects in the Nooksack River Basin, Washington. The Notice of Availability of the DEIS appeared in the **Federal Register** on December 2, 1994, 59 FR 61894.

In response to a letter filed by the Washington Department of Ecology,

FERC is extending the comment period on the DEIS from January 30, 1995, until March 1, 1995.

Anyone wishing to comment in writing on the DEIS must do so no later than March 1, 1995. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Written correspondence should clearly show the following caption on the first page: Nooksack River Basin Docket No. EL85-19-118.

For further information, please contact Tom Dean at (202) 219-2778.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-721 Filed 1-11-95; 8:45 am]

BILLING CODE 6717-01-M

**Office of Fossil Energy**

[FE Docket No. 94-104-NG]

**The Clean Air Fuels Corporation; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Clean Air Fuels Corporation (CAF) blanket authorization to import up to a combined total of 20 Bcf of natural gas, including liquefied natural gas (LNG) from Canada and Mexico. In addition, CAF is authorized to export a combined total of up to 20 Bcf of natural gas, including LNG, to Canada and Mexico. This authorization to import and export natural gas and LNG from and to Canada and Mexico is for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on January 3, 1995.

**Clifford Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 95-828 Filed 1-11-95; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 94-105-NG]

**National Steel Corporation Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting National Steel Corporation blanket authorization to import up to 125 Bcf of natural gas from Canada and to export up to 75 Bcf of natural gas to Canada. This authorization is for a period of two years beginning on the date of the initial import or export, whichever occurs first, after December 31, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on January 3, 1995.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 95-829 Filed 1-11-95; 8:45 am]

BILLING CODE 6450-01-P

[Project No. 11075-001 Idaho]

**Grand View Irrigation District, Ltd., Surrender of Preliminary Permit**

January 6, 1995.

Take notice that Grand View Irrigation District, Ltd., Permittee for the Grand View Project No. 11075, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11075 was issued January 23, 1992, and would have expired December 31, 1995. The project would have been located on the Grand View Irrigation District's canal, off C.J. Strike reservoir, in Owyhee County, Idaho.

The Permittee filed the request on December 12, 1994, and the preliminary permit for Project No. 11075 would have expired on December 31, 1994. Since there is less than 30 days remaining in the permit's maximum term, the permit shall remain in effect through Friday, December 30, 1994. New applications involving this project site, to the extent

provided for under 18 C.F.R. Part 4, may be filed on the next business day.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-724 Filed 1-11-95; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CP95-131-000]**

**Colorado Interstate Gas Co.; Notice of Request Under Blanket Authorization**

January 6, 1995.

Take notice that on December 22, 1994, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP95-131-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a new delivery facility located in Albany County, Wyoming, under CIG's blanket certificate issued in Docket No. CP83-21-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG states that the facility would consist of a 2-inch tap, meter run and facilities appurtenant thereto for the delivery of gas to Walden Capital Leasing Corporation for use by the municipal customers of the Town of Walden, Colorado.

CIG states further that it has been advised that the maximum daily volume would be approximately 750 Mcf with an estimated annual requirement of 100,000 Mcf. It is said that the estimated cost of the delivery facilities is \$47,400 for which CIG would be reimbursed.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-723 Filed 1-11-95; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CP95-138-000]**

**Natural Gas Pipeline Co. of America; Notice of Application**

January 6, 1995.

Take notice that on December 29, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95-138-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale an offshore pipeline lateral and appurtenant facilities located offshore Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural proposes to abandon by sale to NCX Company, Inc. (NCX), a 0.95 mile pipeline lateral in High Island, Block A-270 (HI A-270). It is stated that the lateral was constructed under Natural's budget certificate in Docket No. CP80-86-000, to gain access to gas supplies from Chevron U.S.A. Inc. (Chevron) and to transport gas for itself and for Tennessee Gas Pipeline Company (Tennessee), which was also receiving gas supplies from Chevron, through the High Island Offshore System. It is asserted that NCX is one of the working interest owners in HI A-270 and the operator of the platform. It is explained that NCX would purchase the facilities for \$550,000. It is stated that NCX is requesting in a separate petition that the Commission issue a declaratory order making a determination that the lateral be considered a non-jurisdictional gathering facility.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas

Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-720 Filed 1-11-95; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. EL95-16-000]**

**Southern California Edison Company; Filing**

January 6, 1995.

Take notice that on January 6, 1995, Southern California Edison Company (Edison) filed a Petition For Enforcement pursuant to Section 210(h) of the Public Utility Regulatory Policies Act of 1978 (PURPA). Edison states that the California Public Utilities Commission (California Commission) has ordered Edison to sign long-term, fixed-price contracts with qualifying facilities (QFs) to purchase 686 MW of new capacity that will come on line in 1997-99. Edison asserts that these new contracts will require payments above its avoided cost and will dramatically increase stranded costs in a soon to be restructured electric utility industry. Edison requests the Commission to relieve Edison and its customers from these California Commission orders which it asserts violate both PURPA and this Commission's regulations. 18 CFR Part 292.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

Secretary.

[FR Doc. 95-789 Filed 1-11-95; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5137-9]

### 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 February 13, 1995.

**FOR FURTHER INFORMATION OR A COPY OF THIS ICR CONTACT:** Sandy Farmer at EPA, (202) 260-2740.

### SUPPLEMENTARY INFORMATION:

#### Office of Solid Waste and Emergency Response

*Title:* Underground Storage Tanks: Technical and Financial Requirements and State Program Approval Procedures (ICR No. 1360.04; OMB No. 2050-0068). This ICR consolidates and renews three approved collections: ICR 1360, Underground Storage Tanks (USTs)—Notification, Reporting, and Recordkeeping Requirements (OMB No. 2050-0068); ICR 1359, RCRA Financial Responsibility Requirements for USTs (OMB No. 2050-0066); and ICR 1355, UST—Requirements for State Program Approval (OMB No. 2050-0067).

*Abstract:* This ICR details the information collection activities associated with technical, financial responsibility, and state program approval requirements for owners and operators of underground storage tanks (USTs). Owners of USTs that contain regulated substances must notify their designated State or local agency of the existence of their tanks. Owners of new or replacement UST systems must notify

their designated agency within 30 days of bringing a tank into use by submission of the federal notification form, or an approved alternate State notification form. Also, any person who sells a tank intended to be used in an UST system must advise the tank purchaser of the owner's notification requirements. UST owners and operators must maintain records on monitoring, cathodic protection, installation, release detection equipment calibration, maintenance, repairs, and closures. UST owners and operators must also report on suspected and confirmed releases; initial abatement; initial site characterization; free product removal; cleanup investigation; corrective action; and closure. State, local, and federal authorities use the information to verify statutory compliance and to enforce technical standards for USTs.

The financial responsibility requirements for owners/operators of USTs are specified in Subpart H, Financial Responsibility Requirements, 40 CFR Part 280. Owners/operators of USTs containing petroleum must obtain evidence of financial responsibility for UST releases. In order to comply with the requirements, owners/operators of USTs containing petroleum must obtain one of the financial instruments specified in the regulation. On occasion, owners/operators who obtain a financial instrument must report to EPA on the status of financial assurance instruments, their financial status or the financial status of institutions issuing the instruments. In addition, owners/operators must maintain records of the financial instrument along with a statement that they are in compliance with the financial responsibility requirements.

The requirements for approved State programs are specified in 40 CFR Part 281. Any State, Territory or Indian Tribe wishing to operate an UST program in lieu of the federal program must submit a one-time application to EPA for approval. In addition, approved States may have to submit a revised application under certain circumstances, for example, when a key State law or UST regulation is repealed or modified. Development of an application is coordinated with EPA Regional Offices, and States may submit draft applications to EPA for review and comment prior to submittal of the official State application. EPA reviews the State application to determine whether the State technical requirements are as stringent as the corresponding federal requirements and if the State program provides adequate

enforcement for compliance with the requirements.

*Burden Statement:* The public reporting burden for this collection is estimated to average 12 hours per response and 11 hours per recordkeeper annually for UST facilities. For states applying for program approval, the public reporting burden is estimated to average 108 hours per response and 34 hours per recordkeeper annually. This estimate includes all aspects of the information collection including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* Owners and Operators of Underground Storage Tanks that contain regulated substances, States, Territories, and Indian Tribes.

*Estimated Number of Respondents:* 389,296.

*Estimated Number of Responses Per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 9,088,267 hours.

*Frequency of Collection:* On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street SW., Washington, D.C.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, D.C. 20503.

Dated: January 5, 1995.

**Paul Lapsley,**

Director, Regulatory Management Division.

[FR Doc. 95-704 Filed 1-11-95; 8:45 am]

BILLING CODE 6560-50-M

[WH-FLR-5138-8]

### State and Local Assistance; Grants for State Water Pollution Control Revolving Funds (Title VI) Under the Clean Water Act

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

**ACTION:** Notice of allotment.

**SUMMARY:** The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, (the Act) provides \$1,235,200,000 to capitalize State Revolving Fund (SRF) programs authorized by Title VI of the

Clean Water Act (CWA). This notice sets forth the State allotments for Fiscal Year (FY) 1995 for their SRF programs. It also provides notice that one-half of one percentum of the appropriation, \$6,176,000, is reserved for grants to Indian Tribes and Alaska Native Villages to construct sewage treatment facilities.

**FOR FURTHER INFORMATION CONTACT:** Mr. Leonard B. Fitch, Municipal Support Division, Office of Wastewater Management (202) 260-5858.

**SUPPLEMENTARY INFORMATION:** Public Law No. 103-327, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, provides \$1,235,200,000 to capitalize SRF programs authorized by Title VI of the CWA. Section 604(a) of the CWA requires that funds appropriated for Title VI for FYs 1987-1990 be allotted in accordance with the table in section 205(c)(3) of the CWA. Congress has given the Agency no instruction regarding the allotment of FY 1995 funds. In the absence of Congressional

action, the Agency will allot the FY 1995 funds in accordance with the table in section 205(c)(3) except as described below.

**Indian Tribes Adjustment**

Public Law 102-389 authorized the Administrator to reserve up to one half of one percentum of the funds appropriated for FY 1993 and thereafter for the State Revolving Funds for making grants to Indian Tribes and Alaska Native Villages for construction of wastewater treatment facilities. The full amount is hereby reserved to be administered under the Indian Set-Aside Program authorized by section 518(c) of the CWA.

**Trust Territory Adjustment**

In Public Law No. 99-658, Congress approved a Compact of Free Association for the Trust Territories' members. Two entities, the Federated States of Micronesia and the Republic of the Marshall Islands have implemented Compacts and are no longer eligible for grants under Title VI. At the beginning of the FY the Republic of Palau's

Compact of Free Association had not become effective, and, under Public Law No. 99-239, Section 105(h)(2), Palau remains eligible for Title VI grants. Funds that otherwise would have been allotted to the Federated States of Micronesia and the Republic of the Marshall Islands are redistributed to the States and Territories by proportionally increasing their respective shares of the appropriation as shown in the column titled "Allotment Formula After Trust Territory Adjustments". The actual allotments resulting from the adjusted allotment shares are shown in the column titled "Fiscal Year 1995 State Allotment". The table at the end of this notice lists the amount of funding made available to each State. These funds are available for obligation until September 30, 1996. Grants from the allotments may be awarded as of the date that the funds were issued to the Regional Administrators by the Comptroller of EPA.

Dated: December 22, 1994.

**Carol M. Browner,**  
Administrator.

State	Allotment formula	Allotment formula after trust territory adjustment	Fiscal year 1995 title VI state allotment
Alabama .....	0.011309	0.011320	\$13,911,900
Alaska .....	0.006053	0.006059	7,446,200
Arizona .....	0.006831	0.006837	8,403,300
Arkansas .....	0.006616	0.006622	8,138,800
California .....	0.072333	0.072400	88,981,600
Colorado .....	0.008090	0.008098	9,952,000
Connecticut .....	0.012390	0.012402	15,241,800
Delaware .....	0.004965	0.004970	6,107,800
Dist. of Columbia .....	0.004965	0.004970	6,107,800
Florida .....	0.034139	0.034171	41,996,600
Georgia .....	0.017100	0.017116	21,035,800
Hawaii .....	0.007833	0.007840	9,635,900
Idaho .....	0.004965	0.004970	6,107,800
Illinois .....	0.045741	0.045783	56,269,000
Indiana .....	0.024374	0.024397	29,984,100
Iowa .....	0.013688	0.013701	16,838,500
Kansas .....	0.009129	0.009137	11,230,200
Kentucky .....	0.012872	0.012884	15,834,700
Louisiana .....	0.011118	0.011128	13,677,000
Maine .....	0.007829	0.007836	9,631,000
Maryland .....	0.024461	0.024484	30,091,100
Massachusetts .....	0.034338	0.034370	42,241,400
Michigan .....	0.043487	0.043527	53,496,200
Minnesota .....	0.018589	0.018606	22,867,500
Mississippi .....	0.009112	0.009120	11,209,300
Missouri .....	0.028037	0.028063	34,490,200
Montana .....	0.004965	0.004970	6,107,800
Nebraska .....	0.005173	0.005178	6,363,600
Nevada .....	0.004965	0.004970	6,107,800
New Hampshire .....	0.010107	0.010116	12,433,300
New Jersey .....	0.041329	0.041367	50,841,500
New Mexico .....	0.004965	0.004970	6,107,800
New York .....	0.111632	0.111736	137,325,400
North Carolina .....	0.018253	0.018270	22,454,200
North Dakota .....	0.004965	0.004970	6,107,800
Ohio .....	0.056936	0.056989	70,040,700
Oklahoma .....	0.008171	0.008179	10,051,700
Oregon .....	0.011425	0.011436	14,054,600
Pennsylvania .....	0.040062	0.040099	49,282,900
Rhode Island .....	0.006791	0.006797	8,354,100

State	Allotment formula	Allotment formula after trust territory adjustment	Fiscal year 1995 title VI state allotment
South Carolina .....	0.010361	0.010371	12,745,700
South Dakota .....	0.004965	0.004970	6,107,800
Tennessee .....	0.014692	0.014706	18,073,600
Texas .....	0.046226	0.046269	56,865,600
Utah .....	0.005329	0.005334	6,555,600
Vermont .....	0.004965	0.004970	6,107,800
Virginia .....	0.020698	0.020717	25,462,000
Washington .....	0.017588	0.017604	21,636,200
West Virginia .....	0.015766	0.015781	19,394,800
Wisconsin .....	0.027342	0.027367	33,635,200
Wyoming .....	0.004965	0.004970	6,107,800
American Samoa .....	0.000908	0.000909	1,117,000
Guam .....	0.000657	0.000658	808,200
N. Marianas .....	0.000422	0.000422	519,100
Puerto Rico .....	0.013191	0.013203	16,227,100
T T of Palau .....	0.000367	0.000367	451,500
Virgin Islands .....	0.000527	0.000527	648,300
State totals .....	0.999072	1.000000	1,229,024,000
Indian tribes .....	.....	.....	6,176,000
Total all funds .....	.....	.....	1,235,200,000

[FR Doc. 95-825 Filed 1-11-95; 8:45 am]  
BILLING CODE 6560-50-P

[PF-618; FRL-4927-7]

**Rhone Poulenc Ag Co.; Request for Extension of Tolerances for Thiodicarb**

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

**SUMMARY:** EPA has received from Rhone Poulenc Ag Co. a request to extend the tolerances for the insecticide thiodicarb and its metabolite in or on leafy vegetables, broccoli, cabbage, and cauliflower. The tolerances had been established after the filing by Rhone Poulenc Ag Co. of pesticide petitions 7F3516 and 6F3417.

**DATES:** Comments, identified by the document control number (PF-618), must be received on or before February 13, 1995.

**ADDRESSES:** By mail, submit written comments on this notice, identified by the document control number (PF-618), to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with

procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Dennis H. Edwards, Jr., Product Manager (PM-19), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6386.

**SUPPLEMENTARY INFORMATION:** EPA has received from the Rhone Poulenc Ag Co., P.O. Box 12014, Research Triangle Park, NC 27709, requests to extend for 1 year a temporary tolerance that expires on August 15, 1996, for the combined residues of the insecticide thiodicarb (dimethyl *N,N'*-[thiobis [(methylimino) carbonyloxy]]bis [ethanimidothioate]), in or on leafy vegetables at 35 parts per million (ppm) under 40 CFR 180.407(b) and a temporary tolerance that expires on August 15, 1996, for the aforementioned combined residues of the insecticide thiodicarb and its metabolite, methomyl, in or on broccoli at 7 ppm, cabbage at 7 ppm, and cauliflower at 7 ppm under 40 CFR 180.407(c). (For a rule previously extending these

tolerances, see the **Federal Register** of August 11, 1993 (58 FR 42673).)

**Authority:** 21 U.S.C. 346a and 348.  
Dated: December 22, 1994.

**Lois Rossi,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95-820 Filed 1-11-95; 8:45 am]  
BILLING CODE 6560-50-F

[OPP-180956; FRL 4928-1]

**Receipt of Applications for Emergency Exemptions to Use Bifenthrin; Solicitation of Public Comment**

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

**SUMMARY:** EPA has received specific exemption requests from the California Environmental Protection Agency and the Texas Department of Agriculture (hereafter referred to as the "Applicants") to use the pesticide bifenthrin [CAS 82657-04-3 (*cis isomer*) and CAS 83322-02-5 (*trans isomer*)] to treat up to 200,000 and 36,000 acres, respectively, of cucurbits (cucumbers, melons, pumpkins, and squash) to control the sweet potato whitefly. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

**DATES:** Comments must be received on or before January 27, 1995.

**ADDRESSES:** Three copies of written comments, bearing the identification notation "OPP-180956," should be

submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308-8791.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for the use of bifenthrin on cucurbits to control the sweet potato whitefly. Information in accordance with 40 CFR part 166 was submitted as part of this request. The sweet potato whitefly (SPWF) is a relatively new pest on cucurbits. The SPWF has caused severe economic damage to several other commodities nationwide including cotton, lettuce, squash, beans, peanuts, and ornamentals. SPWF causes damage through feeding activities, and also indirectly through the production of a honeydew, which encourages growth of sooty mold and other fungi. This pest also causes a physiological disorder resulting in irregular ripening of fruit,

believed to be caused by transmission of a geminivirus. The Applicants claim that adequate control of the SPWF is not being achieved with the currently registered compounds. The Applicants claim that significant economic losses are expected in California and Texas cucurbit production if the SPWF is not adequately controlled, and are therefore requesting this use of bifenthrin.

The Applicants propose to apply bifenthrin at a maximum rate of 0.1 lb. active ingredient (a.i.) (6.4 oz. of product) per acre with up to three applications allowed, and a maximum of 0.3 lb. a.i. per acre per season, on a total of 200,000 acres of cucurbits in California, and 36,000 acres of cucurbits in Texas. It is possible to produce two cucurbit crops per calendar year on a given acre, and therefore, the acreage could potentially receive 6 applications, (maximum of 0.6 lb. a.i. per acre) per calendar year. Therefore, use under these exemptions could potentially amount to a maximum total of 120,000 lbs. of active ingredient in California and 21,600 lbs. of active ingredient in Texas.

This notice does not constitute a decision by EPA on the applications themselves. This is the fifth year that this use has been requested under section 18. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a pesticide if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use and/or a petition for tolerance for residues in or on the commodity has not been submitted to the Agency [40 CFR 166.24(a)(6)].

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the California Environmental Protection Agency and the Texas Department of Agriculture.

#### List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: January 4, 1995.

**Stephen L. Johnson,**  
Director, Registration Division, Office of  
Pesticide Programs.

[FR Doc. 95-819 Filed 1-11-95; 8:45 am]

BILLING CODE 6560-50-F

[FRL-5138-4]

#### Proposed CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement for the Carrico Drum Site

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

**ACTION:** Proposal of CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement for the Carrico Drum Site.

**SUMMARY:** U.S. EPA proposes to address the potential liability of Hoover Precision Products, Inc., Hoover Group, Inc., Hoover Universal, Inc., Johnson Controls, Inc., and Lydall, Inc. (collectively referred to as "the Settling Parties") under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499, for past costs incurred in connection with a federal fund lead removal action conducted at the Carrico Drum Site ("the Site"). The U.S. EPA proposes to address the potential liability of the Settling Parties by execution of a CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement ("AOC") prepared pursuant to 42 U.S.C. 9622(h)(1). The key terms and conditions of the AOC may be briefly summarized as follows: (1) The Settling Parties agree to pay U.S. EPA \$73,333.33 in satisfaction of claims for past costs incurred at the Site; (2) the Settling Parties agree to waive all claims against the United States that arise out of response activities conducted at the Site; and (3) U.S. EPA affords the Settling Parties a covenant not to sue for past costs incurred during the removal action upon satisfactory completion of obligations under the Settlement, however U.S. EPA is free to pursue any other necessary and appropriate judicial and administrative relief against the Settling Parties. The Site is not on the NPL, and no further response activities at the Site are anticipated at this time. Because the total response costs that were incurred at the Site are less than \$500,000, approval of the settlement by the Attorney General is not required. **DATES:** Comments on the proposed AOC must be received by U.S. EPA within

thirty (30) days of the publication date of this notice.

**ADDRESSES:** A copy of the proposed AOC is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Mike Anastasio at (312) 886-7951, prior to visiting the Region 5 office.

Comments on the proposed AOC should be addressed to Mike Anastasio, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code CS-29A), Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Mike Anastasio at (312) 886-7951, of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i), for comments on the proposed AOC. Comments should be sent to the addressee identified in this notice.

**Valdas V. Adamkus,**

*Regional Administrator, U.S. Environmental Protection Agency, Region 5.*

[FR Doc. 95-827 Filed 1-11-95; 8:45 am]

**BILLING CODE 6560-50-M**

[FRL-5137-8]

**Notice and Request for Comment on Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9621(i), notice is hereby given of a proposed administrative cost recovery settlement concerning certain costs incurred by EPA in connection with the Culpeper Wood Preservers Site near Culpeper, Culpeper County, Virginia ("Site"). The cost recovery settlement concerns reimbursement of EPA's costs in preparing a work plan to be used by Jefferson Homebuilders, Inc. in performing a remedial investigation and feasibility study at the Site under an administrative order on consent signed by EPA on June 16, 1993 and corresponding to EPA Docket No. III-93-28-DC ("Consent Order"). The Consent Order provides that EPA will bill Jefferson Homebuilders, Inc. for all

costs incurred by EPA in preparing the work plan and requires Jefferson Homebuilders, Inc. to reimburse EPA for the amounts so billed. At this time, such costs are estimated at \$126,125.37.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the provisions in the Consent Order requiring Jefferson Homebuilders, Inc. to reimburse EPA's costs in preparing the work plan. The Agency's response to comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, Regional Docket Clerk, (3RC00), 841 Chestnut Building, Philadelphia, PA 19107.

**DATES:** Comments must be submitted on or before February 13, 1995.

**ADDRESSES:** The Consent Order and additional background information relating to the settlement are available for public inspection at U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA, 19107. A copy of the Consent Order may be obtained from Suzanne Canning, U.S. EPA Region III Docket Clerk (3RC00), U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA, 19107. Comments should reference the "Culpeper Wood Preservers Site RI/FS Consent Order" and should be addressed to Suzanne Canning, U.S. EPA Region III Docket Clerk, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Andrew S. Goldman, Sr. Assistant Regional Counsel, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA 19107, Telephone: (215) 597-4840.

Dated: December 23, 1994.

**Stanley Laskowski,**

*Acting Regional Administrator, United States Environmental Protection Agency, Region III.*

[FR Doc. 95-703 Filed 1-11-95; 8:45 am]

**BILLING CODE 6560-50-M**

**FEDERAL COMMUNICATIONS COMMISSION**

[CC Docket No. 90-571]

**Telecommunications Relay Services; FCC Form 431**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that in an Order on Telecommunications Relay Services and the Americans with Disabilities Act of 1990 (Order), CC Docket No. 90-571, adopted December 28, 1994, and released December 30, 1994, the Commission calculated the contribution factor for the period April

26, 1995 through March 26, 1996 for the Telecommunications Relay Services (TRS) Fund, and approved the TRS payment formula for the 1995 calendar year. In addition, the Commission adopted the 1995 TRS Fund Worksheet, FCC Form 431, subject to approval by the Office of Management and Budget (OMB).

**FOR FURTHER INFORMATION CONTACT:**

Pamela Gerr, Domestic Facilities Division, Common Carrier Bureau, (202) 634-1798, or James Lande, Industry Analysis Division, Common Carrier Bureau, (202) 418-0948.

**SUPPLEMENTARY INFORMATION:** The above actions were taken pursuant to Section 64.604(c)(4)(iii) of the Commission's Rules, 47 CFR Section 64.604(c)(4)(iii). Pursuant to the Order, and subject to approval by OMB, the 1995 TRS Fund Worksheet, FCC Form 431, shall be effective for the period April 26, 1995 through March 26, 1996. All subject carriers are required to file the form annually and contribute to the TRS Fund. The TRS Fund reimburses TRS providers for the costs of providing interstate TRS. The Commission's rules provide that the TRS Fund Worksheet shall be published in the **Federal Register**. See 47 CFR Section 64.604(c)(4)(iii)(B).

Public reporting burden for this collection of information is estimated to average 2 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 the Federal Communications Commission, Records Management Branch, Room 234, Paperwork Reduction Project (3060-0536), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060-0536), Washington, DC 20503.

Federal Communications Commission.

**Kathleen M.H. Wallman,**

*Chief, Common Carrier Bureau.*

**TRS Fund Worksheet**

Estimated Average Burden Hours Per Response: 2 hours.

Instructions for completing the worksheet for calculating and filing carrier contributions to fund Interstate Telecommunications Relay Service (TRS).

Notice to Individuals

Section 64.604(c)(4)(iii) of the Commission's Rules requires all carriers providing interstate service to complete this

worksheet and to contribute funding for interstate Telecommunications Relay Services (TRS). The collection of information and fees stems from the Commission's authority under the Communications Act of 1934, Sections 4, 48, 48 Stat. 1066, as amended, 47 U.S.C. 154 unless otherwise noted. Interpret or apply Sections 201, 211, 218, 219, 220, 225 48 Stat. 1073, 1077, as amended; 47 U.S.C. 201, 211, 218, 219, 220, 225. The data in the report will be used to ensure that carriers properly fund interstate TRS. Selected information provided in the worksheet will be made available to the public in a manner consistent with the Commission's Rules. All carriers providing interstate telecommunications service must file this worksheet. Other telecommunications carriers may voluntarily file this worksheet.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93.579, December 31, 1974, 5 U.S.C. 552(a)(e)(3), and the Paperwork Reduction Act of 1980. P.L. 96-511, Section 3504(c)(3).

Public reporting burden for this collection of information is estimated to average 2 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 the reporting burden to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction project (3060), Washington, DC 20503.

**I. Introduction**

On July 15, 1993, the Commission adopted rules that require all providers of interstate telecommunications services to contribute to the provision of TRS based in their proportionate share of gross interstate revenues. Section 64.604(c)(4)(iii) directs carriers to calculate and file their contribution in accordance with a TRS Fund Worksheet.

\* \* \* Contributions shall be calculated and filed in accordance with a "TRS Fund Worksheet", which will be prepared and published in the **Federal Register**. The worksheet sets forth information that must be provided by the contributor, the formula for computing the contribution, the manner of payment, and due dates for payments.

**II. Filing Requirements and General Instructions**

**A. Who Must File**

All common carriers providing interstate telecommunications services within the United States or international telecommunications service between U.S. and foreign points must file this worksheet. For this purpose, the United States is defined as the conterminous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

For the purpose of calculating TRS contributions, interstate telecommunications service includes, but is not limited to the interstate portion of the following types of services: cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including Subscriber Line Charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telephone, video, satellite, international, intraLATA, and resale services. Note that all local exchange carriers provide interstate access services, and therefore must file.

Carriers need not file if they provide only intrastate service. Carriers need not file if they did not provide interstate service in calendar year 1994. However, all such carriers are encouraged to file because all carriers that file will be included in the FCC *Carrier Locator*. The *Carrier Locator* is a directory of telecommunications common carriers and is available to the public through the Commission's contract copier or on-line through the FCC-State Link computer bulletin board at (202)-418-0241. All carriers that are required to file or that voluntarily file must include a TRS fund contribution. The minimum contribution is \$100.

Entities may not file summary reports for more than one carrier. *Each legal entity that provides interstate telecommunications service must file separately.* Entities that have distinct articles of incorporation are separate legal entities. All affiliates or subsidiaries should identify the ultimate controlling parent or entity in Block 1, Line (1c)—Holding Company.

**B. When and Where to File**

The 1995 TRS contribution period will fund interstate TRS provided between May 1, 1995 and April 30, 1996. Monthly contributions for the 1995 TRS contribution period must be received by the 26th of each month for April 1995 through March 1996. A revised TRS Worksheet will be released for the 1996 TRS contribution period.

The legal name of the carrier and the TRS Company Code should be shown on all checks exactly as it appears on the completed TRS Fund Worksheet. TRS Company Codes can be obtained from the *Carrier Locator*, or by contacting the TRS Fund Administrator. Do not mail the TRS worksheet or TRS contribution checks to the FCC. Payments must be received by the FCC TRS Fund Administrator—the National Exchange Carrier Association (NECA)—no later than the dates indicated below. The filing schedule is as follows:

Mailing address	Worksheet due 4/26/95	Payment due 4/26/95 through 3/26/96*
NECA TRS, P.O. Box 360090, Pittsburgh, PA 15251-6090.	.....	Check.**

Mailing address	Worksheet due 4/26/95	Payment due 4/26/95 through 3/26/96*
NECA FCC TRS Fund Administration, 100 South Jefferson Rd., Whippany, NJ 07981. Telephone: 201-884-8173 Fax: 201-884-8469	Completed Worksheet.	Photocopy of check.**

\* Carriers whose total 1995 TRS contribution is less than \$1200 must pay the total amount to the FCC TRS Fund Administrator no later than April 26, 1995. Carriers whose total 1995 TRS contribution is \$1,200 or greater may elect to make twelve equal monthly payments with the first payment due to the FCC TRS Fund Administrator no later than April 26, 1995.

\*\* Carriers are encouraged to contact the FCC TRS Fund Administrator to make arrangements for Electronic Funds Transfer.

**C. Rounding of Numbers**

All information provided in the worksheet, except the signature, should be neatly printed in ink or typed. Reported revenues in block 2, column (b) may be rounded to the nearest thousand dollars. Regardless of rounding, all dollar amounts must be reported in whole dollars. For example, \$2,271,881.93 could be reported as \$2,271,882 or as \$2,272,000, but could not be reported as \$2272 thousand or \$2.272 million. Please enter \$0 if there was no revenue for the line for 1994.

Percentages reported in block 2, column (c) should be rounded to the nearest whole percent. For example, if the ratio of interstate to total revenue was .4269115, then the figure 43% should be reported. *Percentages between 0% and 1% should be reported as 1%.* Please enter 0% if there was no interstate revenue for the line for 1994.

Interstate revenues are calculated as total revenues in column (b) times the percentage shown in column (c). Calculated interstate revenues should be rounded to the nearest whole dollar and entered in column (e). Similarly, the total contribution (block 3, Line (18)) and amounts enclosed with the filing (block 3, Line (19)) should be rounded to the nearest whole dollar.

**D. Compliance**

Carriers failing to file the TRS Worksheet in a timely fashion are subject to the fines prescribed in Section 219(b) of the Communications Act of 1934 (the Act). Carriers filing false information are subject to fines or imprisonment as specified in Section 220(e) of the Act. Carriers failing to contribute in a timely fashion are subject to fines prescribed in Section 503(b) of the Act. In addition, Section 64.604(c)(4) of the Commission's Rules authorizes the FCC Fund Administrator to bill a carrier for reasonable costs, including legal fees, that are caused by improper filing of the worksheet or overdue TRS contributions.

### III. Specific Instructions

#### A. Block 1: Carrier Identification

Block 1 of the TRS Fund Worksheet requires identification information. Line (1a) requests the legal name of the carrier as it appears on articles of incorporation or other legal documents. Line (1b) provides a checkoff for the principal carrier activity. Please check the category that best describes the carrier.

LEC—Local Exchange Carrier—provider of franchised local exchange service.

Cellular—Cellular telephone company.

Mobile—Any provider of mobile services, such as a radio telephone and paging service. This category does not include cellular or PCS.

OSP—Operator Service Providers—are companies other than LECs that provide services to customers needing assistance of an operator such as to complete away from home calls, or calls using alternate billing arrangements. These companies typically employ operators as well as credit and cash card technologies to complete calls.

IXC—Interexchange Carrier.

CAP—Competitive Access Provider—competes with local exchange carriers to provide services that link customers with interexchange facilities, local exchange networks, or other customers.

Pay Telephone—Provides customers access to telephone networks through pay telephone equipment, special teleconferences rooms, etc.

PCS—Provider of Personal Communications Services.

Reseller—Leases underlying transmission facilities for purposes of providing interexchange service.

Other—Check other if none of the above categories describes the carrier.

Line (1c) requests the name of the holding company or controlling entity, if any. All affiliates should have the same name for Line (1c). Line (1d) requests the primary carrier identification code (CIC) used by the carrier for the provision of interexchange services. All carriers that purchase feature group B or feature group D access services have one or more CICs. CICs are administered by the North American Numbering Plan Administration, which can be reached at 201-740-3129.

Line (2) requests the principal name under which the company conducts carrier activities. This would typically be the name that appears on customer bills, or the name used when service representatives answer customer inquiries. For example, American Telephone and Telegraph, Inc. might show AT&T. Line (3) requests the complete mailing address of the corporate headquarters. Line (4) requests a telephone number that can be used for customer inquiries. Information provided in Block 1 will be published in the Industry Analysis Division *Carrier Locator*.

#### B. Block 2: Carrier Revenue for Calendar Year 1994

##### 1. Column (b)

Provide gross revenues for all telecommunications services for Calendar 1994. Gross revenues include revenues from regulated, detariffed, and nonregulated

telecommunications services. Where two carriers have merged during the year, the successor company should report total revenues for the year for both the predecessor and successor operations. [However, the two carriers would continue to report separately if each maintained separate corporate identities and continued to operate.] Gross revenues should not include non-telecommunications services, such as the lease of customer premises equipment. Gross revenues consist of total revenues billed to customers with no allowances for uncollectibles. Billed revenues may be distinct from booked revenues. NECA pool companies should report the actual gross billed revenues (CABS Revenues) reported to the NECA pool and not settlement revenues received from the pool. For international services, gross revenues consist of gross revenues billed by U.S. carriers with no allowances for settlement payments. Gross revenues should also include any surcharges on communications services that are billed to the customer and either retained by the carrier or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded as revenue but which instead are remitted to government bodies. Carrier revenue data for Calendar 1994 should be taken from the latest available company official records as of April 1995.

Report carrier revenues using the categories shown in column (a) of Block 2. Carriers required to use the Uniform System of Accounts (USOA) prescribed in Part 32 of Commission's rules should base their response on their USOA account data. Other carriers should divide gross revenues based on the following descriptions. Do not use categories 8 or 14 revenues that logically should be placed in other categories.

Line (5)—Local exchange service—should include the basic local service revenues of local exchange carriers except for local private line revenue, access revenues, and revenues from providing mobile or cellular services to the public. Line (5) should include Account 5001—basic area revenue; Account 5002—Optional extended area revenue; Account 5003—Cellular mobile revenue (revenue to the local exchange carrier for messages between a cellular customer and another station within the mobile service area); Account 5050—Customer premises revenue; Account 5060—Other local exchange revenue; and, Account 5069—Other local exchange revenue settlements. Line (5) should also include amounts in Account 5004—Other mobile services revenue—that were derived from connecting with mobile service carriers.

Line (5) should not include Account 5010—pay telephone revenues. Such revenues should be included in Line (11)—Operator service and pay telephone revenues. In addition, Line (5) should not include revenues from the Universal Service Fund and Lifeline Assistance Revenues (reimbursement for the waived portion of subscriber line charges). Such revenues should be included in Line (9)—Interstate access revenues.

Line (6)—Local private line service—should include revenues from providing

local services that involve dedicated circuits, private switching arrangements and/or predefined transmission paths. Line (6) should include amounts recorded in Account 5040—Local private line revenue.

Line (7)—Mobile radio, cellular, paging and PCS—should include revenues from the provision of mobile radio, cellular, paging and personal communications services to the public. Line (7) should also include amounts in Account 5004—Other mobile services revenue—that were derived from providing service directly to the public.

Line (8)—Alternative access & other—should include all other local service revenues, including revenues for competitive access providers. Line (8) should include Account 5200—Miscellaneous revenue.

Long distance revenues include intrastate, interstate, and international long distance services. Divide long distance revenues between access service, operator service, other switched service, long distance private line services, and all other long distance services.

Line (9)—Interstate access—should include revenues in Account 5081—End User revenue; Account 5082—Switched access revenue; and, Account 5083—Special access revenue. In addition, Line (9) should include revenues from the Universal Service Fund and Lifeline Assistance Revenues (reimbursement for the waived portion of subscriber line charges). Only carriers collecting revenues pursuant to interstate access tariffs filed with the FCC should be reporting non-zero amounts on Line (9).

Line (10)—Intrastate access—should include revenues in Account 5084—State access revenue. Only carriers collecting revenues pursuant to intrastate access tariffs should be reporting data in Line (10).

Line (11)—Operator service and Pay Telephone—should include all calling card or credit card calls, person to person calls, and calls with alternative billing arrangements such as third number billing and collect calls. In addition, Line (11) should also include all pay telephone revenue, including all revenue in Account 5010. Operator service revenues should include all toll traffic from coin, public and semi-public, accommodation and prison telephones.

Line (12)—Non-operator switched toll service—should include amounts from Account 5100—Long distance message revenue—except for amounts reported in Line (11). Line (12) includes WATS, 800, 900, "WATS like" and similar switched services.

Line (13)—Long distance private line service—should include revenue from dedicated circuits, private switching arrangements, and/or predefined transmission paths, extending beyond the basic service area. This category should include the resale of special access services. Line (13) should include Account 5120—Long distance private network revenue.

Line (14)—All other long distance—should include all other revenues from providing long distance communications services. Line (14) should include Account 5160—Other long distance revenue.

Total the figures in column (b) for Line (5) through Line (14) and enter this amount in

Line (15b). This should represent the total communications revenues for the company.

2. Column (c) and Column (d)

For each entry in Line (5) through Line (14), estimate the percentage of the amounts reported in column (b) that are for interstate and/or international service, and enter this percentage in Column (c). Interstate revenues include all revenues received for calls that do not originate and terminate in the same state. For example, if a cellular carrier collects a fixed amount of revenue per minute of traffic, and 10% of minutes are interstate, then interstate revenues would include 10% of the per minute revenues.

Wherever possible, carriers should calculate the percentage of total revenues that are interstate by using information from their books of accounts and other internal data reporting systems. Carriers who cannot calculate a percentage by using information from their books of accounts and other internal data reporting systems, may elect to rely on a special study to estimate the percentages. Place a check mark in Column (d) if the percentage shown in column (c) was based on a special study—e.g. not based on a direct calculation from revenue amounts taken from the carrier's books of account.

3. Column (e)

Multiply the gross revenues reported in column (b) by the interstate percentages reported in column (c), putting the results in column (e). The sum of the figures in column (e), Lines (5) through (14), should be entered in Line (15e).

*C. Block 3: Calculation of Contribution*

Use block 3 in the worksheet to calculate the TRS contribution for the period April 1995 through March 1996. Total interstate revenues from Line (15e) should be copied to Line (16). This amount must be multiplied by the Contribution Rate shown in Line (17), with the result entered in Line (18). The contribution rate is 0.00023 for the 1995 filing year.

If the result of the calculation is less than \$100, then the total contribution for the year is \$100. If the total contribution is less than \$1,200, then the carrier should remit the total contribution with the worksheet. If the total liability is equal to or greater than \$1,200, then the carrier may elect to make 12 equal monthly payments. The monthly contribution should be calculated as the amount in Line (18) divided by 12.0, rounded to the nearest whole dollar. Enter the amount of the April 26, 1995 fund contribution in Line (19). If the carrier elects to make monthly contributions, the eleven additional monthly contributions must be received by the 26th of succeeding months, May 1995 through March 1996.

Section II—B above provides directions for mailing the completed TRS Fund Worksheet and checks for amounts due to the FCC Fund Administrator. Carriers who check the box in Line (19) will receive monthly payment reminders. These reminders will be mailed to the address shown in Line (25b). Contact the NECA, the TRS Fund Administrator to make other arrangements. Failure to receive a reminder notice will not justify late payment.

*D. Block 4: Certification*

An officer of the fund contributor must examine the data provided in the TRS Fund Worksheet and certify that the information provided therein is accurate. In addition, the fund contributor should provide the name of a contact person who can provide clarifications, if necessary, and who could serve as the first point of contact in the event that either the FCC or the FCC Fund Administrator should choose to audit information provided by the company.

Line (25b) should contain the address of the contact person. The 1996 TRS Fund Worksheet will be sent to this address unless other arrangements are made with the TRS Fund Administrator.

Line (26) provides a check off to show whether the worksheet is the original filing for 1995, or whether the worksheet is a

revised 1995 filing. A Carrier must file a revised worksheet if it discovers an error in the data that it reports. Carriers generally close their books for financial purposes by April. Carriers should not report routine out of period adjustments to revenue data unless such adjustments would affect a reported amount by more than 10%. Carriers should not file a revised Form 431 to reflect mergers, acquisitions, or sale of operating units. In the event that a carrier that filed a Form 431 no longer exists, the successor company to the carrier's assets or operations is responsible to continue making payments for the funding period.

**IV. Reminders**

- Each affiliate or subsidiary must file separately. Each affiliate or subsidiary should show the same holding company name on Line (1c).
- Provide data for all lines that apply. Show a zero for all items where the carrier had no revenue for calendar 1994.
- Only LECs should be reporting revenue on Line (5).
- Only carriers with access tariffs should be reporting access revenues on Line (9) and Line (10).
- All pay telephone, credit card, debit card, and operator assisted revenue should be included on Line (11).
- Check the special study box for each line where the percentage of interstate revenues cannot directly calculated from revenue amounts taken from the carrier's books of account.
- Include the legal name of the carrier—as shown on Line (1a)—on all TRS fund checks. Also include the TRS company code on checks. The TRS company code is assigned by NECA, the TRS Fund Administrator.

BILLING CODE 6712-01-M

**1995 TRS Fund Worksheet**

(Please read instructions before completing)

Estimated Average Burden Hours Per Response: 2 hours

**Block 1: Carrier Identification** TRS Company Code supplied by NECA >

1a Legal Name of Carrier >

1b Principal Communications Business (check only one)  
 LEC  Cellular  Mobile  OSP  IXC  CAP  Pay Telephone  Reseller  Other (explain)  
 PCS

1c Holding Company >

1d Principal CIC code used for interexchange service >

2 Principal Business Name for Carrier >

3 Complete Mailing Address of Carrier Corporate Headquarters >

4 Telephone # for Customer Inquiries > ( ) -

**Block 2: Carrier Revenue Data for Calendar Year 1994** Note: Please report whole dollars without further rounding

(a)	Gross Revenues (b)	% interstate (c)	Special study (d)	Interstate Revenues (e) = (b) x (c)
<b>Local Services</b>				
5 Local exchange service	\$	%		\$
6 Local private line service	\$	%		\$
7 Mobile radio, cellular, paging & PCS	\$	%		\$
8 Alternative access & other	\$	%		\$
<b>Long Distance</b>				
9 Interstate access	\$	100 %		\$
10 Intrastate access	\$	0 %		\$ 0
11 Operator service & Pay Telephone	\$	%		\$
12 Non-operator switched toll service	\$	%		\$
13 Long distance private line service	\$	%		\$
14 All other long distance	\$	%		\$
15 Total lines 5 through 14	\$			\$

**Block 3: Calculation of Contribution** Note: Please report whole dollars without further rounding.

16 Interstate Revenues from Line 15e \$

17 Contribution Rate: x 0.00023

18 Total CONTRIBUTION for April 1995 through March 1996: line 16 x line 17  
 [The minimum contribution is \$100] \$

19 Contribution to be paid this month:  
 (Enter the amount from line 18 if it is less than \$1200. Otherwise, the contributor may divide the amount on line 18 by 12.0 to calculate equal monthly contributions.)  
 Check here for monthly billing reminders >  \$

**Block 4: CERTIFICATION**

I certify that I am an officer of the carrier named above, that I have examined the foregoing report and that to the best of my knowledge, information and belief, all statements of fact contained in this worksheet are true and that said worksheet is an accurate statement of the affairs of the above named carrier for the period January 1, 1994 through December 31, 1994.

20 Printed Name of Officer >

21 Position with carrier >

22 Signature >

23 Date >

24 Contact Person >

25a Telephone Number of Contact Person > ( ) -

25b Complete Mailing Address of Contact:  
 (Filing information and the 1996 TRS Fund Worksheet will be sent to this address.) >

26 This filing is:  Original filing for 1995  Revised filing for 1995

Mail checks to: NECA TRS P.O. Box 360090 Pittsburgh, PA 15251-0090 For additional information call NECA 201-884-8173  
 Mail worksheet and photocopy of checks to: NECA - FCC TRS Fund Administration 100 South Jefferson Rd. Whippany, NJ 07981

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER THE COMMUNICATIONS ACT, 47 U.S.C. 220(e)

FCC 431  
 January 1995

**FEDERAL RESERVE SYSTEM****Abess Properties, Ltd.; Acquisition of Company Engaged in Permissible Nonbanking Activities**

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 26, 1995.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Abess Properties, Ltd.*, and City National Bancshares, Inc., both of Miami, Florida, to acquire an additional 20.6 percent of the outstanding voting shares, for a total of 30.15 percent, of Turnberry Savings & Loan Association, North Miami Beach, Florida and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y. The proposed

activity will be conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, January 6, 1995.

**Jennifer J. Johnson**,  
*Deputy Secretary of the Board.*

[FR Doc. 95-766 Filed 1-11-95; 8:45 am]

BILLING CODE 6210-01-F

**Albert City Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 6, 1995.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Albert City Bankshares, Inc.*, Albert City, Iowa; to acquire 94 percent of the voting shares of The Citizens State Bank, Marathon, Iowa.

2. *First Michigan Bank Corporation*, Holland, Michigan; to acquire 100 percent of the voting shares of Superior Financial Corporation, Sault Sainte Marie, Michigan, and thereby indirectly acquire Sault Bank, Sault Sainte Marie, Michigan.

3. *National Bancorp, Inc.*, Melrose Park, Illinois; to acquire 100 percent of the voting shares of Northwest Community Bank, Prospect Heights, Illinois, a *de novo* bank.

4. *West Plains Investors, Inc.*, Pleasant Plains, Illinois; to become a bank

holding company by acquiring at least 80 percent, but up to 98.24 percent of the voting shares of Pleasant Plains State Bank, Pleasant Plains, Illinois.

Board of Governors of the Federal Reserve System, January 6, 1995.

**Jennifer J. Johnson**,  
*Deputy Secretary of the Board.*

[FR Doc. 95-767 Filed 1-11-95; 8:45 am]

BILLING CODE 6210-01-F

**E. Ross Harris; Change in Bank Control Notice****Acquisition of Shares of Banks or Bank Holding Companies**

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 6, 1995.

**A. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *E. Ross Harris*, George West, Texas; to acquire an additional 1.74 percent, for a total of 11.65 percent, of the voting shares of Live Oak Bancshares Corporation, George West, Texas, and thereby indirectly acquire First National Bank, George West, Texas.

In connection with this proposal, E. Ross Harris, Thomas J. Martin, Jr., and Joseph R. Schruder have applied as voting representatives for a voting and stock restriction agreement to control 66 percent of the outstanding shares of Live Oak Bancshares Corporation.

Board of Governors of the Federal Reserve System, January 6, 1995.

**Jennifer J. Johnson**,  
*Deputy Secretary of the Board.*

[FR Doc. 95-768 Filed 1-11-95; 8:45 am]

BILLING CODE 6210-01-F

### KeyCorp; Notice of Application to Engage *de novo* in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 26, 1995.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *KeyCorp*, Cleveland, Ohio; to engage *de novo* through its subsidiary, *KeyCorp Finance, Inc.*, in making, acquiring, and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 6, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95-769 Filed 1-11-95; 8:45 am]

BILLING CODE 6210-01-F

### GENERAL SERVICES ADMINISTRATION

#### Industrial Funding of Federal Supply Schedule Program

**AGENCY:** General Services Administration, Federal Supply Service.

**ACTION:** Notice; corrections.

**SUMMARY:** This notice makes corrections to a notice published for comment on December 27, 1994 (59 FR 66545).

**FOR FURTHER INFORMATION CONTACT:** Linda S. Hauenstein, FCO (703) 305-5272.

**SUPPLEMENTARY INFORMATION:** A typographical error was made Under Paragraph A, Background, second paragraph, third sentence from end of paragraph. The amount shown that the contractor will invoice GSA should be \$90.00, and not \$90.90. Another similar typographical error was made in the example shown under Paragraph 7c. The amount shown in the sentence that reads, "The contractor invoices GSA at the awarded contract price of \$90.90" should be \$90.00.

Dated: January 5, 1995.

**Nicholas M. Economou,**

*Director, FSS Acquisition Management Center.*

[FR Doc. 95-774 Filed 1-11-95; 8:45 am]

BILLING CODE 6820-24-M

#### Interagency Committee for Medical Records (ICMR) Cancellation and Establishment of Medical Forms

**AGENCY:** General Services Administration.

**ACTION:** Notice.

**SUMMARY:** Standard Form 520, Clinical Record—Electrocardiographic Record is being cancelled and replaced by Optional Form 520, Medical Record—Electrocardiographic Record. Now that many facilities use automated EKG tracings and report interpretation, SF 520 is usually not completed. Only some of the smaller hospitals who still collect this data manually will use the new Optional form. This form is authorized for local reproduction. Upon request, a camera copy of OF 520 will be provided by the General Services Administration (CARM), Attn.: Barbara Williams, (202) 501-0581.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Williams, General Services Administration, (202) 501-0581.

Dated: December 29, 1994.

**Theodore D. Freed,**

*Chief, Forms Management Branch.*

[FR Doc. 95-775 Filed 1-11-95; 8:45 am]

BILLING CODE 6820-34-M

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Agency for Health Care Policy and Research

#### Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

**AGENCY:** Agency for Health Care Policy and Research, HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

**DATES:** The meeting will be open to the public on Monday, January 23, from 1:00 p.m. to 5:45 p.m., and on Tuesday, January 24, from 8:30 a.m. to 10:30 a.m.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act, a meeting closed to the public will be held on January 24, 1995, from 10:30 a.m. to 12:00 p.m. to discuss the relative emphasis and focus of topics in the AHCPR grant portfolio. The discussion could reveal confidential personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

**ADDRESSES:** The meeting will be held at the ANA Hotel, 2401 M Street, N.W., Washington, D.C. 20037.

**FOR FURTHER INFORMATION CONTACT:** Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 603, Rockville, Maryland 20852, (301) 594-1459.

In addition, if sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594-6666 no later than January 13, 1995.

**SUPPLEMENTARY INFORMATION:****I. Purpose**

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to the activity of AHCPR to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These current members are: Marion F. Bishop, Ph.D.; Linda Burnes Bolton, Dr.P.H.; John W. Danaher, M.D.; William S. Kiser, M.D.; Walter J. McNerney, M.H.A.; and Louis F. Rossiter, Ph.D.

Eleven new members will be appointed shortly.

There also are Federal ex officio members. These members are:

Administrator, Substance Abuse and Mental Health Services Administration; Director, National Institutes of Health; Director, Centers for Disease Control and Prevention; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

**II. Agenda**

On Monday, January 23, 1995, the open portion of the meeting will begin at 1:00 p.m. with the call to order by the Council Chairman. The Administrator will introduce new and reappointed members to the Council and discuss the broad strategic plan for AHCPR and related organizational issues. The Administrator, AHCPR, will conclude the afternoon meeting with a discussion of new AHCPR initiatives. The meeting will adjourn at 5:45 p.m.

On Tuesday, January 24, 1995, the open portion of the Council meeting will resume at 8:30 a.m. with administrative announcements, a discussion of legislative and budget authorities, and a discussion of tools for accomplishing the AHCPR mission. The open meeting will adjourn at 10:30 a.m. The Council will begin the closed portion of the meeting to discuss the AHCPR grant portfolio from 10:30 a.m. to 12:00 p.m. The meeting will then adjourn at 12:00 p.m.

Agenda items are subject to change as priorities dictate.

Dated: January 6, 1995.

**Linda K. Demlo,**

*Acting Administrator.*

[FR Doc. 95-708 Filed 1-11-95; 8:45 am]

BILLING CODE 4160-90-P

**Centers for Disease Control and Prevention**

[Announcement Number 515]

**Cooperative Agreement Program for Urban Center(s) for Applied Research in Public Health****Introduction**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement program for the establishment of an Urban Center(s) for Applied Research in Public Health. Activities coordinated by the Urban Center(s) are intended to use "population laboratories"\* to produce information useful in health policy decisions and planning, thereby enhancing the effectiveness, quality, and cost-effectiveness of preventive and health care delivery systems and improving the health of persons living in the city.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. As the lead Federal agency for prevention, CDC has emphasized evaluation of prevention programs. As part of that continuing effort, CDC is strengthening efforts to assure that public health priorities and program strategies maximize the health of the population relative to the resources expended. Epidemiologic research is required in urban areas both to recognize emerging problems of illness and injury, to describe trends in risk factors, especially among youth and diverse populations, and to better characterize known public health problems. While research is required to identify persons at highest risk, studies are particularly needed to evaluate the efficacy, effectiveness, and economic feasibility of proposed and ongoing preventive interventions.

\* The phrase "population laboratory" as used herein refers to an organization dedicated to epidemiologic, sociologic, and economic study of public health interventions in a well defined urban population. Projects may or may not include support from a laboratory as defined in the traditional clinical setting.

Residents of many urban neighborhoods have high rates of disease and injury, such as sexually transmitted diseases and AIDS, tuberculosis, lead toxicity, diabetes, asthma, violence, and teen pregnancy. Interventions to reduce these problems must address the complex social, behavioral, and economic conditions of the communities as well as the determinants of the specific diseases and injuries themselves. These comprehensive, multidisciplinary interventions need to be implemented and evaluated to determine their effectiveness and cost effectiveness. This cooperative agreement is intended to create an interdisciplinary urban center to work with the community. The center will assess the health impact of interventions targeted to address underlying problems contributing to high rates of disease and injury.

CDC also recognizes the vital importance of measuring the impact on health (including effectiveness, safety, and cost) of prevention policies, programs, and practices. The assessment of prevention effectiveness is the ongoing process of applying evaluation tools to prevention practices.

This announcement is related to all of the priority area(s) of Healthy People 2000. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

**Authority**

This program is authorized under section 301 of the Public Health Service Act (42 U.S.C. 241) as amended.

**Smoke-Free Workplace**

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

**Eligible Applicants**

Assistance will be provided only to local (city/county) health departments or research organizations collaborating with local health departments of the fifty largest U.S. cities ranked by population per square mile (as determined from the County and City Book 1994—refer to Attachment A). Applications should be made by the local (city or county) department of health or by one or more other organizations (e.g., academic, technical, or community organizations) with a written indication of support from the local health department. Therefore, there should be only one application per

geographic area (e.g., the responsible local health agency may apply as a single applicant or in consortium). The list of organizational partners should include at least one with demonstrated substantial expertise in epidemiologic research, evaluation, economics, and quantitative policy analysis. In addition, collaboration with health care providers, especially managed care organizations, will be of significant importance. The interests of the community organizations should be incorporated into the development of this cooperative agreement.

#### Availability of Funds

Federal financial assistance totalling approximately \$600,000 is available in FY 1995 to fund up to three awards in support of core activities. Awardees will be expected to secure additional funding from other sources (public and private sector support). It is expected that the award(s) will be made on or about April 1, 1995, and will extend for a 12-month budget period. Projects may be approved for a period of up to 5 years, renewable on an annual basis. Federal funding estimates may vary and are subject to change. Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds. Funds for specific program project activities may be added to the awards in subsequent years upon availability.

Grant awards cannot supplant existing funding for epidemiologic research in urban areas. Eligible applicants are encouraged to secure additional funds from other sources, including consortia agreements, as necessary, to meet the requirements of the program and strengthen the overall application.

#### Purpose

The purpose of this cooperative agreement is to assist the recipient in the development of an urban "population laboratory" which utilizes the combined resources of the recipient, other local organizations, the local community, and CDC. The goal is to promote collaborative epidemiologic and prevention effectiveness research on the most serious health threats facing urban residents; and thereby, developing information for public health planning and for improving the health of citizens. A key aim of this center will be to identify opportunities related to the inner city. The Center will be beneficial to CDC by unifying the process of community planning.

The specific objectives of the population laboratory are as follows:

A. To assess the availability and capacity of existing prevention programs offered by State and local health agencies; public and private health care providers; and other community or lay organizations.

B. To foster the development of collaborative relationships among the population laboratory, CDC, and the State and local health departments for the purpose of focusing the expertise of academic institutions and community based organizations on high priority urban health problems.

C. To develop and implement organizational and sociological intervention studies to optimize effectiveness in prevention programs by involving the community in planning, program design, and related public health activities.

D. To develop a multidisciplinary approach to prevention programs and to develop, test, evaluate, and disseminate model programs to enhance health promotion and disease and injury prevention in various settings and populations.

#### Program Requirements

Applications that do not meet the following requirements will be considered non-responsive. Applicants must:

- Provide evidence of working relationships with partner organizations and community leaders which allow evaluation and implementation of any proposed intervention activities.
- Provide evidence of supplemental technical and financial assistance from other "partner organizations."
- Provide evidence of expertise in research related to urban and minority health issues or a planned process for developing such expertise in a short timeframe.
- Provide evidence/plans for core activities, demonstration projects, collaborations/collaborative projects with State/local health departments and academic institutions.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A, (Recipient Activities), and CDC will be responsible for the activities listed under B, (CDC Activities).

#### A. Recipient Activities

1. Establish and operate a demonstration population laboratory for epidemiologic, social science, behavioral science, and prevention effectiveness research.

a. Establish the population laboratory in a defined population in a geographically defined urban area.

b. Establish an Executive Board composed of representatives from the community as well as public health, academic, health care community leaders and private partners to provide advice and guidance to the Urban Center Project Director, as needed. The recipient will obtain participation and input from community-based organizations in the proposed geographic area.

2. Propose and conduct multidisciplinary research dedicated to improving the health and well-being of urban populations. Address research topics of typical urban health problems (e.g., HIV transmission and AIDS, tuberculosis, violence, lead poisoning, immunization, diabetes, and cardiovascular disease).

3. Manage, analyze, and interpret data from population laboratory projects, and publish and disseminate important public health information stemming from population laboratory projects.

4. Monitor and evaluate scientific and operational accomplishments of the population laboratory and progress in achieving the purpose and overall goals of this program.

5. Document findings in the scientific literature.

6. Evaluate specific interventions (programs) to address typical urban health problems researched in #2 of Recipient activities.

7. Foster the development of prevention programs that are not categorical but that cut across health issues that affect common populations. Coordinate activities with CDC's Prevention Centers program.

#### B. CDC Activities

1. Assign a CDC scientist on-site to function as liaison, provide technical assistance, and facilitate collaboration of population laboratory staff with CDC staff. The assignee will provide cross-cutting coordination for all CDC Centers, Institute, and Offices (CIO) programmatic activities which are relevant to the Urban Center(s) activities, especially activities undertaken by CDC's Prevention Centers program.

2. Provide consultation and scientific and technical assistance in designing and conducting individual population laboratory projects.

3. Participate in analysis and interpretation of data from population laboratory projects. Participate in the dissemination of findings and information stemming from population laboratory projects.

4. Monitor and evaluate scientific and operational accomplishments of the population laboratory and progress in

achieving the purpose and overall goals of this program.

#### Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading Program Requirements (a listing of where these requirements are described and/or documented in the application will facilitate the review process). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive will undergo an initial peer evaluation of the scientific and technical merit to warrant further review; the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. The second review will be conducted by senior Federal staff, who will consider the results of the first review together with program need and relevance. Awards will be made based on merit and priority score ranking by the peer review, program review by senior Federal staff, and the availability of funds.

A. The Objective Review Committee may recommend approval or disapproval based on the content of the application and the following criteria:

1. The Population Laboratory for Applied Research in Public Health Purpose (5 points)

The extent to which the efforts will result in innovative approaches or interventions to meet health priorities, emerging health and other health needs of urban residents, or an identified demographic group, or combination thereof.

2. Overall program plan (10 points)

The extent to which the overall program plan has clear objectives that are specific, measurable, and realistic, and makes effective use of population laboratory resources to advance the population laboratory's purpose.

3. Strategy and Technical Approach (45 points)

The technical and scientific merits of the proposed projects, the potential to achieve the stated objectives and the extent to which the applicant's plans are consistent with the purpose of the program.

a. Core activities (10 points)

—Description of the core activities of the Urban Center.

b. Collaborations/collaborative projects with State/local health departments and academic institutions (35 points)

—Plan for including community-based organizations, State and local health departments, and academia in planning, developing, and implementing collaborative projects (15 points)

—Plan for conducting collaborative assessments to identify urban health issues (5 points)

—Plan to identify, train, and involve community residents in program activities (5 points)

—Project descriptions of collaborative projects (10 points)

4. Evaluation plan (5 points)

The extent to which the overall population laboratory objectives will be evaluated in regards to progress, efficacy, and cost benefit to the urban areas.

5. Management and staffing plan (15 points)

The extent to which the applicant demonstrates the ability and capacity to carry out the overall objectives and specific project plans. Elements to consider include:

(a) Demonstrated knowledge and experience of the proposed project director in planning and managing large and complex interdisciplinary programs involving public health and urban issues (5 points);

(b) Demonstrated knowledge and experience of the proposed staff in carrying out the project objectives, including the percentage of time each person will devote to each project/activity (5 points); and

(c) Institutional capacity, demonstrated by the experience and continuing capability of the State and local health departments, academia, and community-based organizations to initiate and implement similar projects.

Applicant should describe previous related efforts and the current capacity of its collaborators/collaborating organizations (5 points).

6. Institutionalization plan/Collaboration (20 points)

The population laboratory's plan for collaborating and developing relationships with local/State health departments, academic/research institutions, and community leaders. Extent to which the applicant demonstrates that proposed activities

are being conducted in conjunction with, or through, organizations with known and established ties in the identified urban area. Evidence of support and participation from appropriate community-based organizations in the form of memoranda of understanding or other agreements of collaboration.

7. Budget (not scored)

The extent to which the budget and justification are consistent with the program objectives and purpose. Applicants are strongly urged to include a plan for obtaining additional resources that lead to institutionalization of the population laboratory.

B. Review by senior Federal staff

Further review will be conducted by Senior Federal staff.

Factors to be considered will be:

1. Results of the peer review.
2. Program needs and relevance to national goals.
3. Budgetary considerations.

#### Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list is included in the application kit. If SPOC have any State process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E-13, Atlanta, Georgia 30305, no later than 60 days after the deadline date for new and competing awards. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

#### Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the

items identified below to the head of the appropriate State and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

- A. A copy of the face page of the application (PHS 398, AA).
- B. A summary of the project that should be titled "Public Health System Impact Statement" (PHSIS), not exceed one page, and include the following:
  1. A description of the population to be served;
  2. A summary of the services to be provided; and
  3. A description of the coordination plans with the appropriate State and/or local health agencies.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the SPOC or directly from the applicant.

#### **Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance number is 93.135.

#### **Other Requirements**

##### *A. Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

##### *B. Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

#### **Application Submission and Deadlines**

##### *A. Preapplication Letter of Intent*

Although it is not a prerequisite to apply, potential applicants are encouraged to submit a non-binding letter of intent to apply to the Grants Management Officer (whose address is given in this section, Item B). It should

be postmarked on or before February 21, 1995. The letter should identify the announcement number being responded to, title and brief description of the proposed population laboratory, and the names and addresses of the principal investigators. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently.

##### *B. Applications*

Applicants should submit an original and five copies of form PHS-398 (OMB Number 0925-0001) to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E-13, Atlanta, Georgia 30305, on or before March 13, 1995.

##### *C. Deadlines*

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or
2. Sent on or before the deadline date and received in time for submission to the peer review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

##### *D. Late Applications*

Applications which do not meet the criteria in C.1 or C.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

#### **Where to Obtain Additional Information**

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E-13, Atlanta, Georgia 30305, telephone (404) 842-6814. Programmatic technical assistance may be obtained from Mary Moreman, Project Officer, Epidemiology Program Office, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C-08, Atlanta, Georgia 30333, telephone (404) 488-4390.

Please refer to Program Announcement Number 515 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock number 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock number 017 001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: December 19, 1994.

#### **Joseph R. Carter,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

#### **Attachment A**

50 largest U.S. Cities with 200,000 or more population ranked by population per square mile, 1992 (reference: County and City Data Book 1994)

New York, NY  
 San Francisco, CA  
 Jersey City, NJ  
 Chicago, IL  
 Philadelphia, PA  
 Boston, MA  
 Newark, NJ  
 Santa Ana, CA  
 Miami, FL  
 Washington, D.C.  
 Baltimore, MD  
 Long Beach, CA  
 Buffalo, NY  
 Los Angeles, CA  
 Detroit, MI  
 Oakland, CA  
 Minneapolis, MN  
 Pittsburgh, PA  
 Rochester, NY  
 Cleveland, OH  
 Milwaukee, WI  
 St. Louis, MO  
 Seattle, WA  
 Anaheim, CA  
 St. Paul, MN  
 Cincinnati, OH  
 Norfolk, VA  
 San Jose, CA  
 Honolulu, HI  
 Louisville, KY  
 Stockton, CA  
 Toledo, OH  
 Sacramento, CA  
 St. Petersburg, FL  
 Fresno, CA  
 Akron, OH  
 Portland, OR  
 Las Vegas, NE  
 San Diego, CA  
 Omaha, NE  
 Columbus, OH  
 Richmond, VA  
 Denver, CO  
 Houston, TX

Riverside, CA  
Baton Rouge, LA  
Albuquerque, NM  
Atlanta, GA  
Dallas, TX  
Arlington, TX

**Local Health Departments for the 50 Largest Urban Cities**

New York City, Dept of Health, 125 Worth St., New York, NY 10013, (212) 788-5261  
Los Angeles County Department of Health Services, 313 North Figueroa, Room 930, Los Angeles, CA 90012, (213) 240-8156  
Chicago Department of Health, DePaul Center, 333 South State, 2nd Floor, Chicago, IL 60602, (312) 747-9870  
City of Houston Health and Human Services, 8000 North Stadium Dr., Houston, TX 77054, (713) 794-9311  
Philadelphia Department of Health, 1600 Arch St., Seventh Floor, Philadelphia, PA 19103, (215) 686-5043  
San Diego County Department of Health Services, Suite 211, 1700 Pacific Highway, San Diego, CA 92101, (619) 236-7633  
Detroit Health Department, Herman Kiefer Health Complex, 1151 Taylor, Detroit, MI 48202, (313) 876-4000  
Dallas County Health Department, 1936 Amelia Court, Dallas, TX 75235-7795, (214) 920-7910  
Santa Clara County Health Department, 2220 Moorpark Ave., San Jose, CA 95128, (408) 299-2301  
Baltimore City Health Department, Eighth Floor, 303 East Fayette St., Baltimore, MD 21202, (410) 396-4387  
San Francisco Department of Health, 101 Grove St., Suite 306, San Francisco, CA 94102, (415) 554-2600  
Franklin County Health Department, 410 South High St., Courthouse Annex, Fifth Floor, Columbus, OH 43215, (614) 462-3160  
City of Milwaukee Health Department, 841 North Broadway, Room 112, Milwaukee, WI 53202, (414) 278-3521  
District of Columbia Division of Public Health, Suite 1200, 1660 L St., NW, Washington, D.C. 20036, (202) 673-7700  
City of Boston Department of Health and Hospitals, 818 Harrison Ave., Boston, MA 02118, (617) 534-5365  
Seattle/King County Health Department, Suite 600, 110 Prefontaine Place, South, Seattle, WA 98104, (206) 296-4603  
Cuyahoga County Health Department, One Playhouse Square, 1375 Euclid Ave., Cleveland, OH 44115, (216) 443-7500  
Denver Department of Health, 605 Bannock, Denver, CO 80204, (303) 436-7200

Mulnomah County Department of Health, Eighth Floor, 426 Southwest Stark, Portland, OR 97204, (503) 248-3674  
Department of Health and Human Services, City of Long Beach, 2525 Grand Ave., Long Beach, CA 90806, (310) 570-4014  
City of St. Louis, 634 North Grand, Ninth Floor, St. Louis, MO 63103, (314) 658-1140  
Fulton County Health Department, District 3, Unit 2, 99 Butler St., SE, Atlanta, GA 30303, (404) 703-1205  
District Health Department, Box 25846, 1111 Stanford Dr., N.E., Albuquerque, NM 87125, (505) 841-4100  
Alameda County Health Care Services Agency, 409 Fifth St., Oakland, CA 94607, (510) 268-2727  
Allegheny County Health Department, 3333 Forbes Ave., Pittsburgh, PA 15213-9913, (412) 578-8026  
Sacramento County Health Department, 3701 Branch Center Rd., Sacramento, CA 95827, (916) 366-2181  
Hennepin County Community Health Department, Third Floor, 525 Portland Ave., South, Minneapolis, MN 55415, (612) 348-4382  
Hawaii State Department of Health, 1250 Punchbowl St., PO Box 3378, Honolulu, HI 96801, (808) 548-6505  
Cincinnati Health Department, 3101 Burnet Ave., Cincinnati, OH 45229-3098, (513) 357-7285  
Dade County Health Department, 1350 Northwest 14th St., Miami, FL 33125, (305) 324-2400  
Fresno County Department of Health, 1221 Fulton Mall, PO Box 11867, Fresno, CA 93775, (209) 445-3202  
Douglas County Health Department, 1819 Farnam St., Room 401, Omaha, NE 68183-0401, (402) 444-7472  
Toledo Health Department, 635 North Erie St., Health Center, Toledo, OH 43624, (419) 245-1711  
Erie County Health Department, Rath Office Building, 95 Franklin St., Buffalo, NY 14202, (716) 858-7690  
Jersey City Division of Health, 586 Newark Ave., Jersey City, NJ 07306, (201) 547-5168  
Newark Department of Health, and Welfare, 110 Williams St., Newark, NJ 07102, (201) 733-5310  
Orange County Health Department, Box 355, Santa Ana, CA 92702, (714) 834-3155  
Monroe County Health Department, 111 Westfall Rd., Health and Social Services Building, Rochester, NY 14692, (716) 274-6068  
Dakota County Community Health Services, Suite 345 West, 33 East Wentworth, St. Paul, MN 55118, (612) 450-2608

Norfolk Department of Public Health, Norfolk City Health District, 401 Colley Ave., Norfolk, VA 23507  
Louisville/Jefferson County Health, Department, PO Box 1704, Louisville, KY 40202, (502) 625-6530  
San Joaquin Local Health District, 1601 East Hazelton Ave., PO Box 20009, Stockton, CA 95201, (209) 468-3411  
Pinellas County Health Unit, 500 Seventh Ave., South, PO Box 13549, St. Petersburg, FL 33701, (813) 824-6924  
Akron City Health Department, 177 South Broadway, Akron, OH 44308-1799, (216) 375-2960  
Clark County Health Department, PO Box 4426, Las Vegas, NV 89106, (702) 383-1201  
Henrico County Health Department, Henrico Gov't Center, Human Services, 8600 Dixon Powers Dr., Box 27032, Richmond, VA 23273  
Riverside County Health Department, 4065 County Circle Dr., Riverside, CA 92503, (909) 358-5058  
Capitol Regional Health Department, Region II, 1772 Wooddale Boulevard, Baton Rouge, LA 70806, (504) 925-7200  
Texas Department of Health, Region #5, 2561 Matlock, Arlington, TX 76015, (817) 459-6767.

[FR Doc. 95-790 Filed 1-11-95; 8:45 am]

BILLING CODE 4163-18-P

**Food and Drug Administration**

[Docket No. 94F-0415]

**Ashland Chemical Co.; Filing of Food Additive Petition**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Ashland Chemical Co., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polypropylene glycol with a molecular weight range of 1,200-3,000 grams per mole (g/mol), as a defoaming agent in processing beet sugar and yeast.

**FOR FURTHER INFORMATION CONTACT:** Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204-0002, 202-418-3076.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5A4436) has been filed by

Ashland Chemical Co., One Drew Plaza, Boonton, NJ 07005. The petition proposes to amend the food additive regulations in § 173.340 *Defoaming agents* (21 CFR 173.340) to provide for the safe use of polypropylene glycol with a molecular weight range of 1,200–3,000 g/mol, as a defoaming agent in processing beet sugar and yeast.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 4, 1995.

**Alan M. Rulis,**

*Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 95–837 Filed 1–11–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94F–0451]

### The Shepherd Color Co., Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that The Shepherd Color Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of copper chromite black spinel (C.I. Pigment Black 28) as a colorant for polymers intended for use in contact with food.

**DATES:** Written comments on the petitioner's environmental assessment by February 13, 1995.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4446) has been filed by The Shepherd Color Co., 4539 Dues Dr., Cincinnati, OH 45246. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of copper chromite black

spinel (C.I. Pigment Black 28) as a colorant for polymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before February 13, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 4, 1995.

**Alan R. Rulis,**

*Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 95–838 Filed 1–11–95; 8:45 am]

BILLING CODE 4160–01–F

### Health Resources and Services Administration

RIN 0905–ZA45

### Final Review Criterion and Indicators for Grants for Family Medicine Training and Grants for General Internal Medicine and General Pediatrics Training

Grants for Family Medicine Training and Grants for General Internal Medicine and General Pediatrics Training are authorized by sections 747 (a) and (b) and 748, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. These grant programs include:

Grants for Predoctoral Training in Family Medicine  
Grants for Graduate Training in Family Medicine  
Grants for Faculty Development in Family Medicine  
Grants for Establishment of Departments of Family Medicine  
Grants for Residency Training in General Internal Medicine and General Pediatrics  
Grants for Faculty Development in General Internal Medicine and General Pediatrics

A notice was published in the **Federal Register** at 59 FR 50423 on October 3, 1994 to review criterion and indicators for Grants for Family Medicine Training and Grants for General Internal Medicine and General Pediatrics Training. No comments were received within the 30 day comment period. Therefore, the review criterion and indicators remain as proposed.

### Review Criteria

The following review criteria were established in 42 CFR part 57, subparts Q, R, and FF.

1. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner.

2. The potential of the project to continue on a self-sustaining basis after the period of grant support.

3. The degree to which the proposed project adequately provides for the project requirements.

In addition, the following review criterion is finalized for FY 1995:

4. Potential effectiveness of the proposed project in carrying out the training purposes of sections 747 or 748 of the PHS Act.

### Weighted Indicators

*Criterion 1: Potential Effectiveness of the Proposed Project in Carrying Out the Training Purposes of Sections 747 and 748 of the PHS Act*

Indicator 1—Institutional Environment—20 points

Proposal describes the actions taken by the institution (i.e., department, medical school, or other sponsoring health care delivery institution) that demonstrate a high level of support for and promotion of generalist training and practice in community-based settings within underserved urban and rural communities and populations. Examples include organizational mission statements describing support for training and graduating generalists in the primary care disciplines, institutional financial support for such programs, institutional support for rural

practices such as locum tenens, 1-800 numbers for consultations, visiting faculty status for rural practitioners, complementary institutional and other resources to support such programs, and adequate representation of generalist faculty on key academic committees such as Admissions, Selection, Tenure, and Faculty Recruitment.

**Indicator 2—Strategic Outcomes—20 points**

Proposal describes a strategy for the institution's training program that will lead to or sustain a high level of graduates entering generalist residencies and/or practice.

**Indicator 3—Generalist Faculty—10 points**

Proposal includes strong, clinically-oriented generalist faculty who practice in community-based settings that include underserved populations.

**Indicator 4—Promotion of Workforce Diversity—20 points**

Proposal includes a strategy and plan for recruiting and retaining underrepresented minority and disadvantaged faculty, students, trainees and/or residents. Proposal describes the current and projected levels of participation of these underrepresented groups in the program. Applicants are expected to reflect the diversity of the populations within their states.

**Indicator 5—Critical Training Emphasis—10 points**

Proposal includes reference to a curriculum that incorporates Healthy People 2000 objectives in one or more of the following content areas: HIV/AIDS epidemiology, prevention, diagnosis and treatment; substance abuse; or clinical preventive services. Wherever necessary, curriculum is appropriate to the needs of the patient population (culturally competent regarding ethnicity, gender, and sexual orientation) whether that population is urban, rural or underserved.

**Indicator 6—Interdisciplinary Training—10 points**

Except for Faculty Development projects, proposal provides for interdisciplinary clinical training opportunities, i.e., a training environment in which students, interns and/or residents learn to work in teams including varied health care professionals and/or primary care disciplines. The environment is such that the important contributions by each member of the health care team are recognized and utilized in the primary care setting.

**Indicator 7—Clinical Training Settings—10 points**

Except for Faculty Development projects, proposal provides for clinical training in community-based settings within underserved areas or populations.

**Indicator 8—Primary Care Preceptorship—10 points**

For Departments of Family Medicine and Predoctoral Training Programs Only: Training includes a primary care preceptorship that: 1) occurs in the first or second year and is at least four weeks in duration; or 2) is a longitudinal experience of at least five days per semester in both the first and second years.

**Indicator 9—Third-Year Clerkship—20 points**

For Departments of Family Medicine and Predoctoral Training Programs Only: Training includes a required third-year clerkship in family medicine of at least four-weeks duration.

**Indicator 10—Faculty Expertise—30 points**

For Faculty Development Programs Only: Proposal includes adequate balance in faculty expertise to teach the proposed curriculum, e.g., teaching skills, administrative and management skills, or primary care research.

**Indicator 11—Generalism Outcomes/Continuity of Care—30 points**

For General Internal Medicine and/or General Pediatrics Residency Training Program Only: Competing continuation General Internal Medicine and/or General Pediatrics program demonstrates a consecutive 3-year track record of 80% or more graduates entering primary care careers. IN ADDITION, by the beginning of the second year of grant support the competing continuation *OR NEW* General Internal Medicine and/or General Pediatrics program will provide ALL PGY-1 residents (primary care and traditional) entering the Internal Medicine and/or Pediatrics residency with continuity of care training experience comprising a total of 20% (average) over the 3-year training period, scheduled in at least 9 months of each year of training.

**Criterion 2: Administration and Management Ability of the Applicant to Carry Out the Proposed Project in a Cost-Effective Manner**

**Indicator 1—Project Rationale—30 points**

Project plan includes a background statement, a statement of need for the project, and a specific rationale justifying the proposed project. Project plan also describes the links between this proposed project and an effective larger institutional program, i.e., the department, division, residency, etc. This section of the project plan will define the larger purposes of the project, i.e., in what way the project will cause an improvement or expansion in the capability of the larger educational institution or program to deliver quality primary care training.

For competing continuation proposals, a progress report is provided. At a minimum, the report includes a summary of the funded objectives and the accomplishments made during the project period. Progress report includes evaluation data related to each of the project objectives. For applicants who are not currently funded, but who have received funding within the last four years, a discussion is included in the application describing the previously funded objectives, accomplishments and evaluation data relative to those objectives.

**Indicator 2—Project Objectives—40 points**

Project plan contains a detailed description of the project's objectives with measurement indicators for each objective. The plan also includes a description of the methods that will be used to implement the project, e.g., educational strategy, timetable and a resource plan that outlines the faculty, staff, facilities and equipment that will be used, including identification of those resources that already exist or that will be made available by the institution.

**Indicator 3—Budget Justification—30 points**

Project plan indicates the degree to which the proposed objectives relate to the budget narrative and justifies the budget items requested.

**Indicator 4—Evaluation Plan—10 points**

Project plan includes an evaluation strategy for the proposed project to determine achievements in relation to project objectives.

**Indicator 5—Anticipated Problems—10 points**

Project plan defines the problems anticipated in implementing the project and the proposed approaches to resolving such problems as may arise.

**Indicator 6—Institutional Collaboration—15 points**

Project plan includes documentation of the support of individuals or organizations who will collaborate in implementation of this proposed project. Letters of support for the project from the institution, department, faculty, etc., are included. For Faculty Development projects, letters from potential/actual trainees are included.

**Indicator 7—Trainee Grid—10 points**

Except for Departments of Family Medicine, project plan includes a "trainee grid" that defines the type of individuals being trained, how many will be trained, and when they will be trained.

For General Internal Medicine and General Pediatrics Residencies, the grid should also reflect actual and projected numbers of primary care and traditional residents.

**Criterion 3: Economic Viability—The Potential of the Project to Continue on a Self-Sustaining Basis After the Period of the Project Grant****Indicator 1—Continuation Support—10 points**

Proposed projects demonstrate how their support will be continued after cessation of Federal funding. If other projects have been funded under this grant program within the past five years, a financial report discusses how terminated Federal funds have been replaced.

**Indicator 2—Non-Federal Support—10 points**

Financial and in-kind support is or will be provided by state or local government, institution, medical school, department, patient fees, or other private funding sources to supplement the Federal grant.

**Criterion 4: Degree to Which the Proposed Project Adequately Provides for the Project Requirements**

(These indicators (project requirements) have been established in 42 CFR part 57, subparts Q, R, and FF and are summarized below.)

**Establishing Departments of Family Medicine****Indicator 1—Project Director—10 Points****Indicator 2—Administrative Autonomy—15 points****Indicator 3—Control Over Residency Program—10 points****Indicator 4—Evaluation Plans—10 points****Indicator 5—Family Medicine Instruction—10 points****Indicator 6—Full-Time Faculty—10 points****Indicator 7—Academic Status—10 points****Family Medicine Residencies****Indicator 1—Accreditation Status—40 points**

Proposal includes a letter of accreditation from the ACGME/RRC or a letter of approval from the AOA verifying that the residency meets all requirements. All such projects are considered to have satisfied the Project Requirements. To the extent that problems are noted by the accrediting body, the project plan addresses the problems and has a plausible plan for their correction. New programs which have not yet been accredited must meet the project requirements specified in regulations at 42 CFR 57.1604.

**Family Medicine Faculty Development****Indicator 1—Project Director—10 points****Indicator 2—Administrative & Organizational Plan—10 points****Indicator 3—Evaluation Plans—10 points****Indicator 4—Curriculum—25 points****Indicator 5—Eligible Trainees—10 points****Indicator 6—Number of Trainees—0 points****Indicator 7—Length of Training—0 points****Indicator 8—Trainee Support—0 points****Family Medicine Predoctoral Training****Indicator 1—Project Director—10 points****Indicator 2—Administrative & Organizational Plan—10 points****Indicator 3—Evaluation Plans—10 points****Indicator 4—Ambulatory Care Training Settings—20 points****Indicator 5—Curriculum—10 points****Indicator 6—Sponsoring Unit—10 points****Indicator 7—Institutional Strategy—10 points****General Internal Medicine and General Pediatrics Residencies****Indicator 1—Project Director—10 points****Indicator 2—Administrative & Organizational Plan—10 points****Indicator 3—Curriculum Development and Evaluation Coordinator—10 points****Indicator 4—Faculty and Training Personnel—10 points****Indicator 5—Behavioral Science Faculty—10 points****Indicator 6—Resident Recruitment and Selection—10 points****Indicator 7—Requirement for Stipend Support—0 points****Indicator 8—Number and Distribution of Residents—10 points****Indicator 9—Ambulatory Care Training Setting—10 points****Indicator 10—Continuity of Care Experience—0 points****Indicator 11—Other Ambulatory Patient Care Experiences—10 points****Indicator 12—Curriculum Content and Evaluation of Educational Offerings—20 points****Indicator 13—Evaluation of Residents—10 points****General Internal Medicine and General Pediatrics Faculty Development****Indicator 1—Project Director—10 points****Indicator 2—Administrative & Organizational Plan—10 points****Indicator 3—Curriculum—25 points****Indicator 4—Evaluation Plans—10 points****Indicator 5—Eligible Trainees—10 points****Indicator 6—Eligibility for Trainee Stipend Support—0 points****Indicator 7—Length of Training for Stipend Support—0 points**

If additional information is needed, please contact: Enrique Fernandez, M.D., Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A-20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-1467, FAX: (301) 443-8890.

Dated: January 5, 1995.

**Ciro V. Sumaya,**

*Administrator.*

[FR Doc. 95-696 Filed 1-11-95; 8:45 am]

BILLING CODE 4160-15-P

**Health Resources and Services Administration****Final Project Requirements and Review Criteria for Cooperative Agreements for the National AIDS Education and Training Centers Program for FY 1995**

The Health Resources and Services Administration (HRSA) announces the final project requirements and review criteria for Cooperative Agreements for the National AIDS Education and Training Centers (AETCs) Program for FY 1995 authorized under section 776(a), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102-408, dated October 13, 1992.

### Eligibility and Purpose

The Secretary may make awards and enter into contracts to assist public and nonprofit private entities and schools and academic health science centers in meeting the costs of projects.

(1) To train the faculty of schools of, and graduate departments or programs of, medicine, nursing, osteopathic medicine, dentistry, public health, allied health, and mental health practice to teach health professions students to provide for the health care needs of individuals with HIV disease;

(2) To train practitioners to provide for the health care needs of such individuals;

(3) With respect to improving clinical skills in the diagnosis, treatment, and prevention of such disease, to educate and train the health professionals and clinical staff of schools of medicine, osteopathic medicine, and dentistry; and

(4) To develop and disseminate curricula and resource materials relating to the care and treatment of individuals with such disease and the prevention of the disease among individuals who are at risk of contracting the disease.

Specifically for the National AETC Program, these awards will be made as above and will include community-based organizations (CBOs) and community health clinics affiliated with accredited public and nonprofit private entities—

1. To train health personnel, focusing on practitioners in Title XXVI programs (Ryan White CARE Act), in the diagnosis, treatment, and prevention of Human Immunodeficiency Virus (HIV) infection and disease; and to provide supplementary and/or complementary training to the faculty of schools of, and graduate departments or programs of medicine, nursing, dentistry, public health, mental health practice and allied health personnel;

2. To train and motivate the above practitioners and other community providers to care for the health needs of individuals with HIV disease;

3. To teach health professions students and residents to provide for the health care needs of individuals with HIV disease; and

4. To develop and disseminate to health providers curricula and resource materials relating to the care and treatment of individuals with HIV disease and the prevention of HIV among individuals who are at risk of contracting the disease; and to organize plans for information dissemination of HIV-related information.

Project requirements and review criteria for this program were proposed

for public comment in the **Federal Register** on October 27, 1994 at 59 FR 53996. No comments were received during the 30-day comment period. Therefore, the project requirements and review criteria will be retained as proposed.

### Final Project Requirements

The focus in FY 1995 will be on primary care providers in high HIV/AIDS prevalence areas, with an emphasis on living persons infected with HIV. However, consideration will be given to rural areas. The project requirements are designed to direct Federal resources where the greatest needs exist. To accomplish this, each project must define a geographic region and identify the types of providers to be targeted for training within that region.

#### A. Definition of AETCs

All applicants are encouraged to form AETCs composed of as many states/territories/commonwealths as can be managed completely and efficiently. There are four options for defining an AETC region. An applicant may propose, with appropriate documentation:

1. An AETC composed only of a single state/territory/commonwealth as a region if that region contains two or more Ryan White CARE Act Title I Eligible Metropolitan Areas (EMAs) or if the AETC currently is established as a single state AETC;

2. An AETC composed of multiple, contiguous states (Hawaii and Alaska may be included) if it justifies its boundaries with the inclusion of one EMA and specific local epidemiological data equivalent to at least 10,000 living HIV-infected persons (with a prevalence of at least 2,500 living AIDS cases and 7,500 other HIV infected persons). Supporting documentation may include rates of HIV/AIDS infection, or proxy indicators such as STD, TB, and substance abuse, CDC heel stick study data, teenage pregnancy, etc.;

3. An AETC for rural regions if it encompasses at least three states with contiguous boundaries (Hawaii and Alaska may be included) and contains at least one EMA, although the prevalence of living HIV infected persons totals less than 10,000; or

4. An AETC specifically in the District of Columbia that either stands alone or is incorporated in a consortium arrangement with another AETC.

At least 50 percent of project funds must be expended for training activities in high AIDS prevalence areas, i.e.; as defined as EMAs in the Ryan White CARE Act, Title I. If this is not done, appropriate justification from regional

epidemiological data and the needs assessment must be provided.

#### B. Performance Expectations

Each AETC must provide or perform the following. These items are essential for consideration for this cooperative agreement.

1. Submission of a coordinated plan, including a clear statement of resources available from the region's EMA(s), for the network that has been created for dissemination of state-of-the-art information to health professions schools and organizations, HIV care providers and CBOs, including organizations of people living with AIDS (PLWA) in the AETC's proposed region; the methodology (e.g., electronic bulletin boards, print material and teleconferencing, etc.) should be described as well as the types of education materials to be distributed in concert with other PHS agencies and health professions' schools and organizations.

2. A comprehensive clinical training plan, of which a minimum of 50 percent of the Federal funds devoted to training is directed toward primary care providers, i.e., physicians, registered nurses, dentists, physician assistants, nurses with advanced training (e.g., nurse practitioners, clinical nurse specialists and nurse-midwives) and dental hygienists.

3. A training plan for other health professionals including, but not limited to, mental health care providers, case managers, substance abuse counselors and other allied health personnel;

4. Linkages to other organizations in the following priority order: (a) Ryan White CARE ACT, Titles I, II, including Special Programs of National Significant (SPNS), IIIb and IVd funded health services-programs, and the Hemophilia Programs; (b) health professions schools, academic centers, and national health professions organizations, including minority professional groups; (c) Federally supported substance abuse programs (e.g., NIDA & SAMHSA) and community substance abuse programs; (d) PHS funded Area Health Education Centers (AHECs), migrant centers (e.g., sec. 329(a)(1), community health centers (e.g., sec. 330(a), and homeless centers (e.g., sec. 340), mental health providers (e.g., SAMHSA grantees), Federally supported STD and prevention activities (e.g., CDC, etc.), providers in prisons, family planning programs and HRSA supported maternal and child health programs, State and local health agencies and health care facilities involved in providing care for HIV infected individuals in order to fill any gaps in training; (e) other community

based HIV-related organizations (including those formed by PLWA); AETC projects also are encouraged to collaborate with (f) national networks of AIDS clinical trials such as the adult and pediatric AIDS Clinical Trials Group (ACTG), the Community Programs for Clinical Research on AIDS (CPCRA), AMFAR and the Robert Wood Johnson Foundation.

5. An updated needs-assessment of the education and training needs of the primary care providers within the proposed service area and which is based upon epidemiological data for that service area.

6. A plan for outreach to minorities, including involvement of minority providers, providers who serve minority populations, minority professional organizations, and minority health care delivery systems;

7. A plan for program assessment and data collection on program and trainees which can be used for regional and national evaluative purposes; and

8. Plan for non-Federal funding during the 3-year project period.

#### Final Review Criteria

Applications will be reviewed and rated according to the applicant's ability to meet the following:

1. The completeness and pertinence of the needs assessment to the proposed region and the degree of linkage between its findings and the plans for information dissemination and training for National AETC Program Levels I through III described in the program guidelines;

2. The degree of emphasis on linkages with Ryan White CARE ACT programs I, II (including Special Programs of National Significance (SPNS)), IIIb and IVd, health professions schools and academic health centers, and other collaborations as described under Proposed Project Requirements above;

3. The extent to which the training plans meet the national priorities (prevention, substance abuse, cultural competence, tuberculosis, providers in prisons, implementation of the PHS recommendations of protocol, AIDS Clinical Trials Group (ACTG 076), and psychosocial issues) of the National AETC Program;

4. The completeness and appropriateness of the plan for information dissemination among key HIV contacts as defined under Proposed Project Requirements above;

5. The completeness and appropriateness of the training plans for National AETC Program Levels I, II and III;

6. The organization of the AETC; the administration and management of the

AETC and its relationship to its component parts, i.e., Consortia members and/or subcontractors;

7. The appropriateness of the size and configuration of the AETC; the appropriateness and cost-effectiveness of the budget; the amount of support constituted by the proposed awardee institution, including in-kind support;

8. The completeness and appropriateness of the data management and evaluation plans; and

9. The potential for the project to operate on a partially self-sustaining basis during the 3-year period of support.

#### Additional Information

Requests for technical or programmatic information should be directed to: Juanita Koziol, RN, MS, CS, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A-39, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443-6326.

This program is listed at 93.145 in the Catalog of Federal Domestic Assistance and is not subject to the provisions of Executive Order 12372 Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: January 5, 1995.

**Ciro V. Sumaya,**

*Administrator.*

[FR Doc. 95-697 Filed 1-11-95; 8:45 am]

BILLING CODE 4160-15-P

#### Advisory Council; Notice of Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the months of January and February 1995.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: January 27-29, 1995.

Place: Terrace Garden Inn-Buckhead, 3405 Lenox Road, NW., Atlanta, Georgia, (404) 261-9250.

The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The meeting will begin at 8:00 a.m. on Friday, January 27, and include a Bureau of Primary Health Care Director's update, Regional Office presentations, an

update on the Division of National Health Service Corps and the Division of Scholarships and Loan Repayments and presentations on modules developed to assist community-based systems of care in the delivery of health care services. On Saturday at 7:30 for visit to sites in the Atlanta area and hear from National Health Service Corps scholar and loan repayment participants. The Council will continue their business meeting on Sunday at 8:00 and adjourn at noon.

The meeting is open to the public; however, no transportation will be provided to the sites.

Anyone requiring information regarding the subject Council should contact Ms. Nada Schnabel, National Advisory Council on the National Health Service Corps, 8th floor, 4350 East West Highway, Rockville, Maryland 20857, Telephone (301) 594-4147.

\* \* \* \* \*

Name: National Advisory Committee on Rural Health.

Date and Time: February 6-8, 1995; 8:30 a.m.

Place: The Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, DC 20036, (202) 328-7526.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

Agenda: During the Plenary Session, the Committee is considering a discussion of managed care and network development in rural areas.

The Education and Health Services Work Group and the Health Care Finance Work Group will meet between plenary sessions on developing recommendations and strategies for improving health services delivery in rural areas. The Education and Health Services Work Group will address emerging health service delivery systems and the impact that they will have on rural and/or vulnerable populations. This is a long-term agenda item for the Work Group and will be addressed over the next couple of years. The Health Care Financing Work Group will discuss the interplay between Medicare cuts and network development in a more competitive marketplace; and ERISA and Medicaid waivers. The meeting will adjourn on Wednesday, February 8, at noon.

Anyone requiring information regarding the subject Council should contact Dena S. Puskin, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835, FAX (301) 443-2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443-0835.

Agenda Items are subject to change as priorities dictate.

Dated: January 9, 1995.

**Jackie E. Baum,**

*Advisory Committee Management Officer,  
HRSA.*

[FR Doc. 95-839 Filed 1-11-95; 8:45 am]

BILLING CODE 4160-15-P

## Public Health Service

### Notice of Cooperative Agreements With the Interamerican College of Physicians and Surgeons and the National Council of La Raza

The Office of Minority Health (OMH), Office of the Assistant Secretary for Health, PHS, announces that it will enter into two separate cooperative agreements with two organizations: (1) The Interamerican College of Physicians and Surgeons (ICPS) and (2) The National Council of La Raza (NCLR). These cooperative agreements will establish the broad programmatic framework within which specific projects can be funded as they are identified during the project period.

The purpose of these cooperative agreements is to assist the organizations in expanding and enhancing their activities in the following areas: Service delivery, health prevention, health promotion, and health services research opportunities, with the ultimate goal of improving the health status of minorities and disadvantaged people. The OMH will provide consultation, administrative and technical assistance as needed for the execution and evaluation of all aspects of these cooperative agreements. The OMH will also participate and collaborate with the awardees in any workshops or symposia to exchange current information, opinions, and research findings.

#### Authorizing Legislation

These cooperative agreements are authorized under the grantmaking authorities of the Office of Minority Health. Refer to Section 1707(d)(1) of the Public Health Service Act, as amended by Public Law 101-527.

#### Background

Assistance will be provided to ICPS and NCLR only. No other applications are solicited. The ICPS and NCLR are the only organizations capable of administering these cooperative agreements because they have:

1. Developed, expanded, and managed an infrastructure to coordinate and implement various health education programs within local communities and physician groups that deal extensively with Hispanic health issues.

The ICPS has established several medical training programs which

provide a foundation upon which to develop, promote, and conduct professional medical programs aimed at preventing and reducing unnecessary morbidity and mortality rates among Hispanic populations.

The NCLR has established a strong network of Hispanic providers, health advocates, and health educators that provide a foundation upon which to develop, promote, and manage health interventions, and client education programs aimed at preventing and reducing unnecessary morbidity and mortality rates among Hispanic populations.

2. Both the ICPS and NCLR have established themselves and their members as organizations with professionals who serve as leaders and experts in planning, developing, implementing, and evaluating health education curricula and client-based health prevention programs aimed at reducing excessive mortality and adverse health behaviors among Hispanic populations.

3. ICPS has developed databases and directories of health care providers, Hispanic medical students interested in primary care, and funding mechanisms to continue graduate medical and scientific education that are essential for any health care professional development initiatives that deal exclusively with Hispanic populations.

NCLR has developed databases and directories of health education programs, health care accessibility issues, and professional development initiatives that deal exclusively with Hispanic populations that are necessary for any intervention dealing with Hispanic populations.

4. Both organizations have assisted in the development of many of the current education, research, disease prevention, and health promotion activities for its members, affiliated groups, and represented subpopulations.

5. Both the ICPS and NCLR have developed national organizations whose members consist of Hispanic physicians, health care providers, researchers and advocates with excellent professional performance records. ICPS consists exclusively of Hispanic physicians, surgeons, and future health care providers, while NCLR has a broad range of membership that is comprised of mostly Hispanic health care workers.

6. Both organizations have developed a base of critical knowledge, skills, and abilities related to serving Hispanic clients on a range of health and social problems. Through the collective efforts of its members, its affiliated community-based organizations, sponsored research

(NCLR), and sponsored health education and prevention programs, the ICPS and NCLR have demonstrated (1) the ability to work with academic institutions and official health agencies on mutual education, service, and research endeavors relating to the goal of disease prevention and health promotion of Hispanic peoples, (2) the leadership needed to assist health care professionals work more effectively with Hispanic clients and communities, and (3) the leadership needed to effectively promote health professions careers to Hispanic students who would otherwise not consider such a career path.

This cooperative agreement will be awarded in FY 1995 for a 12-month budget period within a project period of 5 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

#### Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please contact Dr. Clay E. Simpson, Office of Minority Health, Public Health Service, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852, telephone (301) 443-5084.

Dated: December 22, 1994.

**Audrey F. Manley,**

*Acting Deputy Assistant Secretary for  
Minority Health.*

[FR Doc. 95-761 Filed 1-11-95; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-989-1050-00-P]

#### Filing of Plats of Survey; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

#### Sixth Principal Meridian, Wyoming

T. 58 N., R. 95 W., accepted November 18, 1994

T. 50 N., R. 72 W., accepted January 3, 1995

T. 50 N., R. 72 W., accepted January 3, 1995

T. 17 N., R. 84 W., accepted January 3, 1995

T. 17 N., R. 84 W., accepted January 3, 1995

If protests against a survey, as shown on any of the above plats, are received

prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s). These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of \$1.10 per copy.

A person or party who wishes to protest a survey must file with State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections and metes and bounds surveys. **FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: January 4, 1995.

**John P. Lee,**

*Chief, Branch of Cadastral Survey.*

[FR Doc. 95-778 Filed 1-11-95; 8:45 am]

BILLING CODE 4310-22-M

## Fish and Wildlife Service

### Ruffe Control Program; Environmental Assessment and Benefits and Cost Analysis

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and request for comments.

**SUMMARY:** This notice announces the availability of the proposed Ruffe Control Program, a draft Environmental Assessment of the proposed Ruffe Control Program, and a Benefits and Costs of the Ruffe Control Program for public review and comment. Public meetings to explain the proposed Ruffe Control Program and to take comments will be held in several areas of the Great Lakes where ruffe are of particular concern. Public meetings will be scheduled for: Duluth, MN; Chicago, IL; and, Buffalo, NY. The public meetings will be announced when the locations and dates are firmly established.

The proposed Ruffe Control Program and the accompanying Environmental

Assessment were prepared by the Ruffe Control Committee of the Aquatic Nuisance Species (ANS) Task Force as required by Section 1202 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101-464, Act). Comments received will be considered in preparing the final Ruffe Control Program that will become the basis for Federal participation in cooperative responses with State, Tribes, and local resource agencies to control ruffe.

**DATES:** Comments on the proposed Ruffe Control Program, Environmental Assessment, and Benefits and Cost Analysis should be received by March 13, 1995.

**ADDRESSES:** Written responses and requests for copies of the documents should be mailed to: Jay Troxel, ANS Coordinator, U.S. Fish and Wildlife Service (ARLSQ 820), 1849 C Street, Washington, D.C. 20240. Specific questions regarding the Ruffe Control Program and related documents should be directed to: Thomas Busiahn, U.S. Fish and Wildlife Service, Supervisor, Ashland Fishery Resources Office, Ashland, Wisconsin 54806, telephone (715) 682-6186.

**FOR FURTHER INFORMATION CONTACT:** Jay Troxel, ANS Coordinator, at (703) 358-1718.

**SUPPLEMENTARY INFORMATION:** The ANS Task Force was established to coordinate implementation of the Nonindigenous Act and is co-chaired by the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. The proposed Ruffe Control Program and related documents were developed by the Ruffe Control Committee of the ANS Task Force. The Ruffe Control Program presents the goals and objectives of ruffe control, the requisites to the Program, the uncertainties regarding the proposed control efforts, and the conditions for reevaluating or terminating the Program. The Ruffe Control Program emphasizes range reduction, ballast water management, population investigation, surveillance, predator evaluation, and education. All the objectives must be met if control is to be successful.

The Ruffe Control Committee has prepared a draft Environmental Assessment on the proposed Ruffe Control Program. Taking into consideration comments on the proposed Ruffe Control Program and the Environmental Assessment, a determination will be made whether approval of the Program is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(20)(c)

of the National Environmental Policy Act of 1969. The Ruffe Control Committee also developed the Benefits and Costs Analysis of the Ruffe Control Program. The purpose is to evaluate the cost-effectiveness of alternate control strategies as well as the cost/benefit of taking action versus no action.

Dated: January 6, 1995.

**Gary Edwards,**

*Co-Chair, ANS Task Force, Assistant Director—Fisheries.*

[FR Doc. 95-694 Filed 1-11-95; 8:45 am]

BILLING CODE 4310-55-M

## Geological Survey

### Application Notice Establishing the Closing Date for Transmittal of Applications Under the National Earthquake Hazards Reduction Program (NEHRP) for Fiscal Year (FY) 1996

**AGENCY:** U.S. Geological Survey Interior.

**ACTION:** Notice.

**SUMMARY:** Applications are invited for research projects under the NEHRP.

Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Public Law 95-124 (42 U.S.C. 7701, et. seq.).

The purpose of this program is to support research in earthquake hazards prediction to provide earth-science data and information essential to mitigate earthquake damage.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of State and local governments.

The NEHRP supports research related to the following general areas of interest: I. Understanding the earthquake source: Determine the physical properties and mechanical behavior of active crustal fault zones and their surroundings; and develop quantitative models of the physics of earthquake processes. II. Evaluating earthquake potential: Determine the geological and geophysical setting and characteristics of seismically active regions; determine the occurrence, distribution and source properties of earthquakes, and relate seismicity to geologic structures and tectonic processes; determine the nature and rates of crustal deformation; characterize the earthquake potential of the United States on a regional and national basis; identify active faults, define their geometry, and determine the characteristics and dates of past earthquakes; conduct research to facilitate long-term probabilistic forecasts of the likelihood of large earthquakes on active fault; conduct

intensified monitoring experiments in selected regions of high seismic potential; and develop and evaluate short- and intermediate-term earthquake prediction methods. III. Predicting the effects of earthquakes: Acquire data needed for the prediction of ground shaking, ground failure, and response of engineered structures; predict strong ground shaking at local, regional and national scales; predict ground failure at local and regional scales; and evaluate earthquake risk and losses. IV. Applying and utilizing research results: Application of research results; transference hazards and risk information and assessment method to users.

**ADDRESSES:** The program announcement is expected to be available on or about February 1, 1995. You may obtain a copy of Announcement No. 8117 by writing Mary Burkett, U.S. Geological Survey, Office of Procurement and Contracts—Mail Stop 205C, 12201 Sunrise Valley Drive, Reston, Virginia 22092, or by fax (703-648-7901). Organizations that applied for an FY 1995 award, and organizations that requested to be retained on the mailing list since the last announcement will be mailed a copy of Announcement No. 8117.

**DATES:** Applications must be received on or about April 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** John Sims, Office of Earthquakes, Volcanoes, and Engineering—U.S. Geological Survey, Mail Stop 905, 12201 Sunrise Valley Drive, Reston Virginia 22092. Telephone: (703) 648-6722.

**John K. Peterson,**

*Acting Assistant Director for Administration.*

[FR Doc. 95-795 Filed 1-11-95; 8:45 am]

BILLING CODE 4310-31-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

#### Renewal of the Advisory Committee on Voluntary Foreign Aid

**AGENCY:** United States Agency for International Development.

**ACTION:** Notice of renewal of advisory committee.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, the Administrator has determined that renewal of the Advisory Committee on Voluntary Foreign Aid for a two-year period, beginning January 1, 1995, is necessary and in the public interest.

**FOR FURTHER INFORMATION CONTACT:**

Elise Storck, (703) 351-0204.

Dated: January 4, 1995.

**Jan Miller,**

*Deputy Assistant General Counsel for Legislation and Policy.*

[FR Doc. 95-798 Filed 1-11-95; 8:45 am]

BILLING CODE 6116-01-M

## Agency for International Development

### Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

**Date:** January 25, 1995 (8:30 a.m. to 5:30 p.m.)

**Location:** State Department

The purposes of the meeting are: to determine strategies for educating the U.S. public on sustainable development and foreign assistance in the national interest; and to review USAID's draft "Partnership Initiative" document.

The meeting is free and open to the public. However, notification by January 20, 1995, through the Advisory Committee headquarters is required. Persons wishing to attend the meeting must call Lisa Douglas-Watson (703) 351-0243 or Susan Saragi (703) 351-0244 or FAX (703) 351-0228/0212. Persons attending must include their name, organization, birthdate and social security number for security purposes.

Dated: December 28, 1994.

**Louis C. Stamberg,**

*Office Director, Office of Private and Voluntary Cooperation, Bureau for Humanitarian Response.*

[FR Doc. 95-777 Filed 1-11-95; 8:45 am]

BILLING CODE 6116-01-M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-364 (Final)]

### Oil Country Tubular Goods From Italy

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of a final countervailing duty investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-364 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by

reason of imports from Italy of oil country tubular goods (OCTG),<sup>1</sup> provided for in subheadings 7304.20, 7305.20, and 7306.20 of the Harmonized Tariff Schedule of the United States.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), Commerce has extended the date for its final determination to coincide with that to be made in the ongoing antidumping investigation on OCTG from Italy. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigation until Commerce makes a preliminary determination in the antidumping investigation (currently scheduled for January 26, 1995).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** December 2, 1994.

**FOR FURTHER INFORMATION CONTACT:** Douglas Corkran (202-205-3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

### SUPPLEMENTARY INFORMATION:

**Background.**—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Italy of OCTG. The investigation was requested in petitions filed on June 30, 1994, by IPSCO Steel, Inc. (Camanche, IA);

<sup>1</sup> For the purposes of this investigation, OCTG are hollow steel products of circular cross-section. These products include oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished or unfinished (including green tubes). This investigation does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium.

Koppel Steel Corp. (Beaver Falls, PA); Maverick Tube Corp. (Chesterfield, MO); North Star Steel Ohio (Youngstown, OH); U.S. Steel Group (Pittsburgh, PA); and USS/Kobe Steel Co. (Lorain, OH).

**Participation in the investigation and public service list.**—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: January 6, 1995.

By order of the Commission.

**Donna R. Koehnke,**

Secretary.

[FR Doc. 95-811 Filed 1-11-95; 8:45 am]

BILLING CODE 7020-02-P

#### [Investigation No. 701-TA-362 (Final)]

#### **Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe From Italy**

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of a final countervailing duty investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-362 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is

threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy of certain seamless carbon and alloy standard, line, and pressure steel pipe,<sup>1</sup> provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. § 1671d(a)(1)), the U.S. Department of Commerce (Commerce) has extended the date for its final determination to coincide with that to be made in the ongoing antidumping investigation on certain seamless carbon and alloy standard, line, and pressure steel pipe from Italy. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigation until Commerce makes a preliminary determination in the antidumping investigation (currently scheduled to be made by January 19, 1995).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** December 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Diane Mazur (202-205-3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

<sup>1</sup> The subject product consists of seamless carbon and alloy (other than stainless) steel pipe, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. The pipe is commonly known as standard pipe, line pipe, or pressure pipe, depending on the application. It may also be used in structural applications. The subject pipe is further defined in the U.S. Department of Commerce's notice of its affirmative preliminary countervailing duty determination (59 FR 60774, Nov. 28, 1994). Specifically excluded from the scope of the investigation are boiler tubing, mechanical tubing, and oil country tubular goods except when used in a standard, line, or pressure pipe application. Also excluded from the scope of the investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

#### **SUPPLEMENTARY INFORMATION:**

**Background.**—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. § 1671b) are being provided to manufacturers, producers, or exporters in Italy of certain seamless carbon and alloy standard, line, and pressure steel pipe. The investigation was requested in a petition filed on June 23, 1994, by the Gulf States Tube Division of Quanex Corp., Rosenberg, TX.

**Participation in the investigation and public service list.**—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: January 6, 1995.

By order of the Commission.

**Donna R. Koehnke,**

Secretary.

[FR Doc. 95-812 Filed 1-11-95; 8:45 am]

BILLING CODE 7020-02-P

**DEPARTMENT OF JUSTICE****Office of Community Oriented Policing Services****FY 1995 Community Policing Discretionary Grants**

**AGENCY:** Office of Community Oriented Policing Services, Department of Justice.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of Justice, Office of Community Oriented Policing Services ("COPS") announces the availability of grants to support the purchase of equipment and technology, the procurement of support resources and the use of overtime under COPS Making Officer Redeployment Effective ("COPS MORE"). Eligible applicants under COPS MORE are those state, local and other public law enforcement agencies, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia that employ sworn law enforcement officers.

**DATES:** COPS MORE Application Kits will be available on December 31, 1994 and completed applications must be received by the COPS Office no later than March 17, 1995.

**ADDRESSES:** COPS MORE Application Kits may be obtained by writing to COPS MORE, P.O. Box 14440, Washington, D.C. 20044 or by calling the Department of Justice Crime Bill Response Center, (202) 307-1480 or 1-800-421-6770. Completed COPS MORE Application Kits should be sent to Director, COPS Program, P.O. Box 14440, Washington, D.C. 20044.

**FOR FURTHER INFORMATION CONTACT:** The Department of Justice Crime Bill Response Center, (202) 307-1480 or 1-800-421-6770, or David Hayeslip or Craig Uchida, Office of Community Oriented Policing Services, U.S. Department of Justice, 633 Indiana Avenue, N.W., Suite 300, Washington, DC 20531, (202) 514-2058.

**SUPPLEMENTARY INFORMATION:****Overview**

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. COPS MORE is designed to expand the time available for community policing by current law enforcement officers, rather than fund the hiring or rehiring of additional law enforcement officers.

COPS MORE permits eligible agencies to seek funding for the purchase of

equipment and technology, the procurement of support resources (including civilian personnel) and to pay overtime. As a result of this funding, the number of officers redeployed by agencies in community policing must be equal to or greater than the number of officers that would result from grants of the same amount for hiring new officers. Application Kits will be available as of December 31, 1994. Completed Applications Kits must be received by the COPS Office by March 17, 1995.

Applicants must provide a thorough explanation of how the proposed redeployment funds will actually result in the required increase in the number of officers deployed in community policing. Additionally, the applicant must specify within the COPS MORE Application a plan for continuing the proposed activity following the conclusion of COPS MORE funding. Technical assistance with the development of policing plans will be provided to jurisdictions in need of such assistance. Grants will be made for up to 75 percent of the cost of the equipment, technology, civilian salaries or overtime for one year, with the remainder to be paid by state or local funds. In the case of overtime grants, federal funds may be used for up to 75 percent of an officer's hourly overtime rate of pay. An officer's regular overtime wage is the amount an officer is paid for each hour of overtime services, and does not include benefits. COPS redeployment funds may not be used to replace funds that eligible agencies otherwise would have devoted to equipment, technology, civilian hiring or overtime.

An award under COPS MORE will not affect the eligibility of an agency's application for a grant under any other COPS program. An agency that receives funding under COPS Phase I, COPS AHEAD and/or COPS FAST is eligible to receive additional funding under COPS MORE, however, any prior award may be considered in the assessment of the agency's need for additional resources under COPS MORE.

Dated: January 3, 1995.

**John R. Schmidt,**

*Associate Attorney General.*

[FR Doc. 95-780 Filed 1-11-95; 8:45 am]

BILLING CODE 4410-01-M

**Lodging of Consent Decree Pursuant to the Clean Water Act**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in

*United States v. City of Titusville, Florida, and State of Florida (M.D. Fla.)*, Civil Action No. 95-9-CIV-ORL-18, was lodged on January 4, 1995 with the United States District Court for the Middle District of Florida. The consent decree settles a civil judicial enforcement action brought under Section 309 of the Clean Water Act, 33 U.S.C. 1319, for the City of Titusville's operation of a publicly owned sanitary sewage collection system and two associated treatment plants in violation of National Pollutant Discharge Elimination System permits and in violation of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Under the Consent Decree, the City of Titusville will construct a new Advanced Wastewater Treatment Plant and an associated wetlands treatment system, modify its existing treatment plants to eliminate discharges of wastewater into the Indian River, and pay a civil penalty of \$600,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. City of Titusville, Florida, and State of Florida*, DOJ Ref. #90-5-1-1-3979.

The proposed consent decree may be examined at the Office of the United States Attorney, Middle District of Florida, 80 North Hughey Avenue, 201 Federal Building, Orlando Florida 32801; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$10.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce Gelber,**

*Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 95-779 Filed 1-11-95; 8:45 am]

BILLING CODE 4410-01-M

**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.**

Notice is hereby given that, on August 15, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Financial Services Technology Consortium, Inc. (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the new Principal Members of the Consortium are: Chemical Bank, New York, NY; and Wells Fargo & Co., San Francisco, CA. The following party was admitted as an Associate Member of the Consortium: AT&T Global Information Solutions, Waterloo, Ontario, Canada. The following parties were admitted as Advisory Members of the Consortium: Polytechnic University of Brooklyn, Brooklyn, NY; Columbia University, New York, NY; Bellcore, Morristown, NJ; and New York Clearing House, New York, NY.

No other changes have been made in either the membership or planned activity of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On October 21, 1993, the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 9(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on June 3, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 14, 1994 (59 FR 56533).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*  
[FR Doc. 95-782 Filed 1-11-95; 8:45 am]

BILLING CODE 4410-01-M

**Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Smart Valley CommerceNet Consortium, Inc.**

Notice is hereby given that, on October 19, 1994, pursuant to Section

6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Smart Valley CommerceNet Consortium, Inc. (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members at the sponsor level are: American Express, Phoenix, AZ; Amp, Inc., Harrisburg, PA; Apple Computer, Inc., Cupertino, CA; Avex Electronics, Inc., Huntsville, AL; Bank of America, Concord, CA; Bank One, Columbus, NA, Columbus, OH; Bellcore, Morristown, NJ; CalREN (Pacific Bell), San Ramon, CA; Citibank, NA, New York, NY; CompuServe, Columbus, OH; D.E. Shaw & Co., L.P., New York, NY; Digital Equipment Corp., Palo Alto, CA; The Dun & Bradstreet Corp., Westport, CT; Electronic Marketplace Systems, Inc. (an Int'l. Data Group Company), San Mateo, CA; Federal Express, Memphis, TN; First Interstate Bancorp, Los Angeles, CA; Hewlett-Packard, Palo Alto, CA; IBM Corporation, Palo Alto, CA; MCI Telecommunications Corporation, San Jose, CA; Marshall Industries, El Monte, CA; National Semiconductor, Santa Clara, CA; Open Market, Inc., Cambridge, MA; RR Donnelley Database Technology Services (a division of RR Donnelley & Sons Co.), Willowbrook, IL; RSA Data Security, Inc., Redwood City, CA; The Santa Cruz Operation, Santa Cruz, CA; Silicon Graphics, Inc., Mountain View, CA; Sterling Software, Dublin, OH; Sun Microsystems, Inc., Mountain View, CA; Synopsys, Mountain View, CA; Tandem Computers, Inc., Cupertino, CA; US West Technologies, Inc., Boulder, CO; Wells Fargo & Co.; San Francisco, CA; and Xerox Corporation, Stamford, CT.

The following organizations have joined the Consortium as associate members: Association of Bay Area Governments, Oakland, CA; California General Services, Sacramento, CA; Danish International, Inc., Sunnyvale, CA; The Electronic Power Research Institute, Palo Alto, CA; Financial Services Technology Consortium, New York, NY; Internet Shopping Network, Menlo Park, CA; MecklerWeb Corporation, Westport, CT; Nanothinc, San Francisco, CA; Spry, Inc., Seattle, WA; Surety Technologies, Inc., Chatham, NJ; and Vanderbilt University, Nashville, TN.

No other changes have been made in either the membership or planned activities of the Consortium. Membership remains open, and the consortium intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994, the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*  
[FR Doc. 95-783 Filed 1-11-95; 8:45 am]

BILLING CODE 4410-01-M

**Office of the Assistant Attorney General for Civil Rights****Certification of Washington State Regulations for Barrier Free Design Under the Americans With Disabilities Act**

**AGENCY:** Department of Justice.

**ACTION:** Notice of preliminary determination of equivalency and certification hearings.

**SUMMARY:** The Department of Justice (Department) has determined that the Washington State Regulations for Barrier Free Design (code) meet or exceed the new construction and alterations requirements of title III of the Americans with Disabilities Act of 1990 (ADA). The Department proposes to issue a final certification, pursuant to 42 U.S.C. § 12188(b)(1)(A)(ii) and 28 C.F.R. § 36.601 *et seq.*, which would constitute rebuttable evidence, in any enforcement proceeding, that a building constructed or altered in accordance with the Washington code meets or exceeds the requirements of the ADA. The Department will hold informal hearings on the proposed certification in Washington, D.C. and Seattle, Washington.

**DATES:** To be assured of consideration, comments must be in writing and must be received on or before March 13, 1995. The hearing in Seattle, Washington is scheduled for January 27, 1995 at 9:00 AM, Pacific Time. The hearing in Washington, D.C. is scheduled for March 27, 1995 at 9:30 AM, Eastern Time.

**ADDRESSES:** Comments on the preliminary determination of equivalency and on the proposal to issue final certification of equivalency of the Washington code should be sent to: John Wodatch, Chief, Public Access Section, Civil Rights Division, U.S.

Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6738.

The hearings will be held at: Washington, D.C.:

U.S. Department of Justice, Civil Rights Division, Public Access Section, 1425 New York Avenue, N.W., 4th floor conference room, Washington, D.C.

Seattle, Washington:

National Oceanic and Atmospheric Administration (NOAA), Building Nine (9) Auditorium, 7600 Sand Point Way, N.E., Seattle, Washington

**FOR FURTHER INFORMATION CONTACT:**

John Wodatch, Chief, Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6738. Telephone number (800) 514-0301 (Voice) or (800) 514-0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514-0301 (Voice) or (800) 514-0383 (TTY). Copies of the Washington code and supporting materials may be inspected by appointment at 1425 New York Avenue, N.W., Washington, D.C. by calling Tito Mercado at (202) 307-0663 (Voice/TDD). This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

**Background**

The ADA authorizes the Department of Justice, upon application by a State or local government, to certify that a State or local law that establishes accessibility requirements meets or exceeds the minimum requirements of title III of the ADA for new construction and alterations. 42 U.S.C.

§ 12188(b)(1)(A)(ii); 28 C.F.R. § 36.601 *et seq.* Final certification constitutes rebuttable evidence, in any ADA enforcement action, that a building constructed or altered in accordance with the certified code complies with the new construction and alterations requirements of title III of the ADA.

By letter dated January 27, 1992, the Washington State Building Code Council (Council) requested certification that the Washington State Regulations for Barrier Free Design (code) meets or exceeds the new construction and alterations requirements of title III of the ADA.

On May 20, 1993, after consulting with the Architectural and Transportation Barriers Compliance Board (Access Board), the Department provided technical assistance to the Council identifying issues that needed to be addressed before certification could be considered.

On August 20, 1993, the Council made a supplemental submission,

providing its 1992 amendments to the code, newly-issued interpretations of the code, and comments responding to the Department's preliminary response. By letter dated March 23, 1994, the Council provided further supplementation of its submission.

On July 22, 1994, the Department responded to the supplemental submissions. On November 17, 1994, the Council adopted amendments to the code addressing the remaining issues raised by the Department. By letter dated November 28, 1994, the Council submitted those amendments as a supplement to its certification request.

The Department has analyzed the Washington code, as adopted on November 8, 1991, and amended on November 13, 1992 and November 17, 1994, and has preliminarily determined that it meets or exceeds the new construction and alterations requirements of title III of the ADA. By letter dated December 6, 1994, the Department notified the Council of its preliminary determination of equivalency.

**Effect of Certification**

The certification determination will be limited to the version of the Washington code, including the amendments and interpretations, that has been submitted to the Department. The certification will not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

The certification will not apply to any elements or features not addressed in the Washington code. If a builder incorporates such elements, he or she will not be entitled to reply on the rebuttable evidence of ADA compliance provided by certification for those elements. Nor will the certification apply to the Appendix provisions of the Washington code, which are advisory only. Finally, the certification will not apply to waivers granted under the Washington code by local building officials. Therefore, if a builder receives a waiver, modification, variance, or other exemption from the requirements of the Washington code for any element of construction or alterations, the certification determination will not constitute evidence of ADA compliance with respect to that element.

**Procedure**

The Department will hold informal hearings in Washington, D.C. and Seattle, Washington to provide an opportunity for interested persons, including individuals with disabilities, to express their views with respect to the preliminary determination of

equivalency of the Washington code. Interested parties who wish to testify at a hearing should contact Tito Mercado at (202) 307-0663 (Voice/TDD). This is not a toll-free number.

The hearing sites shall be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Tito Mercado at (202) 307-0663 (Voice/TDD). This is not a toll-free number.

Dated: January 5, 1995.

**Kerry Alan Scanlon,**

*Acting Assistant Attorney General for Civil Rights.*

[FR Doc. 95-742 Filed 1-11-95; 8:45 am]

BILLING CODE 4410-01-M

**Certification of Washington State Regulations for Barrier Free Design Under the Americans With Disabilities Act**

**AGENCY:** Department of Justice.

**ACTION:** Notice of Hearings.

**SUMMARY:** The Department of Justice will hold informal hearings on the proposed certification that the Washington State Regulations for Barrier Free Design meet or exceed the new construction and alterations requirements of title III of the Americans with Disabilities Act (ADA) in Washington, DC and Seattle, Washington.

**DATES:** The hearing in Seattle, Washington is scheduled for January 27, 1995 at 9:00 AM, Pacific Time, The hearing in Washington, DC is scheduled for March 27, 1995 at 9:30 AM, Eastern Time.

**ADDRESSES:** The hearings will be held at Washington, DC:

U.S. Department of Justice, Civil Rights Division, Public Access Section, 1425 New York Avenue, NW., Room 4064, Washington, DC.

Seattle, Washington:

National Oceanic and Atmospheric Administration (NOAA), Building Nine (9) Auditorium, 7600 Sand Point Way, NE., Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:**

John Wodatch, Chief, Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035-6738. Telephone number (800) 514-0301 (Voice), (800) 514-0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained from the Public Access Section at (800) 514-0301 (Voice) or (800) 514-0383 (TDD).

## SUPPLEMENTARY INFORMATION:

**Background**

The ADA authorizes the Department of Justice (Department), upon application by a State or local government, to certify that a State or local law that establishes accessibility requirements meets or exceeds the maximum requirements of title III of the ADA for new construction and alterations. 42 U.S.C. 12188(b)(1)(A)(ii); 28 C.F.R. 36.601 *et seq.* Final certification constitutes rebuttable evidence, in any ADA enforcement action, that a building constructed or altered in accordance with the certified code complies with the new construction and alterations requirements of title III of the ADA.

By letter dated January 27, 1992, the Washington State Building Code Council (Council), requested certification by the Attorney General that the Washington State Regulations for Barrier Free Design (code) meets or exceeds the new construction and alterations requirements of title III of the ADA.

On May 20, 1993, after consulting with the Architectural and Transportation Barriers Compliance Board (Access Board), the Department provided technical assistance to the Council identifying issues that needed to be addressed before certification could be considered.

On August 20, 1993, the Council made a supplemental submission, providing its 1992 amendments to the code, newly-issued interpretations of the code, and comments responding to the Department's preliminary response. By letter dated March 23, 1994, the Council provided further supplementation of its submission.

On July 22, 1994, the Department responded to the supplemental submissions. On November 17, 1994, the Council adopted amendments to the code addressing the remaining issues raised by the Department. By letter dated November 28, 1994, the Council submitted those amendments as a supplement to its certification request.

The Department has analyzed the Washington code, as adopted on November 8, 1991, and amended on November 13, 1992, and November 17, 1994, and has preliminarily determined that it meets or exceeds the new construction and alterations requirements of title III of the ADA. By letter dated December 6, 1994, the Department notified the Council of its preliminary determination of equivalency.

**Effect of Certification**

The certification determination will be limited to the version of the Washington code, including the amendments and interpretations, that has been submitted to the Department. The certification will not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

The certification will not apply to any elements or features not addressed in the Washington code. If a builder incorporates such elements, he or she will not be entitled to rely on the rebuttable evidence of ADA compliance provided by certification for those elements. Nor will the certification apply to the Appendix provisions of the Washington code, which are advisory only. Finally, the certification will not apply to waivers granted under the Washington code by local building officials. Therefore, if a builder receives a waiver, modification, variance, or other exemption from the requirements of the Washington code for any element of construction or alterations, the certification determination will not constitute evidence of ADA compliance with respect to that element.

**Comments and Hearings**

On January 12, 1995 the Department published a notice in the **Federal Register** announcing that it had preliminarily determined that the Washington code meets or exceeds the new construction and alterations requirements of title III of the ADA. The Department also noted that it intended to issue final certification of the Washington code and requested written comments on the preliminary determination and the proposed final certification. Finally, the Department noted that it intended to hold informal hearings in Washington, D.C. and Seattle, Washington.

The purpose of the informal hearings is to provide an opportunity for interested persons, including individuals with disabilities, to express their views with respect to the preliminary determination of equivalency of the Washington code. Interested parties who wish to testify at a hearing should contact Tito Mercado at (202) 307-0663 (Voice/TDD). This is not a toll-free number.

The meeting sites will be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Tito Mercado at (202) 307-0663 (Voice/TDD). This is not a toll-free number.

Dated: January 5, 1995.

**Kerry Alan Scanlon,**

*Acting Assistant Attorney General for Civil Rights.*

[FR Doc. 95-743 Filed 1-11-95; 8:45 am]

BILLING CODE 4410-01-M

**DEPARTMENT OF LABOR****Office of the Secretary**

**Bureau of International Labor Affairs;  
U.S. National Administrative Office;  
North American Agreement on Labor  
Cooperation; Hearings on  
Submissions #940003 and #940004**

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Notice of hearings.

**SUMMARY:** The purpose of this notice is to announce hearings, open to the public, on Submissions #940003 and #940004.

Submission #940003, filed with the U.S. National Administrative Office (NAO) by the International Labor Rights Education and Research Fund, the Asociacion Nacional de Abogados Democraticos (National Association of Democratic Lawyers), the Coalition for Justice in the Maquiladoras, and the American Friends Service Committee, involves labor law matters in Mexico and was accepted for review by the NAO on October 13, 1994. Notice of acceptance for review was published in the **Federal Register** on October 20, 1994. Submission #940004, filed by the United Electrical, Radio and Machine Workers of America, also involves labor law matters in Mexico and was accepted for review on November 4, 1994. Notice of acceptance for review was published in the **Federal Register** on November 10, 1994.

Article 16(e) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the NAO in accordance with U.S. domestic procedures. Revised procedural guidelines pertaining to the submission, review, and reporting process utilized by the Office were published in the **Federal Register** on April 7, 1994. The guidelines provide for a hearing as part of the review.

**DATES:** The hearing on Submission #940003 will be held on February 13, 1995, commencing at 9: A.M. The hearing on Submission #940004 will be held immediately following the hearing on Submission #940003, continuing, if necessary, on February 14.

Persons wishing to provide information or present their views on matters related to the review of

Submission #940003 or #940004 may do so by filing written statements or briefs with the NAO, which must be received by February 1. Persons desiring to present oral testimony at a hearing must submit a request in writing at the time the written statement or brief is filed. Separate documents should be filed for each submission for which information is provided or permission to testify is sought.

**ADDRESSES:** The hearings will be held in San Antonio, Texas, at a location to be announced. Written statements or briefs and requests to present oral testimony may be mailed or hand delivered to the U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, N.W., Room C-4327, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Irasema T. Garza, Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, N.W., Room C-4327, Washington, DC 20210. Telephone: (202) 501-6653 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Nature and Conduct of Hearings**

As set out in the notices published in the **Federal Register** on October 20 and November 10, 1994, the objective of the NAO's review of the submissions is to gather information to assist it to better understand and publicly report on the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, as set out in Article 3 of the NAALC, and on related matters.

The hearings will be conducted by the Secretary of the NAO or the Secretary's designee. They will be open to the public. All proceedings will be conducted in English, with simultaneous translation provided. The public file for each submission, including written statements, briefs, and requests to present oral testimony, will be made a part of the appropriate hearing record. The public files will also be available for inspection at the NAO prior to the hearings.

The hearings will be transcribed. A transcript of the proceedings will be made available for inspection, as provided for in Section E of the procedural guidelines, or may be purchased from the reporting company.

Disabled persons should contact the Secretary of the NAO no later than January 30, 1995 if special accommodations are needed.

**II. Written Statements or Briefs and Requests To Present Oral Testimony**

Written statements or briefs shall provide a discussion of the information presented or position taken and shall be legibly typed or printed. Requests to present oral testimony shall include the name, address, and telephone number of the witness, the organization represented, if any, and any other information pertinent to the request. Five copies of a statement or brief and a single copy of a request to present oral testimony shall be submitted to the NAO at the time of filing. Separate documents should be filed for each submission for which information is provided or permission to testify is sought.

No request to present oral testimony will be considered unless accompanied by a written statement or brief. A request to present oral testimony may be denied if the written statement or brief suggests that the information sought to be provided is unrelated to the review of the submission or for other appropriate reasons. The NAO will notify each requester of the disposition of the request to present oral testimony.

In presenting testimony, the witness should summarize the written statement or brief, may supplement the written statement or brief with relevant information, and should be prepared to answer questions from the Secretary of the NAO or the Secretary's designee. Oral testimony will ordinarily be limited to a ten minute presentation, not including the time for questions. Persons desiring more than ten minutes for their presentation should so state in the request, setting out reasons why additional time is necessary.

The requirements relating to the submission of written statements or briefs and requests to present oral testimony may be waived by the Secretary of the NAO for reasons of equity and the public interest.

Signed at Washington, DC, on January 9, 1995.

**Irasema T. Garza,**

*Secretary, U.S. National Administrative Office.*

[FR Doc. 95-816 Filed 1-11-95; 8:45 am]

BILLING CODE 4510-28-M

**Employment and Training Administration**

**Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance**

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103-182), hereinafter called (NAFTA-TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of P.L. 103-182) are eligible to apply for NAFTA-TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C., provided such request is filed in writing with the Director of OTAA not later than January 23, 1995.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than January 23, 1995.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 3rd day of January, 1995.

**Victor J. Trunzo,**

*Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.*

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at governor's office	Petition No.	Articles produced
Brookshire Knitting Mills (ILGW) .....	Dallas, TX .....	12/05/94	NAFTA-00295 ..	Knit clothing; sweaters, skirts, pants, blouses, dresses.
Mac Tool; of Stanley Work (USAW) .....	Washington, OH .....	12/02/94	NAFTA-00296 ..	Hand tools for professional mechanics.
D&R Lumber Corporation; dba Blaney Lumber & Mfg. (Co.) .....	Bethesda, OH .....	12/02/94	NAFTA-00297 ..	Rough lumber and logs.
Carter-Wallace, Inc; Wampole (OCAW) .....	East Windsor, NJ ...	12/05/94	NAFTA-00298 ..	Diagnostic aides.
BEST Shingle Co. (Workers) .....	Aberdeen, WA .....	12/05/94	NAFTA-00299 ..	Western red cedar products (ie. shingles).
Woods Geophysical, Inc. (Co.) .....	Mt. Pleasant, MI .....	12/02/94	NAFTA-00300 ..	Geophysical processing for oil and gas exploration.
Asten Dryer Fabrics, Inc. (Co.) .....	Salem, OR .....	12/06/94	NAFTA-00301 ..	Paper machine clothing (industrial product) for paper making.
Washington Public Power Supply system (OCAW) .....	Richland, WA .....	12/07/94	NAFTA-00302 ..	Electricity.
Iowa Assemblies, Inc.; Lucas Products (Workers) .....	Lucas, IA .....	12/05/94	NAFTA-00303 ..	Automotive wire harnesses, wire assemblies.
Crouzet Corporation; Gordes Division (Workers) .....	Rogers, AR .....	12/12/94	NAFTA-00304 ..	Industrial controls (ie. solid state relays).
Hospitak Inc. (Workers) .....	Lindenhurst, NY .....	12/13/94	NAFTA-00305 ..	Disposable respiratory medical devices (ie. oxygen tubes, masks, and other breathing equipment).
Pigeon Manufacturing (Workers) .....	Troy, MI .....	12/13/94	NAFTA-00306 ..	Truck parts.
H. Grabell & Sons, Inc. (Workers) .....	Paterson, NJ .....	12/14/94	NAFTA-00307 ..	Lamp shades.
A.B. Chance Company; Parkersburg Plant (ABGW) .....	Parkersburg, WV ...	12/16/94	NAFTA-00308 ..	Porcelain electrical insulators.
Eutectic Corporation (Workers) .....	Flushing, NY .....	12/12/94	NAFTA-00309 ..	Spray powders, fluxes, and trodes.
Tennessee Valley Steel (USW) .....	Rockwood, TN .....	12/19/94	NAFTA-00310 ..	Steel reinforcement bars, angles, flats, squares, and rounds.
Indiana Sportwear and Columbus Sportswea (IGA) .....	Clinton, IN .....	12/19/94	NAFTA-00311 ..	Women's tailored sportswear.
Frigidaire Co.; Microwave Division (Workers) .....	Dalton, GA .....	12/20/94	NAFTA-00312 ..	Electric microwave ovens (small).
Yocom Knitting (ACTWU) .....	Stowe, PA .....	12/20/94	NAFTA-00313 ..	T-shirts.
Gannett Outdoor Co.; Advertising Div. (Workers) .....	Denver, CO .....	12/20/94	NAFTA-00314 ..	Hand painted billboard faces.
Mobil Chemical; Commercial Films (Workers) .....	Maccoon, NY .....	12/20/94	NAFTA-00315 ..	PXS film (saran coated, polypropylene film).
Ansell Pacific, Inc.; Pacific Dunlop, Inc. (Workers) .....	Salem, OR .....	12/20/94	NAFTA-00316 ..	Natural rubber latex gloves for nuclear, industrial and electronic use.
Nelson Yacht Corporation; Snohomish (Co.) .....	Snohomish, WA .....	12/20/94	NAFTA-00317 ..	Custom built yachts.

[FR Doc. 95-746 Filed 1-11-95; 8:45 am]

BILLING CODE 4510-30-M

**Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance**

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 19th day of December, 1994.

**Victor J. Trunzo,**  
Program Manager, Policy & Reemployment Services.

APPENDIX

Petitioner (union/worker/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
H. Grabell & Sons, Inc (Workers) .....	Paterson, NJ .....	12/19/94	12/06/94	30,565	Lamp shades.

## APPENDIX—Continued

Petitioner (union/worker/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Woods Geophysical, Inc (Co) .....	Mt. Pleasant, MI .....	12/19/94	12/01/94	30,566	Seismic data processing.
A.J. Dress Co., Inc (ILGWU) .....	Laceyville, PA .....	12/19/94	12/07/94	30,567	Ladies' dresses.
Eutectic Corp (Workers) .....	Flushing, NY .....	12/19/94	12/01/94	30,568	Welding supplies and equipment.
Beloit Lenox Division (Co) .....	Lenox, MA .....	12/19/94	11/22/94	30,569	Winders.
Chevron USA Production Co (Co) .....	Houston, TX .....	12/19/94	12/09/94	30,570	Crude oil and natural gas.
Brand S Corp (Workers) .....	Livingston, MT .....	12/19/94	12/02/94	30,571	Logs.
American Airlines, Inc (UTW) .....	Tulsa, OK .....	12/19/94	12/06/94	30,572	Aircraft maintenance.
Dynatech Communications, Inc (Co) .....	Woodbridge, VA .....	12/19/94	12/07/94	30,573	Printed circuit boards.
101 Warehousing Corp (Workers) .....	Medley, FL .....	12/19/94	12/06/94	30,574	Warehouse.
C. McDowell Oil, Inc (Workers) .....	Albion, IL .....	12/19/94	12/08/94	30,575	Crude oil.
David Stevens II (ILGWU) .....	Penns Grove, NJ .....	12/19/94	12/09/94	30,576	Ladies' jackets.
Canon Shoe Co (Workers) .....	Hagerstown, MD .....	12/19/94	12/09/94	30,577	Men's casual and dress shoes.
McKay Drilling Co., Inc (Workers) .....	Aurora, CO .....	12/19/94	12/01/94	30,578	Oil drilling.
McCord Winn Textron (Workers) .....	Winchester, MA .....	12/19/94	12/08/94	30,579	Automobile fuel pump.

[FR Doc. 95-745 Filed 1-11-95; 8:45 am]

BILLING CODE 4510-30-M

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of December, 1994.

**Victor J. Trunzo,**  
Program Manager, Policy & Reemployment Services.

## APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Grange Springwall Mattress (Co) .....	LaConner, WA .....	12/27/94	11/30/94	30,580	Mattress & box springs.
Arthur Frisch Co., Inc (Co) .....	Bronx, NY .....	12/27/94	12/02/94	30,581	Plastic novelty products.
Tennessee Valley Steel (USWA) .....	Rockwood, TN .....	12/27/94	12/12/94	30,582	Steel bars, angles, flats.
Medalist Apparel (Workers) .....	Sidney OH .....	12/27/94	12/08/94	30,583	Long underwear, thermal tops, etc.
Dorman Roth (Workers) .....	Neptune, NJ .....	12/27/94	12/19/94	30,584	Cheese & related products.
MRC II Fashions, Inc (Workers) .....	Paterson, NJ .....	12/27/94	12/14/94	30,585	Womens coats & jackets.
Columbus Sportswear (ILGWU) .....	Columbus, IN .....	12/27/94	12/15/94	30,586	Ladies' jackets.
Indiana Sportswear (ILGWU) .....	Clinton, IN .....	12/27/94	12/15/94	30,587	Ladies' jackets.
A.B. Chance Co (ABGW) .....	Parkersburg, WV .....	12/27/94	12/12/94	30,588	Porcelain insulators.
Garfield Sportswear (ILGWU) .....	Garfield, NJ .....	12/27/94	10/31/94	30,589	Ladies' coats and jackets.
Rose Marie Reid (Workers) .....	New York, NY .....	12/27/94	12/10/94	30,590	Ladies' swimwear, children's sleepwear.
Pigeon Manufacturing (Workers) .....	Pigeon, MI .....	12/27/94	12/09/94	30,591	Automobile parts.
Santa Fe Minerals, Inc (Co) .....	Dallas, TX .....	12/27/94	12/13/94	30,592	Crude oil & natural gas.
Pyke Manufacturing Co (Co) .....	Salt Lake City, UT .....	12/27/94	12/13/94	30,593	Women's apparel.
General Motors—Danville Plant (CO/ UAW) .....	Danville, IL .....	12/27/94	12/16/94	30,594	Metal castings for autos & trucks.
White Bluff Steam Electric (IBEW) .....	Redfield, AR .....	12/27/94	12/01/94	30,595	Electricity & provide services.
Ansel Pacific, Inc. (Workers) .....	Salem, OR .....	12/27/94	12/14/94	30,596	Latex gloves.
Fisher Scientific Co (Workers) .....	Indiana, PA .....	12/27/94	11/15/94	30,597	Laboratory furniture.
Fenestra Corp. (USWA) .....	Erie, PA .....	12/27/94	12/22/94	30,598	Steel doors & frames.
Acme United Corp (Co) .....	Bridgeport, CT .....	12/27/94	12/09/94	30,599	Office shears & school scissors.
Frigidaire Co., Microwave Products (Workers) .....	Dalton, GA .....	12/27/94	12/15/94	30,600	Microwave ovens.
Marktill Corp., Rome Plow Div. (Workers) .....	Cedartown, GA .....	12/27/94	08/01/94	30,601	Agricultural implement machines.
Shade Allied, Inc (Co) .....	Green Bay, WI .....	12/27/94	11/30/94	30,602	Computer paper.
Shade Allied, Inc (Co) .....	Bellville, TX .....	12/27/94	11/30/94	30,603	Computer paper.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Shade Allied, Inc. (Co) .....	Buena Park, CA .....	12/27/94	11/30/94	30,604	Computer paper.
Shade Allied, Inc (Co) .....	De Pere, WI .....	12/27/94	11/30/94	30,605	Computer paper.
Shade Allied, Inc (Co) .....	Denison, TX .....	12/27/94	11/30/94	30,606	Computer paper.
Shade Allied, Inc (Co) .....	Oakwood, GA .....	12/27/94	11/30/94	30,607	Computer paper.
Shade Allied, Inc (Co) .....	Kent, WA .....	12/27/94	11/30/94	30,608	Computer, paper.
Shade Allied, Inc (Co) .....	Lancaster, PA .....	12/27/94	11/30/94	30,609	Computer paper.
Shade Allied, Inc (Co) .....	Leipsic, OH .....	12/27/94	11/30/94	30,610	Computer paper.

[FR Doc. 95-95-744 Filed 1-11-95; 8:45 am]  
 BILLING CODE 4510-30-M

**Office of Federal Contract Compliance Programs**

**Kimmins Abatement Corporation, Debarment**

**AGENCY:** Office of Federal Contract Compliance Programs, Labor.

**ACTION:** Notice of Debarment, Kimmins Abatement Corporation.

**SUMMARY:** This notice advises of the debarment of Kimmins Abatement Corporation (hereinafter "KAC"), as an eligible bidder on Government contracts and subcontracts and federally-assisted construction contracts and subcontracts. The debarment is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Annie Blackwell, Director Program Policy, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Ave., N.W., Room C-3325, Washington, DC 20210 ((202) 219-9430).

**SUPPLEMENTARY INFORMATION:** On December 21, 1994, pursuant to 41 CFR 60-30.31, *et seq.*, the Administrative Law Judge approved a consent decree which provides: (1) KAC will be ineligible for the award of any Government contracts or subcontracts for at least 180 days, and thereafter until KAC satisfies the Deputy Assistant Secretary for Federal Contract Compliance Programs that KAC is in compliance with Executive Order 11246, as amended. A copy of the Consent Decree is attached.

Signed January 5, 1995, Washington, D.C.  
**Shirley J. Wilcher,**  
*Deputy Assistant Secretary For Federal Contract Compliance Programs.*

**United States Department of Labor, Office of Federal Contract Compliance Programs, Plaintiff, v. Kimmins Abatement Corporation and Kimmins Environmental Service Corporation, Defendants; Consent Decree**

[Case No. 94-OFC-20]

This Consent Decree is entered into between the Plaintiff, United States Department of Labor, Office of Federal Contract Compliance Programs (hereinafter "OFCCP"), and Defendants Kimmins Abatement Corporation ("KAC") and Kimmins Environmental Services Corporation ("KESC"), in resolution of the Administrative Complaint filed by OFCCP pursuant to Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303) and Executive Order 12086 (43 FR 46501) ("Executive Order"). The Administrative Complaint alleged that Defendant violated the terms of a conciliation agreement which was executed by Defendant KAC and OFCCP and which became effective on November 20, 1991.

**Part A. General Provisions**

1. The record on the basis of which this Consent Decree is entered shall consist of the Complaint and the Consent Decree and the attachments thereto.

2. Attachment A of the Consent Decree consists of the conciliation agreement between OFCCP and KAC which became effective on November 20, 1991.

3. This Consent Decree shall not become final until it has been signed by the Administrative Law Judge, and the effective date of the Decree shall be the date it is signed by the Administrative Law Judge.

4. This Consent Decree shall be binding upon KAC and KESC and shall have the same force and effect as an order made after a full hearing.

5. All further procedural steps to contest the binding effect of the Consent

Decree, and any right to challenge or contest the obligations entered into in accordance with the agreement contained in this Decree, are waived by the parties.

6. Subject to the performance of all duties and obligations contained in this Consent Decree, all alleged violations identified in the Administrative Complaint shall be deemed fully resolved. However, nothing herein is intended to relieve Defendants from compliance with the requirements of the Executive Order, or its regulations, nor to limit OFCCP's right to review Defendants' compliance with such requirements, subject to Defendants' rights set forth in paragraph 17b of this agreement.

7. Defendants agree that there will be no retaliation of any kind against any beneficiary of this Consent Decree, or against any person who has provided information or assistance in connection with this Decree.

**Part B. Jurisdiction and Procedural History**

8. In its initial compliance review of KAC, OFCCP identified violations of the Executive Order 11246 and its regulation by KAC at its Niagara Falls office.

9. On November 20, 1991, OFCCP and KAC entered into a conciliation agreement.

10. The conciliation agreement required KAC to notify outreach groups of available employment opportunities. KAC failed to issue such notification.

11. In addition, the conciliation agreement obligated KAC to submit two annual reports to OFCCP so that OFCCP could monitor the company's compliance with the terms of the conciliation agreement in its Niagara Falls office. KAC failed to timely submit such reports.

**Part C. Specific Provisions**

*1. Debarment Period*

12. The Office of Administrative Law Judges shall retain jurisdiction in this case for a period of nine (9) months

from the effective date of this Consent Decree.

13. a. KAC and Kimmins Industrial Service Corporation ("KISC") agree not to bid for or enter into future Government contracts or subcontracts for a period of 180 days from the effective date of this Consent Decree.

b. ThermoCor Kimmins ("TK") agrees not to bid on federal or federally assisted demolition or asbestos abatement contracts for a period of 180 days from the effective date of this Consent Decree. It may, however, continue to bid on federal or federally assisted contracts which are for remediation of hazardous waste or contamination.

14. Notice of the debarment shall be printed in the **Federal Register**. In addition, OFCCP shall notify the Comptroller General of the United States General Accounting Office and all Federal Contracting Officers that KAC and KISC are ineligible for the award of any Government contracts or subcontracts. TK shall be ineligible for bidding on the type of contracts noted above in paragraph 13b. The notice in the **Federal Register** shall read, with respect to TK, "Limited to demolition and asbestos abatement; hazardous waste and contamination work permitted."

15. The debarment shall be lifted at the conclusion of the 180-day period if KAC, KISC and TK satisfy the Director of OFCCP that they are in compliance with the Executive Order 11246 and its implementing regulations. Such consent to lifting the debarment shall not be unreasonably withheld.

16. In order to satisfy the Director of OFCCP that they are in compliance with the Executive Order and its implementing regulations, KAC, KISC and TK must accomplish each of the following regarding the Niagara Falls, New York, office:

a. KAC, KISC and TK must agree to list all employment opportunities within the eight Western New York counties with the New York State Employment Service.

b. KAC, KISC and TK must provide timely notification to female recruitment sources when they have an employment opportunity. KAC, KISC and TK provided OFCCP with a list of female recruitment sources on December 12, 1994, in fulfillment of their obligations under the conciliation agreement. KAC, KISC and TK must contact these sources when an opening is available in the eight Western New York counties.

c. KAC, KISC and TK agree to provide five (5) successive reports to the OFCCP Buffalo Office, 6 Fountain Plaza, Suite

300, Buffalo, New York, 14202. Each report will include the following:

1. List for the laborer craft the number of openings in the eight Western New York counties during the reporting period.

2. List for the laborer craft the total number of applications and the number of female applications received in each reporting period within the eight Western New York counties.

3. Verification for the laborer craft that the above openings were referred to the New York State Employment Service and the female recruitment sources outlined in 16 a. and b. above in each reporting period.

4. List for the laborer craft the total number of hires and the number of female hires in each reporting period in the eight Western New York counties.

5. The reports will be due on the dates specified below and will cover the periods specified. Each report will be due on the dates designated for the five successive reports.

	Period covered	Date due
First report	12/25/94-1/28/95	2/6/95
Second report .....	1/29/95-3/4/95	3/13/95
Third report	3/5/95-4/8/95	4/17/95
Fourth report .....	4/9/95-5/6/95	5/15/95
Fifth report	5/7/95-6/3/95	6/12/95

17. In order to satisfy the Director of OFCCP that it is in compliance with the Executive Order and its implementing regulations, KESC and its existing or newly created subsidiaries agree to accomplish each of the following:

a. They will not bid on a federal or federally assisted demolition or asbestos abatement contract for the period of debarment. However, it is understood that this will not preclude Kimmins Contracting Corporation from bidding or performing federal or federally assisted demolition contracts in the state of Florida. It is further understood that subsidiaries of KESC, other than KAC and KISC, will not be precluded from bidding on federal or federally assisted contracts which are for dismantling for resale or rebuilding, and not demolition or asbestos abatement.

b. Kimmins International Corporation agrees to withdraw the litigation pending before the United States District Court for the Eastern District of Virginia in Case No. 94-CV-169. The withdrawal of this lawsuit shall not be deemed to prejudice the rights of Kimmins International, KAC, KISC, TK, KESC or any of its subsidiaries to initiate future litigation alleging similar claims as those asserted in the pending matter should OFCCP initiate

enforcement proceedings against KESC or any of its existing or newly created subsidiaries after the effective date of this Consent Decree. This provision shall not, in any way, preclude the Secretary of Labor from raising any defenses he deems appropriate to any newly filed litigation.

c. KESC will hire an EEO Director to assist its subsidiaries in compliance with the Executive Order and its implementing regulations. OFCCP will provide technical assistance to ensure compliance within the 180 debarment period provided herein.

d. KESC and its current and newly created subsidiaries will file five (5) successive reports with OFCCP listing all federal and federally assisted projects on which it bid and the scope of such work. The reports will be due as follows:

	Period covered	Date due
First report	12/25/94-1/28/95	2/6/95
Second report .....	1/29/95-3/4/95	3/13/95
Third report	3/5/95-4/8/95	4/17/95
Fourth report .....	4/9/95-5/6/95	5/15/95
Fifth report	5/7/95-6/3/95	6/12/95

18. The Buffalo District Office shall review each of the reports and shall determine whether there has been compliance with the terms of this Consent Decree and the terms of the Executive Order and its implementing regulations. OFCCP shall notify Defendants in writing, within ten (10) days of receipt of each report, if there is a deficiency. Defendants shall be given fifteen (15) days to rectify the deficiency. If rectified within the fifteen (15) days, such deficiency shall not be deemed a breach of this agreement. All mailing shall be done by certified mail/return receipt.

19. If OFCCP finds that there has been compliance with the terms of this Consent Decree and with the terms of the Executive Order and its implementing regulations, the debarment of KAC, KISC and TK shall be lifted and such companies shall be free to enter into future Government contracts and subcontracts. OFCCP will notify KAC, KISC and TK within ten (10) days of the last report whether they will be reinstated. Notice of the reinstatement shall be printed in the Federal Register and shall be made to the Comptroller General of the General Accounting Office and all Federal Contracting Officers. It is understood that OFCCP may conduct an onsite review at the Niagara Falls, New York, office or projects in the eight Western New York counties to ensure

compliance with the Consent Decree and the Executive Order. However, in no circumstances shall this review delay the determination of lifting the debarment beyond the ten (10) day period noted in this paragraph.

20. If OFCCP finds that there has not been compliance with the terms of the Consent Decree or with the terms of the Executive Order and its implementing regulations, OFCCP will notify KAC, KISC, TK and KESC within ten (10) days (after the twenty-five (25) day period noted in paragraph 18, above) that the debarment shall not be lifted and shall remain in effect until there is submission of three (3) consecutive monthly reports which demonstrate compliance with the Consent Decree, the Executive Order and its implementing regulations. KAC, KISC, TK and/or KESC may file a motion with the Administrative Law Judge for review of the Director's decision, and such companies may request a hearing at which the sole issue will be whether there has been compliance with the terms of this Consent Decree and the Executive Order and its implementing regulations.

21. Compliance, as used in this Consent Decree, shall mean that, with regard to the Niagara Falls, New York, office, KAC, KISC and TK have satisfied the provisions of Regulation 41 C.F.R. 60-4. In addition, KAC will make a good faith effort to determine whether there were available qualified female employees within the eight Western New York counties who would have been employed as laborers at the Niagara Falls location of KAC during the period of October 1, 1991 to October 1, 1993. KAC agrees to make such employees whole for lost wages they would have received from KAC, less interim earnings, during such period had they been employed by KAC. In order to be deemed qualified to work for KAC, the employee must successfully complete the medical examination required under OSHA 1926.58 and 1910.134, successfully pass the company drug test, and shows that they had attended and successfully passed Part 763 of the Asbestos Hazard Emergency Removal Act with a grade of at least 70% and had received a state asbestos license prior to or during the period of October 1, 1991, to October 1, 1993.

#### **Part D. Implementation and Enforcement of the Decree**

22. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of this Consent Decree, is retained by the Office

of Administrative Law Judges for a period of nine (9) months from the date this Consent Decree becomes final, or until debarment is lifted, whichever is earlier. If any motion is pending before the Office of Administrative Law Judges nine (9) months from the date this Consent Decree becomes final, jurisdiction shall continue beyond nine (9) months and until such time as the pending motion is finally resolved.

23. Enforcement proceedings for violation of this Consent Decree may be initiated at any time after the 25-day period referred to in Paragraph 18 has elapsed upon filing with the Court a motion for an order of enforcement and/or sanctions. The hearing on the motion shall relate solely to the issues of the factual and legal claims made in the motion.

24. Liability for violation of this Consent Decree shall subject KAC, KISC and TK to possible sanctions set forth in the Executive Order and its implementing regulations.

25. If an application or motion for an order of enforcement or clarification indicates by signature of counsel that the application or motion is unopposed by the Plaintiff or KAC, KISC, TK and/or KESC as appropriate, the application or motion may be presented to the Court without hearing, and the proposed Order may be implemented immediately. If an application or motion is opposed by any party, the party in opposition shall file a written response within twenty (20) days of service. The Office of Administrative Law Judges may, if it deems it appropriate, schedule an oral hearing on the application or motion.

26. This Consent Decree sets forth the complete agreement reached by the parties, including the agreement that there shall be no cancellation of any federal or federally assisted contracts or debarment of any officers of the KAC, KISC, TK and KESC or its subsidiaries.

27. The Agreement, herein set forth, is hereby approved and shall constitute the final Administrative Order in this case.

It is so ordered, this 21st day of December, 1994.

George P. Morin,  
*Administrative Law Judge, U.S. Department of Labor.*

So agreed.

On behalf of Kimmins Environmental Services Corporation.

Dated: December 13, 1994.

Edward A. Mackowiak,  
*Vice President.*

On behalf of the Office of Federal Contract Compliance Programs.

Dated: December 20, 1994.

Thomas S. Williamson,  
*Solicitor of Labor.*

James D. Henry,  
*Associate Solicitor.*

Debra A. Millenson,  
*Senior Trial Attorney.*

Gretchen M. Lucken,  
*Attorney, U.S. Department of Labor, Room N-2464, 200 Constitution Ave., N.W., Washington, D.C. 20210, (202) 219-5854.*

It is understood that each of the subsidiaries of KESC will sign this consent decree in its own name and such signature page shall be added to the consent decree.

On behalf of Kimmins Abatement Corporation.

Dated: December 14, 1994.

Daniel Hoffner,  
*Assistant Secretary.*

On behalf of Kimmins Industrial Services Corporation.

Dated: December 14, 1994.

Norman S. Dominiak,  
*Treasurer.*

On behalf of Thermocor Kimmins, Inc.

Dated: December 14, 1994.

Thomas C. Andrews,  
*President.*

On behalf of Kimmins International.

Dated: December 13, 1994.

Joseph M. Williams,  
*Secretary.*

On behalf of Kimmins Contracting Corporation.

Dated: December 13, 1994.

John V. Simon, Jr.,  
*President.*

On behalf of Transcor Waste Services, Inc.

Dated: December 13, 1994.

Francis M. Williams,  
*President.*

On behalf of Kimmins Recycling Corp.  
Charles A. Baker, Jr.

#### **Attachment A—Conciliation Agreement Between U.S. Department of Labor, Office of Federal Contract Compliance Programs and Kimmins Abatement Co., 256 3rd Street, Niagara Falls, New York 14303**

##### **Part I: General Provisions**

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter OFCCP) and Kimmins Abatement Co. 256 3rd Street, Niagara Falls, New York 14303, (hereinafter Kimmins).

2. The violations identified in this Agreement were found during a compliance review of Kimmins which began on October 22, 1991 and they were specified in a Notice of Violation issued October 31, 1991. OFCCP alleges that Kimmins violated Executive Order 11246, as amended, and implementing regulations at 41 CFR Chapter 60 due to

the specific violations cited in Part II below.

3. Subject to the performance by Kimmins of all promises and representations contained herein and all named violations in regard to the compliance of Kimmins with all OFCCP programs will be deemed resolved. However, Kimmins is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

4. Kimmins agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents, as may be relevant to the matter under investigation and pertinent to Kimmins' compliance. Kimmins shall permit access to its premises during normal business hours for these purposes.

5. Nothing herein is intended to relieve Kimmins from the obligation to comply with the requirements of Executive Order 11246, as amended, and/or Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38

U.S.C. 2012) and implementing regulations, or any other equal employment statute or executive order or its implementing regulations.

6. Kimmins agrees that there will be no retaliation of any kind against any beneficiary of this Agreement or against any person who has provided information or assistance, or who files a complaint, or who participates in any manner in any proceedings under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2012).

7. This Agreement will be deemed to have been accepted by the Government on the date of signature by the District Director for OFCCP, unless the Regional Director, OFCCP indicates otherwise within 45 days of the District Director's signature of this Agreement.

8. If, at any time in the future, OFCCP believes that Kimmins has violated any portion of this Agreement during the term of this Agreement, Kimmins will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide

Kimmins with 15 days from receipt of the notification to respond in writing, except where OFCCP alleges that such delay would result in irreparable injury.

Enforcement proceedings for violation of this Agreement may be initiated at any time after the 15 days period has elapsed (or sooner, if irreparable injury is alleged), without issuing a Show Cause Notice.

Where OFCCP believes that Kimmins has violated this Conciliation Agreement, evidence regarding the entire scope of Kimmins' alleged noncompliance which gave rise to the Notice of Violations from which this Conciliation Agreement resulted, in addition to evidence regarding the Kimmins' alleged violation of the Conciliation Agreement, may be introduced at enforcement proceedings.

Liability for violation of this Agreement may subject Kimmins to sanctions set forth in Section 209 of the Executive Order, and/or other appropriate relief.

**Part II: Specific Provisions**

1. *Violation:* Kimmins failed to demonstrate good faith efforts towards increased female employment, as required by 41 CFR 60-4.3(a), 7 b, c, and i, in the following craft(s):

Craft	Goal (%)		Utilization (%)	
	Minority	Female	Minority	Female
Laborer .....	7.7	6.9	12.0	0.0

*Remedy: Kimmins accomplished the following:*

a. On October 22, 1991, Kimmins established and shall maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when it or its unions have employment opportunities available, and maintain a record of the organizations' responses, as required by 41 CFR 60-4.3(a) 7b.

b. On October 22, 1991, Kimmins developed and shall continuously maintain, a current file of names, addresses, and telephone numbers of each minority and female off-the-street applicant, and minority or female referral from a union, recruitment source or community organization, and what action taken with respect to each individual. If such individual was sent to a union hiring hall for referral and was not referred back to the Contractor, by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever

additional actions the Contractor may have taken, as required by 41 CFR 60-4.3(a) 7c.

c. On October 22, 1991, Kimmins agreed to direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving Kimmins recruitment area and employment needs, as required by 41 CFR 60-4.3(a) 7j.

2. *Violation:* Kimmins failed to maintain and submit the Monthly Employment Utilization Reports (CC-257) to OFCCP and to record its employment utilization completely, accurately, and in a timely manner, as required by 41 CFR 60-1.4(b)5.

*Remedy:* On October 22, 1991, Kimmins began and will continue to maintain and submit Monthly Employment Utilization Reports (CC-257) to OFCCP by the 5th of each month for the preceding month, and record its employment utilization completely,

accurately, and in a timely manner, as required by 41 CFR 60-1.4(b)5.

Kimmins agrees to ensure that violations 1 and 2 listed above will not recur.

**Part III: Reporting**

Kimmins agrees to furnish OFCCP, U.S. Department of Labor, 220 Delaware Avenue, 609 Jackson Building, Buffalo, New York 14202 with the following reports:

1. Copies of letters sent to minority and female recruitment sources when it or its unions have opportunities available and copies of the organizations responses.

2. A copy of their applicant log for minorities and females.

3. Copies of letters sent to minority/female recruitment sources and community organizations providing notice of apprentice and training program opportunities.

4. Any other relevant documentation the contractor has to substantiate that each enumerated item in this agreement is being, and continues to be fulfilled.

The documentation will be submitted annually as follows:

Covered period	Report due date
Oct. 1, 1991–Sep. 30, 1992.	Nov. 1, 1992.
Oct. 1, 1992–Sep. 30, 1993.	Nov. 1, 1993.

All support documentation and records pertinent to the violations resolved by the Conciliation Agreement and submitted to OFCCP shall be retained until the expiration of the Conciliation Agreement or consistent with regulatory requirements (41 CFR 60–3.15) whichever is later.

This Conciliation Agreement shall remain in full force and effect until such time as Kimmins is notified by OFCCP that it has met all of the terms of this Agreement or for two (2) years following its execution by the District Director, whichever comes first.

#### Part IV: Signatures

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Kimmins Abatement Co.  
Dated: November 19, 1991.

Michael O'Brien,

*Regional Manager, Kimmins Abatement Co.,  
256 3rd Street, Niagara Falls, NY 14303.*

Dated: November 20, 1991.

Mary Ellen Bentivogli,

*Asst. District Director, Buffalo District Office.*

Dated: November 20, 1991.

Allan Cecchini,

*Compliance Officer, Buffalo District Office.*

Dated: November 20, 1991.

Garland Sweeney,

*District Director, Buffalo District Office.*

#### Service Sheet

Case Name: Kimmins Abatement Corporation and Kimmins Environmental Services Corp.

Case Number: 94–OFC–20.

Title of Document: Consent Decree.

I hereby certify that on December 21, 1994 a copy of the above-entitled document was mailed to the following parties:

Laura Ann Brown,

*Legal Technician.*

#### Certified Mail

Director, Office of Administrative Appeals, U.S. Department of Labor, Room S–4309, 200 Constitution Avenue, NW, Washington, DC 20210  
Robert Reich, Secretary of Labor, U.S. Department of Labor, Room S–2018, 200 Constitution Avenue, NW, Washington, DC 20210  
Gretchen M. Luken, Esq., U.S. Department of Labor, Office of the

Solicitor, 200 Constitution Ave., NW, Room N–2464, Washington, DC 20210  
Robert A. Doren, Esq., Flaherty Cohen Grande Randazzo Doren P.C., Suite 210, Firstmark Building, 135 Delaware Avenue, Buffalo, NY 14202  
Josephine A. Greco, Esq., Offermann, Cassano, Pigott & Greco, 1776 Statler Towers, Buffalo, NY 14202–3090

#### Regular Mail

Office of Federal Contract Compliance Programs, U.S. Department of Labor, Room C–3325, FPB, 200 Constitution Avenue, NW, Washington, DC 20210  
Associate Solicitor, Civil Rights Division, U.S. Department of Labor, Room N–2464, FPB, 200 Constitution Avenue, NW, Washington, DC 20210  
Patricia M. Rodenhause, Esq., Regional Solicitor, Office of the Solicitor, U.S. Department of Labor, 201 Varick Street, Room 707, New York, NY 10014–4811

Solicitor of Labor, Office of the Solicitor, U.S. Department of Labor, Room S–2002, FPB, 200 Constitution Avenue, NW, Washington, DC 20210  
Special Counsel to the Assistant Secretary of Labor, U.S. Department of Labor, Employment & Training Admin., Room N–4671, 200 Constitution Avenue, NW, Washington, DC 20210

President, Kimmins Abatement Corporation, 256 Third Street, Niagara Falls, NY 14303

Garland Sweeney, District Director, U.S. Department of Labor, Employment Standards Admin., Office of Federal Contract Compliance Programs, 6 Fountain Plaza, Suite 300, Buffalo, NY 14202

Francis Williams, Chief Executive Officer, Kimmins Environmental Services Corporation, 1501 Second Avenue, Tampa, FL 33605

Harry Anbarlian, Acting Regional Director, U.S. Department of Labor, Employment Standards Admin., Office of Federal Contract Compliance Programs, 201 Varick Street, Room 750, New York, NY 10014

[FR Doc. 95–747 Filed 1–11–95; 8:45 am]

BILLING CODE 4510–27–M

#### Office of Federal Contract Compliance Programs

##### Kimmins Industrial Service Corporation, Debarment

**AGENCY:** Office of Federal Contract Compliance Programs, Labor.

**ACTION:** Notice of Debarment, Kimmins Industrial Service Corporation.

**SUMMARY:** This notice advises of the debarment of Kimmins Industrial

Service Corporation (hereinafter “KISC”), as an eligible bidder on Government contracts and subcontracts and federally-assisted construction contracts and subcontracts. The debarment is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Annie Blackwell, Director Program Policy, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Ave., N.W. Room C–3325, Washington, D.C. 20210 ((202) 219–9430).

**SUPPLEMENTARY INFORMATION:** On December 21, 1994, pursuant to 41 CFR 60–30.31, *et seq.*, the Administrative Law Judge approved a consent decree which provides: (1) KISC is ineligible for the award of any Government contracts or subcontracts for at least 180 days, and thereafter until KISC satisfies the Deputy Assistant Secretary for Federal Contract Compliance Programs that KISC is in compliance with Executive Order 11246, as amended. A copy of the Consent Decree is attached.

Signed January 5, 1995, Washington, D.C.

**Shirley J. Wilcher,**

*Deputy Assistant Secretary For Federal Contract Compliance Programs.*

#### United States Department of Labor, Office of Federal Contract Compliance Programs, Plaintiff, Kimmins Abatement Corporation and Kimmins Environmental Service Corporation, Defendants; Consent Decree

[Case No. 94–OFC–20]

This Consent Decree is entered into between the Plaintiff, United States Department of Labor, Office of Federal Contract Compliance Programs (hereinafter “OFCCP”), and Defendants Kimmins Abatement Corporation (“KAC”) and Kimmins Environmental Services Corporation (“KESC”), in resolution of the Administrative Complaint filed by OFCCP pursuant to Executive Order 11246 (30 Fed. Reg. 12319), as amended by Executive Order 11375 (32 Fed. Reg. 14303) and Executive Order 12086 (43 Fed. Reg. 46501) (“Executive Order”). The Administrative Complaint alleged that Defendant violated the terms of a conciliation agreement which was executed by Defendant KAC and OFCCP and which became effective on November 20, 1991.

#### Part A. General Provisions

1. The record on the basis of which this consent Decree is entered shall consist of the complaint and the Consent Decree and the attachments thereto.

2. Attachment A of the Consent Decree consists of the conciliation

agreement between OFCCP and KAC which became effective on November 20, 1991.

3. This Consent Decree shall not become final until it has been signed by the Administrative Law Judge, and the effective date of the Decree shall be the date it is signed by the Administrative Law Judge.

4. This Consent Decree shall be binding upon KAC and KESC and shall have the same force and effect as an order made after a full hearing.

5. All further procedural steps to contest the binding effect of the Consent Decree, and any right to challenge or contest the obligations entered into in accordance with the agreement contained in this Decree, are waived by the parties.

6. Subject to the performance of all duties and obligations contained in this Consent Decree, all alleged violations identified in the Administrative Complaint shall be deemed fully resolved. However, nothing herein is intended to relieve Defendants from compliance with the requirements of the Executive Order, or its regulations, nor to limit OFCCP's right to review Defendants' compliance with such requirements, subject to Defendants' rights set forth in paragraph 17b of this agreement.

7. Defendants agree that there will be no retaliation of any kind against any beneficiary of this Consent Decree, or against any person who has provided information or assistance in connection with this Decree.

### Part B. Jurisdiction and Procedural History

8. In its initial compliance review of KAC, OFCCP identified violations of the Executive Order 11246 and its regulation by KAC at its Niagara Falls office.

9. On November 20, 1991, OFCCP and KAC entered into a conciliation agreement.

10. The conciliation agreement required KAC to notify outreach groups of available employment opportunities. KAC failed to issue such notification.

11. In addition, the conciliation agreement obligated KAC to submit two annual reports to OFCCP so that OFCCP could monitor the company's compliance with the terms of the conciliation agreement in its Niagara Falls office. KAC failed to timely submit such reports.

### Part C. Specific Provisions

#### 1. Debarment Period

12. The Office of Administrative Law Judges shall retain jurisdiction in this

case for a period of nine (9) months from the effective date of this Consent Decree.

13. a. KAC and Kimmins Industrial Service Corporation ("KISC") agree not to bid for or enter into future Government contracts or subcontracts for a period of 180 days from the effective date of this Consent Decree.

b. ThermoCor Kimmins ("TK") agrees not to bid on federal or federally assisted demolition or asbestos abatement contracts for a period of 180 days from the effective date of this Consent Decree. It may, however, continue to bid on federal or federally assisted contracts which are for remediation of hazardous waste or contamination.

14. Notice of the debarment shall be printed in the **Federal Register**. In addition, OFCCP shall notify the Comptroller General of the United States General Accounting Office and all Federal Contracting Officers that KAC and KISC are ineligible for the award of any Government contracts or subcontracts. TK shall be ineligible for bidding on the type of contracts noted above in paragraph 13b. The notice in the **Federal Register** shall read, with respect to TK, "Limited to demolition and asbestos abatement; hazardous waste and contamination work permitted."

15. The debarment shall be lifted at the conclusion of the 180-day period if KAC, KISC and TK satisfy the Director of OFCCP that they are in compliance with the Executive Order 11246 and its implementing regulations. Such consent to lifting the debarment shall not be unreasonably withheld.

16. In order to satisfy the Director of OFCCP that they are in compliance with the Executive Order and its implementing regulations, KAC, KISC and TK must accomplish each of the following regarding the Niagara Falls, New York, office:

a. KAC, KISC and TK must agree to list all employment opportunities within the eight Western New York counties with the New York State Employment Service.

b. KAC, KISC and TK must provide timely notification to female recruitment sources when they have an employment opportunity. KAC, KISC and TK provided OFCCP with a list of female recruitment sources on December 12, 1994, in fulfillment of their obligations under the conciliation agreement. KAC, KISC and TK must contact these sources when an opening is available in the eight Western New York counties.

c. KAC, KISC and TK agree to provide five (5) successive reports to the OFCCP

Buffalo Office, 5 Foundation Plaza, Suite 300, Buffalo, New York, 14202.

Each report will include the following:  
1. List for the laborer craft the number of openings in the eight Western New York counties during the reporting period.

2. List of the laborer craft the total number of applications and the number of female applications received in each reporting period within the eight Western New York counties.

3. Verification for the laborer craft that the above openings were referred to the New York State Employment Service and the female recruitment sources outlined in 16 a. and b. above in each reporting period.

4. List for the laborer craft the total number of hires and the number of female hires in each reporting period in the eight Western New York counties.

5. The reports will be due on the date specified below and will cover the periods specified. Each report will be due on the dates designated for the five successive reports.

	Period covered	Date due
First report	12/25/94-1/28/95	2/6/95
Second report .....	1/29/95-3/4/95	3/13/95
Third report	3/5/95-4/8/95	4/17/95
Fourth report .....	4/9/95-5/6/95	5/15/95
Fifth report	5/7/95-6/3/95	6/12/95

17. In order to satisfy the Director of OFCCP that it is in compliance with the Executive Order and its implementing regulations, KESC and its existing or newly created subsidiaries agree to accomplish each of the following:

a. They will not bid on a federal or federally assisted demolition or asbestos abatement contract for the period of debarment. However, it is understood that this will not preclude Kimmins Contracting Corporation from bidding or performing federal or federally assisted demolition contracts in the state of Florida. It is further understood that subsidiaries of KESC, other than KAC and KISC, will not be precluded from bidding on federal or federally assisted contracts which are for dismantling for resale or rebuilding, and not demolition or asbestos abatement.

b. Kimmins International Corporation agrees to withdraw the litigation pending before the United States District Court for the Eastern District of Virginia in Case No. 94-CV-169. The withdrawal of this lawsuit shall not be deemed to prejudice the rights of Kimmins International, KAC, KISC, TK, KESC or any of its subsidiaries to initiate future litigation alleging similar claims as those asserted in the pending

matter should OFCCP initiate enforcement proceedings against KESC or any of its existing or newly created subsidiaries after the effective date of this Consent Decree. This provision shall not, in any way, preclude the Secretary of Labor from raising any defense he deems appropriate to any newly filed litigation.

c. KESC will hire an EEO Director to assist its subsidiaries in compliance with the Executive Order and its implementing regulations. OFCCP will provide technical assistance to ensure compliance within the 180 debarment period provided herein.

d. KESC and its current and newly created subsidiaries will file five (5) successive reports with OFCCP listing all federal and federally assisted projects on which it bid and the scope of such work. The reports will be due as follows:

	Period covered	Date due
First report	12/25/94-1/28/95	2/6/95
Second report .....	1/29/95-3/4/95	3/13/95
Third report	3/5/95-4/8/95	4/17/95
Fourth report .....	4/9/95-5/6/95	5/15/95
Fifth report	5/7/95-6/3/95	6/12/95

18. The Buffalo District Office shall review each of the reports and shall determine whether there has been compliance with the terms of this Consent Decree and the terms of the Executive Order and its implementing regulations. OFCCP shall notify Defendants in writing, within ten (10) days of receipt of each report, if there is a deficiency. Defendants shall be given fifteen (15) days to rectify the deficiency. If rectified within the fifteen (15) days, such deficiency shall not be deemed a breach of this agreement. All mailing shall be done by certified mail/return receipt.

19. If OFCCP finds that there has been compliance with the terms of this Consent Decree and with the terms of the Executive Order and its implementing regulations, the debarment of KAC, KISC and TK shall be lifted and such companies shall be free to enter into future Government contracts and subcontracts. OFCCP will notify KAC, KISC and TK within ten (10) days of the last report whether they will be reinstated. Notice of the reinstatement shall be printed in the **Federal Register** and shall be made to the Comptroller General of the General Accounting Office and all Federal Contracting Officers. It is understood that OFCCP may conduct an onsite review at the Niagara Falls, New York,

office or projects in the eight Western New York countries to ensure compliance with the Consent Decree and the Executive Order. However, in no circumstances shall this review delay the determination of lifting the debarment beyond the ten (10) day period noted in this paragraph.

20. If OFCCP finds that there has not been compliance with the terms of the Consent Decree or with the terms of the Executive Order and its implementing regulations, OFCCP will notify KAC, KISC, TK and KESC within ten (10) days (after the twenty-five (25) day period noted in paragraph 18, above) that the debarment shall not be lifted and shall remain in effect until there is submission of three (3) consecutive monthly reports which demonstrate compliance with the Consent Decree, the Executive Order and its implementing regulations. KAC, KISC, TK and/or KESC may file a motion with the Administrative Law Judge for review of the Director's decision, and such companies may request a hearing at which the sole issue will be whether there has been compliance with the terms of this Consent Decree and the Executive Order and its implementing regulations.

21. Compliance, as used in this Consent Decree, shall mean that, with regard to the Niagara Falls, New York, office, KAC, KISC and TK have satisfied the provisions of Regulation 41 CFR 60-4. In addition, KAC will make a good faith effort to determine whether there were available qualified female employees within the eight Western New York countries who would have been employed as laborers as the Niagara Falls location of KAC during the period of October 1, 1991 to October 1, 1993. KAC agrees to make such employees whole for lost wages they would have received from KAC, less interim earnings, during such period had they been employed by KAC. In order to be deemed qualified to work for KAC, the employee must successfully complete the medical examination required under OSHA 1926.58 and 1910.134, successfully pass the company drug test, and shows that they had attended and successfully passed Part 763 of the Asbestos Hazard Emergency Removal Act with a grade of at least 70% and had received a state asbestos license prior to or during the period to October 1, 1991, to October 1, 1993.

#### **Part D. Implementation and Enforcement of the Decree**

22. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the

implementation of the provisions of this Consent Decree, is retained by the Office of Administrative Law Judges for a period of nine (9) months from the date this Consent Decree becomes final, or until debarment is lifted, whichever is earlier. If any motion is pending before the Office of Administrative Law Judges nine (9) months from the date this Consent Decree becomes final, jurisdiction shall continue beyond nine (9) months and until such time as the pending motion is finally resolved.

23. Enforcement proceedings for violation of this Consent Decree may be initiated at any time after the 25-day period referred to in Paragraph 18 has elapsed upon filing with the Court a motion for an order of enforcement and/or sanctions. The hearing on the motion shall relate solely to the issues of the factual and legal claims made in the motion.

24. Liability for violation of this Consent Decree shall subject KAC, KISC and TK to possible sanctions set forth in the Executive Order and its implementing regulations.

25. If an application or motion for an order of enforcement or clarification indicates by signature of counsel that the application or motion is unopposed by the Plaintiff or KAC, KISC, TK and/or KESC as appropriate, the application or motion may be presented to the Court without hearing, and the proposed Order may be implemented immediately. If an application or motion is opposed by any party, the party in opposition shall file a written response within twenty (20) days of service. The Office of Administrative Law Judges may, if it deems it appropriate, schedule an oral hearing on the application or motion.

26. This Consent Decree sets forth the complete agreement reached by the parties, including the agreement that there shall be no cancellation of any federal or federally assisted contracts or debarment of any officers of the KAC, KISC, TK and KESC or its subsidiaries.

27. The Agreement, herein set forth, is hereby approved and shall constitute the final Administrative Order in this case.

It is so ordered, this 21st day of December, 1994.

George P. Morin,  
*Administrative Law Judge, U.S. Department of Labor.*

So agreed.

On behalf of Kimmins Environmental Services Corporation.

Dated: December 13, 1994.  
 Edward A. Mackowiak,  
*Vice President.*  
 On behalf of the Office of Federal Contract  
 Compliance Programs.  
 Thomas S. Williamson,  
*Solicitor of Labor.*  
 James D. Henry,  
*Associate Solicitor.*  
 Debra A. Millenson,  
*Senior Trial Attorney.*

Dated: December 20, 1994.  
 Gretchen M. Lucken,  
*Attorney, U.S. Department of Labor, Room  
 N-2464, 200 Constitution Ave., N.W.,  
 Washington, DC 20210, (202) 219-5854.*

It is understood that each of the  
 subsidiaries of KESC will sign this consent  
 decree in its own name and such signature  
 page shall be added to the consent decree.

On behalf of Kimmins Abatement  
 Corporation.  
 Dated December 14, 1994.  
 Daniel Hoffner,  
*Assistant Secretary.*  
 On behalf of Kimmins Industrial Services  
 Corporation.

Dated: December 14, 1994.  
 Norman S. Dominiak,  
*Treasurer.*  
 On behalf of Thermocor Kimmins, Inc.  
 Dated: December 14, 1994.  
 Thomas C. Andrews,  
*President.*

On behalf of Kimmins International.  
 Dated: December 13, 1994.

Joseph M. Williams,  
*Secretary.*  
 On behalf of Kimmins Contracting  
 Corporation.  
 Dated: December 13, 1994.

John V. Simon, Jr.,  
*President.*  
 On behalf of Transcor Waste Services, Inc.  
 Dated: December 13, 1994.

Francis M. Williams,  
*President.*  
 On behalf of Kimmins Recycling Corp.  
 Charles A. Baker, Jr.

**Attachment A—Conciliation Agreement  
 Between U.S. Department of Labor, Office of  
 Federal Contract Compliance Programs and  
 Kimmins Abatement Co., 256 3rd Street,  
 Niagara Falls, New York 14303**

**Part I: General Provisions**

1. This Agreement is between the  
 Office of Federal Contract Compliance

Programs (hereinafter OFCCP) and  
 Kimmins Abatement Co. 255 3rd Street,  
 Niagara Falls, New York 14303,  
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2. The violations identified in this  
 Agreement were found during a  
 compliance review of Kimmins which  
 began on October 22, 1991 and they  
 were specified in a Notice of Violation  
 issued October 31, 1991. OFCCP alleges  
 that Kimmins violated Executive Order  
 11246, as amended, and implementing  
 regulations at 41 CFR Chapter 60 due to  
 the specific violations cited in Part II  
 below.

3. Subject to the performance by  
 Kimmins of all promises and  
 representations contained herein and all  
 named violations in regard to the  
 compliance of Kimmins with all OFCCP  
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 However, Kimmins is advised that the  
 commitments contained in this  
 Agreement do not preclude future  
 determinations or noncompliance based  
 on a finding that the commitments are  
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 As part of such review, OFCCP may  
 require written reports, inspect the  
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 examine and copy documents, as may  
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 investigation and pertinent to Kimmin's  
 compliance. Kimmins shall permit  
 access to its premises during normal  
 business hours for these purposes.

5. Nothing herein is intended to  
 relieve Kimmins from the obligation to  
 comply with the requirements of  
 Executive Order 11246, as amended,  
 and/or Section 503 of the Rehabilitation  
 Act of 1973, as amended, and/or the  
 Vietnam Era Veterans' Readjustment  
 Assistance Act of 1974, as amended (38  
 USC 2012) and implementing  
 regulations, or any other equal  
 employment statute or executive order  
 or its implementing regulations.

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 no retaliation of any kind against any  
 beneficiary of this Agreement or against  
 any person who has provided  
 information or assistance, or who files a  
 complaint, or who participates in any  
 manner in any proceedings under  
 Executive Order 11246, as amended,  
 Section 503 of the Rehabilitation Act of  
 1973, as amended, and/or the Vietnam

Era Veterans' Readjustment Assistance  
 Act of 1974, as amended (38 USC 2012).

7. This Agreement will be deemed to  
 have been accepted by the Government  
 on the date of signature by the District  
 Director for OFCCP, unless the Regional  
 Director, OFCP indicates otherwise  
 within 45 days of the District Director's  
 signature of this Agreement.

8. If, at any time in the future, OFCCP  
 believes that Kimmins has violated any  
 portion of this Agreement during the  
 term of this Agreement, Kimmins will  
 be promptly notified of that fact in  
 writing. This notification will include a  
 statement of the facts and circumstances  
 relied upon in forming that belief. In  
 addition, the notification will provide  
 Kimmins with 15 days from receipt of  
 the notification to respond in writing,  
 except where OFCCP alleges that such  
 delay would result in irreparable injury.

Enforcement proceedings for violation  
 of this Agreement may be initiated at  
 any time after the 15 day period has  
 elapsed (or sooner, if irreparable injury  
 is alleged), without issuing a Show  
 Cause Notice.

Where OFCCP believes that Kimmins  
 have violated this Conciliation  
 Agreement, evidence regarding the  
 entire scope of Kimmin's alleged  
 noncompliance which gave rise to the  
 Notice of Violations from which this  
 Conciliation Agreement resulted, in  
 addition to evidence regarding the  
 Kimmin's alleged violation of the  
 Conciliation Agreement, may be  
 introduced at enforcement proceedings.

Liability for violation of this  
 Agreement may subject Kimmins to  
 sanctions set forth in Section 209 of the  
 Executive Order, and/or other  
 appropriate relief.

**Part II: Specific Provisions**

1. *Violation:* Kimmins failed to  
 demonstrate good faith efforts towards  
 increased female employment, as  
 required by 41 CFR 60-4.3(a), 7 b, c, and  
 i, in the following craft(s):

Craft	Goal (%)		Utilization (%)	
	Minority	Female	Minority	Female
Laborer .....	7.7	6.9	12.0	0.0

*Remedy:* Kimmins accomplished the following:

a. On October 22, 1991, Kimmins established and shall maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when it or its unions have employment opportunities available, and maintain a record of the organizations' responses, as required by 41 CFR 60-4.3(a) 7b.

b. On October 22, 1991, Kimmins developed and shall continuously maintain, a current file of names, addresses, and telephone numbers of each minority and female off-the-street applicant, and minority or female referral from a union, recruitment source or community organization, and what action taken with respect to each individual. If such individual was sent to a union hiring hall for referral and was not referred back to the Contractor, by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken, as required by 41 CFR 60-4.3(a) 7c.

c. On October 22, 1991, Kimmins agreed to direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving Kimmins recruitment area and employment needs, as required by 41 CFR 60-4.3(a) 7i.

2. *Violation:* Kimmins failed to maintain and submit the Minority Employment Utilization Reports (CC-257) to OFCCP and to record its employment utilization completely, accurately, and in a timely manner, as required by 41 CFR 60-1.4(b)5.

*Remedy:* On October 22, 1991, Kimmins began and will continue to maintain and submit Monthly Employment Utilization Reports (C-257) to OFCCP by the 5th of each month for the preceding month, and record its employment utilization completely, accurately, and in a timely manner, as required by 41 CFR 60-1.4(b)5.

Kimmins agrees to ensure that violations 1 and 2 listed above will not recur.

### Part III: Reporting

Kimmins agrees to furnish ODCCP, U.S. Department of Labor, 220 Delaware Avenue, 609 Jackson Building, Buffalo, New York 14202 with the following reports:

1. Copies of letters sent to minority and female recruitment sources when it

or its unions have opportunities available and copies of the organizations responses.

2. A copy of their applicant log for minorities and females.

3. Copies of letters sent to minority/ female recruitment sources and community organizations providing notice of apprentice and training program opportunities.

4. Any other relevant documentation the contractor has to substantiate that each enumerated item in this agreement is being, and continues to be fulfilled.

The documentation will be submitted annually as follows:

Covered period	Report due date
Oct. 1, 1991-Sep. 30, 1992.	Nov. 1, 1992.
Oct. 1, 1992-Sep. 30, 1993.	Nov. 1, 1993.

All support documentation and records pertinent to the violations resolved by the Conciliation Agreement and submitted to OFCCP shall be retained until the expiration of the Conciliation Agreement or consistent with regulatory requirements (41 CFR 60-3.15) whichever is later.

This Conciliation Agreement shall remain in full force and effect until such time as Kimmins is notified by OFCCP that it has met all of the terms of this Agreement or for two (2) years following its execution by the District Director, whichever comes first.

### Part IV: Signatures

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Kimmins Abatement Co.

Dated: November 19, 1991.

Michael O'Brien,

*Regional Manager, Kimmins Abatement Co., 256 3rd Street, Niagara Falls, NY 14303.*

Dated: November 20, 1991.

Mary Ellen Bentivogli,

*Asst. District Director, Buffalo District Office.*

Dated: November 20, 1991.

Allan Cecchini,

*Compliance Officer, Buffalo District Office.*

Dated: November 20, 1991.

Garland Sweeney,

*District Director, Buffalo District Office.*

### Service Sheet

Case Name: Kimmins Abatement Corporation and Kimmins Environmental Services Corp.

Case Number: 94-OFC-20.

Title of Document: Consent Decree.

I hereby certify that on December 21, 1994, a copy of the above-entitled

document was mailed to the following parties:

**Laura Ann Brown,**

*Legal Technician.*

### Certified Mail

Director, Office of Administrative Appeals, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210

Robert Reich, Secretary of Labor, U.S. Department of Labor, Room S-2018 200 Constitution Avenue, NW, Washington, DC 20210

Gretchen M. Luken, Esq., U.S.

Department of Labor, Office of the Solicitor, 200 Constitution Ave., NW, Room N-2464, Washington, DC 20210

Robert A. Doren, Esq., Flaherty Cohen Grande Randazzo Doren P.C., Suite 210, Firstmark Building, 135 Delaware Avenue, Buffalo, NY 14202

Josephine A. Greco, Esq., Offermann, Cassano, Pigott & Greco, 1776 Statler Towers, Buffalo, NY 14202-3090

### Regular Mail

Office of Federal Contract Compliance Programs, U.S. Department of Labor, Room C-3325, FPB, 200 Constitution Avenue, NW, Washington, DC 20210

Associate Solicitor, Civil Rights Division, U.S. Department of Labor, Room N-2464, FPB, 200 Constitution Avenue, NW, Washington, DC 20210

Patricia M. Rodenhausen, Esq., Regional Solicitor, Office of the Solicitor, U.S. Department of Labor, 201 Varick Street, Room 707, New York, NY 10014-4811

Solicitor of Labor, Office of the Solicitor, U.S. Department of Labor, Room S-2002, FPB, 200 Constitution Avenue, NW, Washington, DC 20210

Special Counsel to the Assistant Secretary of Labor, U.S. Department of Labor, Employment & Training Admin., Room N-4671, 200 Constitution Avenue, NW, Washington, DC 20210

President, Kimmins Abatement Corporation, 256 Third Street, Niagara Falls, NY 14303

Garland Sweeney, District Director, U.S. Department of Labor, Employment Standards Admin., Office of Federal Contract Compliance Programs, 6 Fountain Plaza, Suite 300, Buffalo, NY 14202

Francis Williams, Chief Executive Officer, Kimmins Environmental Services Corporation, 1501 Second Avenue, Tampa, FL 33605

Harry Anbarlian, Acting Regional Director, U.S. Department of Labor, Employment Standards Admin., Office of Federal Contract Compliance

Programs, 201 Varick Street, Room 750, New York, NY 10014

[FR Doc. 95-748 Filed 1-11-95; 8:45 am]

BILLING CODE 4510-27-M

### Thermocor-Kimmins, Incorporated, Debarment

**AGENCY:** Office of Federal Contract Compliance Programs, Labor.

**ACTION:** Notice of Debarment, Thermocor-Kimmins, Inc.

**SUMMARY:** This notice advises of the debarment of Thermocor-Kimmins, Inc. (hereinafter "Thermocor"), as an eligible bidder on Government contracts and subcontracts and federally-assisted construction contracts and subcontracts. *The debarment is limited to asbestos abatement and demolition work; Thermocor may continue to bid on remediation of hazardous waste and contaminated waste.* The debarment is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Annie Blackwell, Director Program Policy, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Ave., N.W. Room C-3325, Washington, D.C. 20210 ((202) 219-9430).

**SUPPLEMENTARY INFORMATION:** On December 21, 1994, pursuant to 41 CFR 60-30.31, *et seq.*, the Administrative Law Judge approved of a consent decree which provides: (1) *Thermocor is ineligible for the award of Government contracts or subcontracts for asbestos abatement or demolition work only for at least 180 days*, and thereafter until Thermocor satisfies the Deputy Assistant Secretary for Federal Contract Compliance Programs that Thermocor is in compliance with Executive Order 11246, as amended. *Thermocor will remain eligible to bid on Federal or federally-assisted contracts which are for remediation of hazardous waste or contamination.* A copy of the Consent Decree is attached.

Signed January 5, 1995, Washington, D.C.

**Shirley J. Wilcher,**

*Deputy Assistant Secretary For Federal Contract Compliance Programs.*

**United States Department of Labor, Office of Federal Contract Compliance Programs, Plaintiff, Kimmins Abatement Corporation and Kimmins Environmental Service Corporation, Defendants**

### Consent Decree

[Case No. 94-OFC-20]

This Consent Decree is entered into between the Plaintiff, United States

Department of Labor, Office of Federal Contract Compliance Programs (hereinafter "OFCCP"), and Defendants Kimmins Abatement Corporation ("KAC") and Kimmins Environmental Services Corporation ("KESC"), in resolution of the Administrative Complaint filed by OFCCP pursuant to Executive Order 11246 (30 Fed. Reg. 12319), as amended by Executive Order 11375 (32 Fed. Reg. 14303) and Executive Order 12086 (43 Fed. Reg. 46501) ("Executive Order"). The Administrative Complaint alleged that Defendant violated the terms of a conciliation agreement which was executed by Defendant KAC and OFCCP and which became effective on November 20, 1991.

### Part A. General Provisions

1. The record on the basis of which this Consent Decree is entered shall consist of the Complaint and the Consent Decree and the attachments thereto.

2. Attachment A of the Consent Decree consists of the conciliation agreement between OFCCP and KAC which became effective on November 20, 1991.

3. This Consent Decree shall not become final until it has been signed by the Administrative Law Judge, and the effective date of the Decree shall be the date it is signed by the Administrative Law Judge.

4. This Consent Decree shall be binding upon KAC and KESC and shall have the same force and effect as an order made after a full hearing.

5. All further procedural steps to contest the binding effect of the Consent Decree, and any right to challenge or contest the obligations entered into in accordance with the agreement contained in this Decree, are waived by the parties.

6. Subject to the performance of all duties and obligations contained in this Consent Decree, all alleged violations identified in the Administrative Complaint shall be deemed fully resolved. However, nothing herein is intended to relieve Defendants from compliance with the requirements of the Executive Order, or its regulations, nor to limit OFCCP's right to review Defendants' compliance with such requirements, subject to Defendants' rights set forth in paragraph 17b of this agreement.

7. Defendants agree that there will be no retaliation of any kind against any beneficiary of this Consent Decree, or against any person who has provided information or assistance in connection with this Decree.

### Part B. Jurisdiction and Procedural History

8. In its initial compliance review of KAC, OFCCP identified violations of the Executive Order 11246 and its regulation by KAC at its Niagara Falls office.

9. On November 20, 1991, OFCCP and KAC entered into a conciliation agreement.

10. The conciliation agreement required KAC to notify outreach groups of available employment opportunities. KAC failed to issue such notification.

11. In addition, the conciliation agreement obligated KAC to submit two annual reports to OFCCP so that OFCCP could monitor the company's compliance with the terms of the conciliation agreement in its Niagara Falls office. KAC failed to timely submit such reports.

### Part C. Specific Provisions

#### 1. Debarment Period

12. The Office of Administrative Law Judges shall retain jurisdiction in this case for a period of nine (9) months from the effective date of this Consent Decree.

13. a. KAC and Kimmins Industrial Service Corporation ("KISC") agree not to bid for or enter into future Government contracts or subcontracts for a period of 180 days from the effective date of this Consent Decree.

b. ThermoCor Kimmins ("TK") agrees not to bid on federal or federally assisted demolition or asbestos abatement contracts for a period of 180 days from the effective date of this Consent Decree. It may, however, continue to bid on federal or federally assisted contracts which are for remediation of hazardous waste or contamination.

14. Notice of the debarment shall be printed in the **Federal Register**. In addition, OFCCP shall notify the Comptroller General of the United States General Accounting office and all Federal Contracting Officers that KAC and KISC are ineligible for the award of any Government contracts or subcontracts. TK shall be ineligible for bidding on the type of contracts noted above in paragraph 13b. The notice in the **Federal Register** shall read, with respect to TK, "Limited to demolition and asbestos abatement; hazardous waste and contamination work permitted."

15. The debarment shall be lifted at the conclusion of the 180-day period if KAC, KISC and TK satisfy the Director of OFCCP that they are in compliance with the Executive Order 11246 and its implementing regulations. Such consent

to lifting the debarment shall not be unreasonably withheld.

16. In order to satisfy the Director of OFCCP that they are in compliance with the Executive Order and its implementing regulations, KAC, KISC and TK must accomplish each of the following regarding the Niagara Falls, New York, office:

a. KAC, KISC and TK must agree to list all employment opportunities within the eight Western New York counties with the New York State Employment Service.

b. KAC, KISC and TK must provide timely notification to female recruitment sources when they have an employment opportunity. KAC, KISC and TK provided OFCCP with a list of female recruitment sources on December 12, 1994, in fulfillment of their obligations under the conciliation agreement. KAC, KISC and TK must contact these sources when an opening is available in the eight Western New York counties.

c. KAC, KISC and TK agree to provide five (5) successive reports to the OFCCP Buffalo Offices, 6 Fountain Plaza, Suite 300, Buffalo, New York, 14202. Each report will include the following:

1. List for the laborer craft the number of openings in the eight Western New York counties during the reporting period.

2. List for the laborer craft the total number of applications and the number of female applications received in each reporting period within the eight Western New York counties.

3. Verification for the laborer craft that the above openings were referred to the New York State Employment Service and the female recruitment sources outlined in 16 a. and b. above in each reporting period.

4. List for the laborer craft the total number of hires and the number of female hires in each reporting period in the eight Western New York counties.

5. The reports will be due on the dates specified below and will cover the periods specified. Each report will be due on the dates designated for the five successive reports.

	Period covered	Date due
First report	12/25/94-1/28/95	2/6/95
Second report .....	1/29/95-3/4/95	3/13/95
Third report	3/5/95-4/8/95	4/17/95
Fourth re- port .....	4/9/95-5/6/95	5/15/95
Fifth report	5/7/95-6/3/95	6/12/95

17. In order to satisfy the Director of OFCCP that it is in compliance with the Executive Order and its implementing regulations, KESC and its existing or

newly created subsidiaries agree to accomplish each of the following:

a. They will not bid on a federal or federally assisted demolition or asbestos abatement contract for the period of debarment. However, it is understood that this will not preclude Kimmins Contracting Corporation from bidding or performing federal or federally assisted demolition contracts in the state of Florida. It is further understood that subsidiaries of KESC, other than KAC and KISC, will not be precluded from bidding on federal or federally assisted contracts which are for dismantling for resale or rebuilding, and not demolition or asbestos abatement.

b. Kimmins International Corporation agrees to withdraw the litigation pending before the United States District Court for the Eastern District of Virginia in Case No. 94-CV-169. The withdrawal of this lawsuit shall not be deemed to prejudice the rights of Kimmins International, KAC, KISC, TK, KESC or any of its subsidiaries to initiate future litigation alleging similar claims as those asserted in the pending matter should OFCCP initiate enforcement proceedings against KESC or any of its existing or newly created subsidiaries after the effective date of this Consent Decree. This provision shall not, in any way, preclude the Secretary of Labor from raising any defenses he deems appropriate to any newly filed litigation.

c. KESC will hire an EEO Director to assist its subsidiaries in compliance with the Executive Order and its implementing regulations. OFCCP will provide technical assistance to ensure compliance within the 180 debarment period provided herein.

d. KESC and its current and newly created subsidiaries will file five (5) successive reports with OFCCP listing all federal and federally assisted projects on which it bid and the scope of such work. The reports will be due as follows:

	Period covered	Date due
First report	12/25/94-1/28/95	2/6/95
Second re- port .....	1/29/95-3/4/95	3/13/95
Third report	3/5/95-4/8/95	4/17/95
Fourth re- port .....	4/9/95-5/6/95	5/15/95
Fifth report	5/7/95-6/3/95	6/12/95

18. The Buffalo District Office shall review each of the reports and shall determine whether there has been compliance with the terms of this Consent Decree and the terms of the Executive Order and its implementing regulations. OFCCP shall notify Defendants in writing, within ten (10)

days of receipt of each report, if there is a deficiency. Defendants shall be given fifteen (15) days to rectify the deficiency. If rectified within the fifteen (15) days, such deficiency shall not be deemed a breach of this agreement. All mailing shall be done by certified mail/return receipt.

19. If OFCCP finds that there has been compliance with the terms of this Consent Decree and with the terms of the Executive Order and its implementing regulations, the debarment of KAC, KISC and TK shall be lifted and such companies shall be free to enter into future Government contracts and subcontracts. OFCCP will notify KAC, KISC and TK within ten (10) days of the last report whether they will be reinstated. Notice of the reinstatement shall be printed in the Federal Register and shall be made to the Comptroller General of the General Accounting Office and all Federal Contracting Officers. It is understood that OFCCP may conduct an onsite review at the Niagara Falls, New York, office or projects in the eight Western New York counties to ensure compliance with the Consent Decree and the Executive Order. However, in no circumstances shall this review delay the determination of lifting the debarment beyond the ten (10) day period noted in this paragraph.

20. If OFCCP finds that there has not been compliance with the terms of the Consent Decree or with the terms of the Executive Order and its implementing regulations, OFCCP will notify KAC, KISC, TK and KESC within ten (10) days (after the twenty-five (25) day period noted in paragraph 18, above) that the debarment shall not be lifted and shall remain in effect until there is submission of three (3) consecutive monthly reports which demonstrate compliance with the Consent Decree, the Executive Order and its implementing regulations. KAC, KISC, TK and/or KESC may file a motion with the Administrative Law Judge for review of the Director's decision, and such companies may request a hearing at which the sole issue will be whether there has been compliance with the terms of this Consent Decree and the Executive Order and its implementing regulations.

21. Compliance, as used in this Consent Decree, shall mean that, with regard to the Niagara Falls, New York, office, KAC, KISC and TK have satisfied the provisions of Regulations 41 C.F.R. 60-4. In addition, KAC will make a good faith effort to determine whether there were available qualified female employees within the eight Western New York counties who would have

been employed as laborers at the Niagara Falls location of KAC during the period of October 1, 1991 to October 1, 1993. KAC agrees to make such employees whole for lost wages they would have received from KAC, less interim earnings, during such period had they been employed by KAC. In order to be deemed qualified to work for KAC, the employee must successfully complete the medical examination required under OSHA 1926.58 and 1910.134, successfully pass the company drug test, and shows that they had attended and successfully passed Part 763 of the Asbestos Hazard Emergency Removal Act with a grade of at least 70% and had received a state asbestos license prior to or during the period of October 1, 1991, to October 1, 1993.

22. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of this Consent Decree, is retained by the Office of Administrative Law Judges for a period of nine (9) months from the date this Consent Decree becomes final, or until debarment is lifted, whichever is earlier. If any motion is pending before the Office of Administrative Law Judges nine (9) months from the date this Consent Decree become final, jurisdiction shall continue beyond nine (9) months and until such time as the pending motion is finally resolved.

23. Enforcement proceedings for violation of this Consent Decree may be initiated at any time after the 25-day period referred to in Paragraph 18 has elapsed upon filing with the Court a motion for an order of enforcement and/or sanctions. The hearing on the motion shall relate solely to the issues of the factual and legal claims made in the motion.

24. Liability for violation of this Consent Decree shall subject KAC, KISC and TK to possible sanctions set forth in the Executive Order and its implementing regulations.

25. If an application or motion for an order of enforcement or clarification indicates by signature of counsel that the application or motion is unopposed by the Plaintiff or KAC, KISC, TK and/or KESC as appropriate, the application or motion may be presented to the Court without hearing, and the proposed Order may be implemented immediately. If an application or motion is opposed by any party, the party in opposition shall file a written response within twenty (20) days of service. The Office of Administrative Law Judges may, if it deems it appropriate, schedule an oral hearing on the application or motion.

26. This Consent Decree sets forth the complete agreement reached by the parties, including the agreement that there shall be no cancellation of any federal or federally assisted contracts or debarment of any officers of the KAC, KISC, TK and KESC or its subsidiaries.

27. The Agreement, herein set forth, is hereby approved and shall constitute the final Administrative Order in this case.

It is so ordered, this 21st day of December, 1994.

George P. Morin,

*Administrative Law Judge, U.S. Department of Labor.*

So agreed.

On behalf of Kimmins Environmental Services Corporation.

Dated: December 13, 1994.

Edward A. Mackowiak,  
*Vice President.*

On behalf of the Office of Federal Contract Compliance Programs.

Dated: December 20, 1994.

Thomas S. Williamson,  
*Solicitor of Labor.*

James D. Henry,

*Associate Solicitor.*

Debra A. Millenson,

*Senior Trial Attorney.*

Gretchen M. Lucken,  
*Attorney.*

Gretchen M. Lucken,  
*U.S. Department of Labor, Room N-2464, 200 Constitution Ave., N.W., Washington, D.C. 20210, (202) 219-5854.*

It is understood that each of the subsidiaries of KESC will sign this consent decree in its own name and such signature page shall be added to the consent decree.

On behalf of Kimmins Abatement Corporation.

Dated: December 14, 1994.

Daniel Hoffner,

*Assistant Secretary.*

On behalf of Kimmins Industrial Services Corporation.

Dated: December 14, 1994.

Norman S. Dominiak,

*Treasurer.*

On behalf of Thermacor Kimmins, Inc.

Dated: December 14, 1994.

Thomas C. Andrews,

*President.*

On behalf of Kimmins International.

Dated: December 13, 1994.

Joseph M. Williams,

*Secretary.*

On behalf of Kimmins Contracting Corporation.

Dated: December 13, 1994.

John V. Simon, Jr.,

*President.*

On behalf of Transcor Waste Services, Inc.

Dated: December 13, 1994.

Francis M. Williams,

*President.*

On behalf of Kimmins Recycling Corp.

Charles A. Baker, Jr.

**Attachment A—Conciliation Agreement Between U.S. Department of Labor, Office of Federal Contract Compliance Programs and Kimmins Abatement Co., 256 3rd Street, Niagara Falls, New York 14303**

### Part I: General Provisions

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter OFCCP) and Kimmins Abatement Co., 256 3rd Street, Niagara Falls, New York 14303, (hereinafter Kimmins).

2. The violations identified in this Agreement were found during a compliance review of Kimmins which began on October 22, 1991 and they were specified in a Notice of Violation issued October 31, 1991. OFCCP alleges that Kimmins violated Executive Order 11246, as amended, and implementing regulations at 41 CFR Chapter 60 due to the specific violations cited in Part II below.

3. Subject to the performance by Kimmins of all promises and representations contained herein and all named violations in regard to the compliance of Kimmins with all OFCCP programs will be deemed resolved. However, Kimmins is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

4. Kimmins agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents, as may be relevant to the matter under investigation and pertinent to Kimmins's compliance. Kimmins shall permit access to its premises during normal business hours for these purposes.

5. Nothing herein is intended to relieve Kimmins from the obligation to comply with the requirements of Executive Order 11246, as amended, and/or Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2012) and implementing regulations, or any other equal employment statute or executive order or its implementing regulations.

6. Kimmins agrees that there will be no retaliation of any kind against any beneficiary of this Agreement or against

any person who has provided information or assistance, or who files a complaint, or who participates in any manner in any proceedings under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2012).

7. This Agreement will be deemed to have been accepted by the Government on the date of signature by the District Director for OFCCP, unless the Regional Director, OFCCP indicates otherwise within 45 days of the District Director's signature of this Agreement.

8. If, at any time in the future, OFCCP believes that Kimmins has violated any portion of this Agreement during the

term of this Agreement, Kimmins will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Kimmins with 15 days from receipt of the notification to respond in writing, except where OFCCP alleges that such delay would result in irreparable injury.

Enforcement proceedings for violation of this Agreement may be initiated at any time after the 15 day period has elapsed (or sooner, if irreparable injury is alleged), without issuing a Show Cause Notice.

Where OFCCP believes that Kimmins has violated this conciliation Agreement, evidence regarding the entire scope of Kimmins's alleged

noncompliance which gave rise to the Notice of Violations from which this Conciliation Agreement resulted, in addition to evidence regarding the Kimmins's alleged violation of the Conciliation Agreement, may be introduced at enforcement proceedings.

Liability for violation of this Agreement may subject Kimmins to sanctions set forth in Section 209 of the Executive Order, and/or other appropriate relief.

**Part II: Specific Provisions**

1. *Violation:* Kimmins failed to demonstrate good faith efforts towards increased female employment, as required by 41 CFR 60-4.3(a), 7 b, c, and i, in the following craft(s):

Craft	Goal (%)		Utilization (%)	
	Minority	Female	Minority	Female
Laborer .....	7.7	6.9	12.0	0.0

*Remedy:* Kimmins accomplished the following:

a. On October 22, 1991, Kimmins established and shall maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when it or its unions have employment opportunities available, and maintain a record of the organizations' responses, as required by 41 CFR 60-4.3(a) 7b.

b. On October 22, 1991, Kimmins developed and shall continuously maintain, a current file of names, addresses, and telephone numbers of each minority and female off-the-street applicant, and minority or female referral from a union, recruitment source or community organization, and what action taken with respect to each individual. If such individual was sent to a union hiring hall for referral and was not referred back to the Contractor, by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken, as required by 41 CFR 60-4.3(a) 7c.

c. On October 22, 1991, Kimmins agreed to direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations

serving Kimmins recruitment area and employment needs, as required by 41 CFR 60-4.3(a) 7i.

2. *Violation:* Kimmins failed to maintain and submit the Monthly Employment Utilization Reports (CC-257) to OFCCP and to record its employment utilization completely, accurately, and in a timely manner, as required by 41 CFR 60-1.4(b)5.

*Remedy:* On October 22, 1991, Kimmins began and will continue to maintain and submit Monthly Employment Utilization Reports (CC-257) to OFCCP by the 5th of each month for the preceding month, and record its employment utilization completely, accurately, and in a timely manner, as required by 41 CFR 60-1.4(b)5.

Kimmins agrees to ensure that violations 1 and 2 listed above will not recur.

**Part III: Reporting**

Kimmins agrees to furnish OFCCP, U.S. Department of Labor, 220 Delaware Avenue, 609 Jackson Building, Buffalo, New York 14202 with the following reports:

1. Copies of letters sent to minority and female recruitment sources when it or its unions have opportunities available and copies of the organizations responses.

2. A copy of their applicant log for minorities and females.

3. Copies of letters sent to minority/ female recruitment sources and

community organizations providing notice of apprentice and training program opportunities.

4. Any other relevant documentation the contractor has to substantiate that each enumerated item in this agreement is being, and continues to be fulfilled.

The documentation will be submitted annually as follows:

Covered period	Report due date
Oct. 1 1991-Sept. 30, 1992.	Nov. 1, 1992.
Oct. 1 1992-Sept. 30, 1993.	Nov. 1, 1993.

All support documentation and records pertinent to the violations resolved by the Conciliation Agreement and submitted to OFCCP shall be retained until the expiration of the Conciliation Agreement or consistent with regulatory requirements (41 CFR 60-3.15) whichever is later.

This Conciliation Agreement shall remain in full force and effect until such time as Kimmins is notified by OFCCP that it has met all of the terms of this Agreement or for two (2) years following its execution by the District Director, whichever comes first.

**Part IV: Signatures**

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Kimmins Abatement Co.

Dated: November 19, 1991.

Michael O'Brien,  
Regional Manager, *Kimmins Abatement Co.*,  
256 3rd Street, Niagara Falls, NY 14303.

Dated: November 20, 1991.

Allan Cecchini,  
Compliance Officer, *Buffalo District Office.*

Dated: November 20, 1991.

Mary Ellen Bentivogli,  
Asst. District Director, *Buffalo District Office.*

Dated: November 20, 1991.

Garland Sweeney,  
District Director, *Buffalo District Office.*

November 20, 1991.

### Service Sheet

Case Name: Kimmins Abatement Corporation and Kimmins Environmental Services Corp.

Case Number: 94-OFC-20.

Title of Document: Consent Decree.

I hereby certify that on December 21, 1994 a copy of the above entitled document was mailed to the following parties:

Laura Ann Brown,  
Legal Technician.

### Certified Mail

Director, Office of Administrative Appeals, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210  
Robert Reich, Secretary of Labor, U.S. Department of Labor, Room S-2018, 200 Constitution Avenue, NW, Washington, DC 20210  
Gretchen M. Luken, Esq., U.S. Department of Labor, Office of the Solicitor, 200 Constitution Ave., NW, Room N-2464, Washington, DC 20210  
Robert A. Doren, Esq., Flaherty Cohen Grande Randazzo Doren P.C., Suite 210, Firstmark Building, 135 Delaware Avenue, Buffalo, NY 14202  
Josephine A. Greco, Esq., Offermann, Cassano, Pigott & Greco, 1776 Statler Towers, Buffalo, NY 14202-3090

### Regular Mail

Office of Federal Contract Compliance Programs, U.S. Department of Labor, Room C-3325, FPB, 200 Constitution Avenue, NW, Washington, DC 20210  
Associate Solicitor, Civil Rights Division, U.S. Department of Labor, Room N-2464, FPB, 200 Constitution Avenue, NW, Washington, DC 20210  
Patricia M. Rodenhause, Esq., Regional Solicitor, Office of the Solicitor, U.S. Department of Labor, 201 Varick Street, Room 707, New York, NY 10014-4811  
Solicitor of Labor, Office of the Solicitor, U.S. Department of Labor, Room S-2002, FPB, 200 Constitution Avenue, NW, Washington, DC 20210  
Special Counsel to the Assistant Secretary of Labor, U.S. Department of

Labor, Employment & Training Admin., Room N-4671, 200 Constitution Avenue, NW, Washington, DC 20210  
President, Kimmins Abatement Corporation, 256 Third Street, Niagara Falls, NY 14303  
Garland Sweeney, District Director, U.S. Department of Labor, Employment Standards Admin., Office of Federal Contract Compliance Programs, 6 Fountain Plaza, Suite 300, Buffalo, NY 14202  
Francis Williams, Chief Executive Officer, Kimmins Environmental Services Corporation, 1501 Second Avenue, Tampa, FL 33605  
Harry Anbarlian, Acting Regional Director, U.S. Department of Labor, Employment Standards Admin., Office of Federal Contract Compliance Programs, 201 Varick Street, Room 750, New York, NY 10014

[FR Doc. 95-749 Filed 1-11-95; 8:45 am]

BILLING CODE 4510-27-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### President's Committee on the Arts and the Humanities; Notice of Meeting

The 31st meeting of the President's Committee on the Arts and the Humanities will take place on Wednesday, January 25, 1995 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, in Washington, D.C. The plenary meeting will be convened at 2 p.m. in room M-09. This meeting will feature a discussion of the private sector's ability to supplement existing government funding for the arts and the humanities. Committee members and guest speakers will discuss the current state of philanthropy and recent reports on declining or stagnant rates of corporate support for the arts. If time permits, the Committee may hear a discussion of current issues affecting institutions in the humanities. Working groups, to discuss specific topics to be addressed by the Committee during 1995, will meet in the morning beginning at 9 a.m. in locations to be determined. At present no guest speakers are confirmed and the agenda for the plenary session is subject to revision. For information about the agenda, please contact the President's Committee staff at the address or phone number below.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the IMS on measures to encourage private sector support for the nation's cultural

institutions and to promote public understanding of the arts and the humanities.

Public attendance is encouraged, but seating is limited in meeting rooms and it is suggested that individuals wishing to attend notify the staff of the President's Committee in advance. For further information, please call the President's Committee at (202) 682-5409 or write to the Committee at 1100 Pennsylvania Avenue, N.W., Suite 526; Washington, D.C. 20506.

Dated: January 6, 1995.

**Yvonne M. Sabine,**

Director, Council and Panel Operations,  
National Endowment for the Arts.

[FR Doc. 95-725 Filed 1-11-95; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

### Call for Nominations For Advisory Committee on Nuclear Waste; Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) requests nominations of qualified candidates to consider for appointment to its Advisory Committee on Nuclear Waste (ACNW). Currently, there are two openings expected on the Committee in mid-1995.

ADDRESSES: Submit nominations to: Ms. Jude Himmelberg, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Ms. Jude Himmelberg at (301) 415-7119.

SUPPLEMENTARY INFORMATION: The ACNW is a part-time advisory group established by the NRC in 1988 to provide independent technical review of and advice on the disposal of nuclear waste, including all aspects of nuclear waste disposal facilities within the purview of NRC. This includes activities related to both high- and low-level radioactive waste disposal facilities including the licensing, operation, and closure of the facilities; and associated rulemakings, regulatory guides, and technical positions developed to clarify the intent of NRC's high- and low-level waste regulations. The ACNW will also review performance assessment evaluations of waste disposal facilities. In performing its work, the Committee reviews and reports on issues related to high- and low-level waste regulations and areas of concern referred to it by the Commission or its designated

representatives, and undertakes other studies and activities related to those issues as directed by the Commission. The Committee interacts with representatives of the Advisory Committee on Reactor Safeguards, the Department of Energy, NRC, other Federal, State, and local agencies, Indian Nations, private organizations, etc., as appropriate to fulfill its responsibilities.

A wide variety of engineering and scientific skills are needed to conduct the broadly based review processes required in the Committee's work. Engineers and scientists with work experience in the high- and low-level radioactive waste disposal programs coupled with broad experience in a pertinent technical field such as nuclear chemistry, nuclear science and technology, risk assessment, and systems engineering are highly sought.

Individuals should have a minimum of 20 years' work experience in related fields or fields that can be applied directly to the work of the Committee. In addition, individuals must be able to devote approximately 50-100 days per year to Committee business. Most meetings are held in Rockville, Maryland, although some additional travel is required to various sites outside the Rockville area.

Because of potential conflict of interest, individuals currently involved in areas related to nuclear waste disposal might be of limited use to the Committee. The degree and nature of any such involvement will be carefully considered. Each qualified nominee's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment to the Committee. This may result in the candidate being required to divest himself or herself of securities issued by nuclear industry entities, discontinue research projects, and/or limit involvement in certain types of contracts, based on a determination of conflict of interest.

Copies of a résumé describing the educational and professional backgrounds of the nominee, including any special accomplishments, professional references, current address, and telephone number should be provided. All qualified nominees will receive full consideration. Appointment will be made without regard to such factors as race, color, religion, national origin, sex, age, or handicapped condition. Nominees must be granted security clearances based on a full background investigation and be citizens of the United States. Applications will be accepted until March 15, 1995.

Dated: January 6, 1995.

**Andrew L. Bates,**  
*Advisory Committee Management Officer.*  
[FR Doc. 94-800 Filed 1-11-94; 8:45 am]  
BILLING CODE 7590-01-M

### Correction to Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

On January 4, 1995 (60 FR 494), the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations. In the first sentence of the last paragraph in the second column on page 494, the date "By February 3, 1994," should be corrected to read "By February 3, 1995."

Dated at Rockville, Maryland, this 6th day of January 1995.

For the Nuclear Regulatory Commission.

**Leif J. Norrholm,**  
*Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*  
[FR Doc. 95-801 Filed 1-11-95; 8:45 am]  
BILLING CODE 7590-01-M

### PHYSICIAN PAYMENT REVIEW COMMISSION

#### Commission Meeting

**AGENCY:** Physician Payment Review Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commission will hold its next public meeting on Thursday, January 19, 1995, and Friday, January 20, 1995 at the Embassy Suites Hotel, 1250 22nd Street NW., Washington, DC, in the Diplomat Room. The meetings are tentatively scheduled to begin at 9:00 a.m. each day. Among the topics to be discussed are state-based insurance market reform, Medicare risk program payment policy, Medicare volume performance standards, Medicaid section 1115 waivers, integration of medical practice, relationships between providers and health plans, the impact of the changing health care market on the physician labor market, state responses to market reform, performance reports, developments and use of practice guidelines, technology and coverage decisions in the Medicare program, Medicare funding of nursing education, network development in rural areas, and telemedicine. Several other topics may be added to the final agenda, which will be available on January 13, 1995.

**ADDRESSES:** Please note that the Commission has a new address: 2120 L Street, N.W./Suite 200/Washington, DC 20037. The telephone number is the same: 202/653-7220.

**FOR FURTHER INFORMATION CONTACT:** Lauren LeRoy, Deputy Director, or Annette Hennessey, Executive Assistant, at 202/653-7220.

**SUPPLEMENTARY INFORMATION:** Agendas for the meeting will be available on Friday, January 13, 1995 and will be mailed out at that time. To receive an agenda, please direct all requests to the receptionist at 202/653-7220.

**Paul B. Ginsburg,**  
*Executive Director.*  
[FR Doc. 95-732 Filed 1-11-95; 8:45 am]  
BILLING CODE 6820-SE-M

### RAILROAD RETIREMENT BOARD

#### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

#### Summary of Proposal(s):

- (1) *Collection title:* Application and Claim for Sickness Insurance Benefits
- (2) *Form(s) submitted:* SI-1a, SI-1b, SI-3, SI-7, SI-8, ID-7H, ID-11A
- (3) *OMB Number:* 3220-0039
- (4) *Expiration date of current OMB clearance:* January 31, 1995
- (5) *Type of request:* Revision of a currently approved collection
- (6) *Respondents:* Individuals or households
- (7) *Estimated annual number of respondents:* 93,400
- (8) *Total annual responses:* 333,600
- (9) *Total annual reporting hours:* 33,591
- (10) *Collection description:* Under Section 2 of the Railroad Unemployment Insurance Act, sickness benefits are provided for qualified railroad employees. The collection obtains information from employees and physicians needed for determining eligibility for and amount of such benefits.

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush

Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

**Chuck Mierzwa,**  
Clearance Officer.

[FR Doc. 95-784 Filed 1-11-95; 8:45 am]

BILLING CODE 7905-01-M

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35197; File No. SR-Amex-94-57]

### Self-Regulatory Organizations; American Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

January 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that the American Stock Exchange Inc. ("Amex") filed with the Securities and Exchange Commission ("Commission") a proposed rule change on December 13, 1994, and filed an amendment thereto on December 23, 1994, as described in Items I, II, and III below, which items have been prepared primarily by Amex. 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

Amex proposes to modify its rules to implement a three business day settlement standard.

#### Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, Amex 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 Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

On October 6, 1993, the Commission adopted Rule 15c6-1 under the Act which establishes three business days after the trade date ("T+3") instead of five business days ("T+5") as the standard settlement cycle for most broker-dealer trades.<sup>2</sup> The rule will become effective June 7, 1995.<sup>3</sup> In the release adopting Rule 15c6-1, the Commission concluded that a T+3 settlement cycle, as compared to the current T+5 settlement cycle, will reduce credit and liquidity risks and will increase efficiency in broker-dealer and clearing agency operations.

In order to accommodate the implementation of the new settlement standard pursuant to Commission's Rule 15c6-1, Amex will amend the following rules. Rule 17, which concerns transactions in rights and warrants, refers to five business days in describing when transactions preceding the final day of trading must be made only for "cash" settlement. "Five" will be changed to "three." Rule 124(c) defines delivery conditions for "regular way" as the fifth business day following the contract. "Fifth" will be changed to "third." Rule 124(d) requires seller's option delivery to be made within the time specified in the option, which time shall not be less than six business days nor more than sixty days. "Six" will be changed to "four."

Rule 179(a) requires during the five business days preceding the final day for trading in an issue of rights, every order entered on a specialist's book shall be for "next day" delivery. "Fifth" will be changed to "third." Rule 179(b) dictates during the five final business days for trading in an issue of warrants, every order entered on a specialist's book shall be for "cash," and during the three preceding business days every such order entered shall be for "next day" delivery. "Fifth" will be changed to "third." Rule 179(c) requires during the five business days preceding the final day for trading in an expiring equity security, every order entered on the specialist's book shall be for "next day" delivery, and on the final day for trading in such equity security, every order entered on a specialist's book shall be for "cash." "Fifth" will be changed to "third."

Rule 205C(2) requires that where an odd-lot dealer accepts "seller's option"

trades for delivery within not less than six business days nor more than thirty days following the day of the contract, such order shall be filled at a price below the effective round lot sale or bid regular way by the amount of any differential. "Six" will be changed to "four."

Rule 423 refers to fourth and third business days in discussing agent instructions with respect to receipt versus payment ("RVP") or delivery versus payment ("DVP") customer transactions. "Fourth" and "third" will be changed to "second" and "first." Rule 830 states that transactions in stocks shall be ex-dividend or ex-rights on the fourth business day preceding the record date. "Fourth" business day will be changed to "second" business day. With regard to a record date other than a business day, the "fifth" will be changed to the "third." The proposal also eliminates the distinction between New York City transfers and transfers outside New York City.

Rule 858 directs settlement in contracts in bonds dealt in "and interest." There shall be added to the contract price interest on the principle amount at the rate specified in the bond, which shall be computed up to but not including the day on which delivery is due, except that in the case of contracts made "seller's option." Currently interest is computed only up to but not including the fifth business day following the day of the contract. The proposed rule change would compute the interest up to the day when delivery would have been due if the contract had been made "regular way."

Rule 862 states that the notice for the return of loans of securities must be given before 3:45 P.M. on a business day and such return shall be made on the "fifth" business day following the day in which notice is given. "Fifth" will be changed to "third."

Rule 866 requires for loans of securities to be deliverable on the "fifth" business day following the day of the loan unless otherwise agreed to by the parties. "Fifth" will be changed to "third." Rule 882 refers to delivery of securities and due-bills after the record date or after the "equivalent New York record date" and requires the seller to pay or to deliver to the buyer the distribution made with respect to such security. With stock or cash dividends or rights to subscribe, the seller shall deliver to the buyer either the dividend or rights or a due-bill for such dividend or rights within five days after the record date or the equivalent New York record date. "Fifth" day will be changed to "third." The proposal also eliminates

<sup>2</sup> Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

<sup>3</sup> Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

references to the equivalent New York record date.

Amex has participated in meetings sponsored by the Commission among self regulated organizations, clearing corporations, and other industry participants and has kept its members informed of the forthcoming transition to T+3. As the effective date for implementation draws near, Amex will continue to educate its membership and to ascertain that they are informed and understand specific timing and cutover issues. The Amex's implementation of these rule changes will be consistent with the June 1995 conversion schedule which Amex and the National Securities Clearing Corporation ("NSCC") have developed for industry use.<sup>4</sup> The schedule is as follows.

Trade date	Settlement cycle	Settlement date
June 2 Friday	5 day .....	June 9 Friday.
June 5 Monday.	4 day .....	June 9 Friday.
June 6 Tuesday.	4 day .....	June 12 Monday.
June 7 Wednesday.	3 day .....	June 12 Monday.

If the Commission determines to alter the exemptions currently provided in Rule 15c6-1, the Amex may be required to file additional rule amendments.

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 protects investors and the public interest by reducing the risk to clearing corporations, their members and public investors which is inherent in settling securities transactions. This is accomplished by reducing the time period for settlement of most securities transactions which will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time.

The proposed change is also consistent with Commission Rule 15c6-1 which requires brokers or dealers to settle most securities transactions no later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

<sup>4</sup> NSCC will use two double-settlement days for the conversion. The first double-day settlement, scheduled for Friday, June 9, will incorporate trades from Friday, June 2 (the last T+5 settlement day) and from Monday, June 5 (a T+4 settlement day). The second double-day settlement, scheduled for Monday, June 12, will include trades from Tuesday, June 6 (T+4 settlement day) and Wednesday, June 7 (the first T+3 settlement day). With respect to the two trade days on which "regular way" trades will settle on T+4, Amex rules will be temporarily deemed to be amended accordingly.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety 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 Amex 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR-Amex-94-57 and should be submitted by February 2, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 95-815 Filed 1-11-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35190; File No. SR-CBOE-94-50]

### **Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to As-Of-Add Submissions**

January 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 1, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange subsequently filed Amendment No. 1 to the proposed rule change on December 23, 1994.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. As discussed below, the Commission has also granted accelerated approval to a portion of the proposal.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to: (1) Amend CBOE Rule 2.26 so as to place a ceiling on the monthly fees members pay for submitting trade information under Exchange Rule 6.51<sup>4</sup> after the trade date (each an "as-of-add") on more than a stated maximum percentage of their monthly trades and to enable the Exchange to suspend the rule in exigent circumstances; and (2) amend CBOE Rule 17.50(g) to include a fine schedule

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1991).

<sup>3</sup> In Amendment No. 1 to the proposal, the Exchange proposes to change the fine schedule as proposed under CBOE Rule 17.50(g) in two ways. First, as amended, a fine will be assessed whenever the as-of-add (as defined herein) submissions of an individual member or a clearing member equals or exceeds 300% of that member's maximum nominal as-of-add rate for two, rather than three, consecutive months. Second, fines will be imposed with reference to a rolling 12-month period, rather than within a calendar year. In Amendment No. 1, the Exchange also requests accelerated approval of the proposed rule change. See Letter from Dan Schneider, Schiff Hardin & Waite, to Sharon Lawson, Assistant Director, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated December 21, 1994 ("Amendment No. 1").

<sup>4</sup> Among other things, Rule 6.51 requires that each transaction be immediately reported to the Exchange in a form and manner prescribed by the Exchange. See Rule 6.51(a).

for substantial and repeated failures to submit trade data on the trade date. The Exchange also proposes that the as-of-add fee pilot program ("Pilot Program"), as proposed to be amended herein, be made permanent. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 CBOE 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

The purpose of the proposed rule change is to amend the as-of-add fee Pilot Program in three ways and to have the Pilot Program, as amended, made permanent. The proposed changes would: (1) Place a ceiling on the monthly as-of-add fee to be paid under Rule 2.26; (2) establish a fine schedule under Rule 17.50(g) for substantial and repeated failures to submit trade data on the trade date; and (3) incorporate into Rule 2.26 provisions like those currently included in Rule 2.30(g) ("Fee for Delayed Submission of Trade Information") that would authorize the Exchange to suspend Rule 2.26 (and thereby waive the fees that would otherwise be due) in exigent circumstances. The Exchange believes these amendments to the Pilot Program are fully responsive to the concerns the Commission has previously identified with respect to the Pilot Program.<sup>5</sup>

Under the Pilot Program in its present form, the fee, if any, to an individual member is \$10.00 for each as-of-add submitted during a given month in excess of the percentage of such submissions considered "nominal"

<sup>5</sup> See Securities Exchange Act Release Nos. 32999 (October 1, 1993), 58 FR 53003 (October 13, 1993) (Order approving the as-of-add fee Pilot Program on a six-month pilot basis), 33855 (April 4, 1994), 59 FR 17128 (April 11, 1994) (order extending the Pilot Program until September 30, 1994), and 34783 (October 3, 1994), 59 FR 51459 (October 11, 1994) (order extending the Pilot Program until December 31, 1994) ("Pilot Extension Approval Order").

under paragraph (a) of Rule 2.26.<sup>6</sup> The fee to any clearing firm under paragraph (b) of that rule is \$3.00 for each as-of-add submitted in excess of the "nominal" percentage.<sup>7</sup> In addition, any member assessed an as-of-add fee may request verification from the Exchange pursuant to Part B of Chapter XIX of CBOE's Rules and may appeal the fee assessment pursuant to Part A thereof.

The CBOE believes that the as-of-add fees assessed pursuant to the Pilot Program recognize that late trade submissions impose special processing costs on the Exchange and require significant effort by clearing firms and executing brokers to check and resolve late trade reports. The Exchange represents that late trade submissions are especially likely to burden the Exchange's operations during periods of high volume and heightened volatility, when added stress is least tolerable, thereby adding financial risk to members during these already difficult periods.

The as-of-add fees, according to the Exchange, respond to these problems in two ways. First, the as-of-add fees help to reimburse the Exchange for the administrative burdens and costs of processing post-trade date submissions, and impose the obligation to make such reimbursement on those members who account for an inordinate number of as-of-add submissions and who are thus most responsible for these added costs in the first place (*i.e.*, individual members).

Second, the Pilot Program creates what the Exchange believes to be reasonable economic incentives for members to submit trade data on the trade date, thereby relieving the Exchange and Exchange members of high levels of special handling associated with processing as-of-adds. The Exchange continues to believe, for the reasons set forth in previous filings and supplemental correspondence,<sup>8</sup> that the particular fees included in the Pilot Program are equitably allocated among individual members and clearing member organizations.

In the last extension of the Pilot Program, the Commission approved the proposed rule change as a fair and equitable allocation of reasonable fees, but asked the Exchange, in connection with any request to make the Pilot Program permanent, to consider ways to

<sup>6</sup> The current "nominal" maximum allowable monthly number of as of adds for individual members is 2.4% of an individual member's monthly trades.

<sup>7</sup> The current "nominal" maximum allowable monthly number of as of adds for clearing members is 1.2% of clearing members' monthly trades.

<sup>8</sup> See *supra* note 5 and *infra* note 10.

incorporate the Pilot Program into Exchange Rule 17.50(g), under which the Exchange imposes fines for minor rule violations ("Minor Rule Plan").<sup>9</sup> The Commission also required the CBOE to submit a report setting forth particular statistics about the Pilot Program.<sup>10</sup>

The first proposed amendment to Rule 2.26 would place a cap on the monthly fee that any individual member or clearing firm would pay under that rule. The monthly fee to individual members under Rule 2.26(a) would be capped at \$500.00, and the monthly fee to clearing firms under Rule 2.26(b) would be capped at \$1,000.00. The Exchange believes that the caps, when set at the levels proposed, will enable the Exchange to recover its costs for as-of-add processing while ensuring that no individual member or clearing member organization pays an inappropriately high, or punitive, fee.<sup>11</sup> In addition, although the proposed cap levels are different for individual members as compared to clearing firms, the Exchange believes that the structure and size of the fee caps are equitable and appropriate. Clearing firms pay, on average, substantially higher aggregate as-of-add fees than do individual members, and the fee cap to clearing firms accordingly, in the Exchange's opinion, should be set at a higher level.

The second proposed amendment to Rule 2.26 would incorporate in a new paragraph (d), provisions authorizing the Clearing Procedures Committee, with the approval of the President of the Exchange, or his designee, to suspend application of the rule, and thereby waive the assessment of as-of-add fees, for periods no greater than seven calendar days, plus extensions, whenever unusual circumstances so dictate. This new paragraph corresponds to the similar suspension provisions contained in Rule 2.30(g).<sup>12</sup> In the proposal, as in Rule 2.30(g), the term "unusual circumstances" refers to

<sup>9</sup> See Pilot Extension Approval Order, *supra* note 5. In the Pilot Extension Approval Order the Commission stated that it would not be inclined to grant a further extension of the as-of-add fee Pilot Program until the concerns of the Commission expressed therein had been addressed by the CBOE. *Id.*

<sup>10</sup> See Letter from Joanne Moffic-Silver, Associate General Counsel, CBOE, to Sharon Lawson, Assistant Director, OMS, Division, Commission, dated November 29, 1994 ("Pilot Report").

<sup>11</sup> The CBOE notes that the use of fee caps will limit the incentive effect of the Pilot Program, but that result will, in its opinion, be offset in part by the introduction of the proposed fine schedule under Rule 17.50(g).

<sup>12</sup> Rule 2.30 provides for fees to be assessed against market makers and clearing members for failing to submit trade information required by Rule 6.51 within two hours after execution of a trade.

circumstances that affect the ability of a significant number of members to submit trade information on time. Any such suspension of the rule must be in writing and must be published by the Exchange for distribution to the membership.

The Exchange anticipates that this authority would be used very infrequently. The Exchange represents that it has invoked Rule 2.30 suspensions only once a year, on average, since the rule was adopted in 1991. In every case, the CBOE represents that the suspensions have occurred on a day when there was both extraordinary volume and a trading surge at the end of the day. Therefore, according to the Exchange, it is likely that any suspension under proposed Rule 2.26 would ordinarily be matched with a suspension under Rule 2.30.

The third proposed change to the Pilot Program would add a fine schedule to CBOE Rule 17.50(g) for substantial and repeated failures to file trade data on the trade date, in contravention of Rule 6.51. As proposed, any member who exceeds the as-of-add rate considered nominal under Rule 2.26<sup>13</sup> by three times or more for two consecutive months would be subject to a fine of \$250 for the first offense, \$500 for the second offense, and \$1,000 for each offense thereafter occurring during any 12-month period.<sup>14</sup> Fines under this proposal would therefore currently be triggered for an individual member whenever that member's as-of-add submissions equal or exceed 7.2% of total trade submissions in each of two consecutive months, while fines to clearing firms would be triggered whenever a clearing member's as-of-add submissions equal or exceed 3.6% of total trade submissions for each of two consecutive months.<sup>15</sup> The fines imposed pursuant to Rule 17.50(g) would be in addition to any fees due under Rule 2.26 and would serve to penalize those members who submit the greatest number of excessive as-of-add trades.

The Exchange believes that the proposed fines would fairly and

effectively supplement the fees assessed under Rule 2.26, by providing a clear sanction in those circumstances in which discipline is clearly appropriate. As structured, fines would be imposed when late submissions by a particular member or members reflect a pronounced pattern of persistent and excessive use of as-of-adds. Absent such a pattern, the Exchange believes, that the assessment of fees is sufficient and that fines should ordinarily not be imposed. Of course, in any circumstance in which a member's use of as-of-adds suggests that it may be appropriate to impose more severe disciplinary sanctions than would be provided for under Rule 17.50(g), the member would be subject to investigation and discipline in accordance with Chapter XVII.<sup>16</sup>

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>17</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

#### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

#### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has requested that the proposed rule change be given

accelerated effectiveness pursuant to Section 19(b)(2)<sup>18</sup> of the Act.<sup>19</sup>

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, the requirements of Section 6(b)(5).<sup>20</sup> Specifically, the Commission finds, as it did in originally approving the Pilot Program and the subsequent extensions,<sup>21</sup> that imposing fees on members who submit as-of-adds for more than a prescribed percentage of transactions in any month is likely to: (1) Offset the carrying costs incurred by the Exchange and Exchange members as a result of these post-trade date submissions; (2) make trade comparisons on the CBOE more efficient in terms of the time and expense involved in trade processing; and (3) reduce the risk exposure to investors and Exchange clearing members. Additionally, the Commission continues to believe that the Pilot Program does not raise any due process concerns because of the availability of the verification and appeals processes pursuant to Chapter XIX of CBOE's rules.<sup>22</sup>

The Commission believes that the proposed caps on the monthly as-of-add fees that can be assessed against members adequately addresses one of the concerns previously noted by the Commission of assessing inordinately high, or punitive, monthly "fees" for violations of Exchange rules.<sup>23</sup> By placing the proposed caps on the maximum monthly as-of-add fees, the Commission believes that it is appropriate for the Exchange to continue to classify these assessments as fees, rather than requiring the Exchange to institute disciplinary proceedings and to assess fines against members each time they submit as-of-adds in violation of Exchange rules.<sup>24</sup> Additionally, the proposal to incorporate the Pilot Program into the Minor Rule Plan under Rule 17.50 further minimizes the Commission's concerns about classifying these assessments as fees rather than fines.<sup>25</sup> The proposal

<sup>13</sup> See *supra* notes 6 and 7.

<sup>14</sup> See Amendment No. 1, *supra* note 3. These fines would be assessed on a rolling basis. For example, an individual member who is cited for a first offense for a minor rule violation for exceeding the nominal allowable number of as-of-adds by three or more times during each of December and January would be fined for a second offense if that member again exceeds the allowable number of as-of-adds by three or more times during February. Telephone conversation between Dan Schneider, Schiff Hardin & Waite, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on December 8, 1994.

<sup>15</sup> See *supra* notes 6 and 7.

<sup>16</sup> The CBOE has agreed to issue a Regulatory Circular to members describing the portions of the proposal approved herein, describing the portion of the proposal to incorporate the Pilot Program into the Minor Rule Plan, emphasizing that serious instances or extended periods of late submissions will be subject to investigation and possible disciplinary action notwithstanding Rule 17.50(g), and highlighting that all members assessed a fee pursuant to the Pilot Program may submit a request for verification and may appeal the fees assessed pursuant to Chapter XIX of the CBOE Rules.

<sup>17</sup> 15 U.S.C. 78f(b)(5) (1988).

<sup>18</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>19</sup> See Amendment No. 1, *supra* note 3.

<sup>20</sup> 15 U.S.C. 78f(b)(5) (1988).

<sup>21</sup> See *supra* note 5.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> The Commission notes that its findings herein are limited to as-of-add submissions. For violations of other Exchange rules, it may be inappropriate to allow the Exchange to assess fees to encourage compliance rather than instituting disciplinary proceedings against members for such violations.

<sup>25</sup> The Commission notes that although the proposal to incorporate the Pilot Program into the

ensures that at some objective level, members will be cited for violating Exchange Rule 6.51.<sup>26</sup> In connection with as-of-add submissions. The Commission believes that the prospect of being fined for a rule infraction, particularly where the as-of-adds reflect a significant pattern of abuse in violation of the requirements of Rule 6.51, will act as a further incentive for encouraging exchange members to reduce their as-of-add submissions.

Furthermore, the Commission does not believe that the fact that the proposed monthly cap as-of-add fees is higher for clearing members (\$1000) than for individual members (\$500) raises significant regulatory concerns. In its present form, the Pilot Program distinguishes between clearing members and individual members in two respects. First, the monthly allowable percentage of as-of-adds is higher for individual members than for clearing members.<sup>27</sup> Second, the per-trade fee amount assessed against individual members (\$10) is higher than that assessed against clearing members (\$3). Because the average fee assessed against clearing members during the period between October 1, 1993, and September 30, 1994, (\$307.51) was higher than the average fee assessed against individual members (\$104.50),<sup>28</sup> the Commission does not disagree with the Exchange's determination that it is reasonable for the monthly cap applicable to clearing members to be higher than the cap applicable to individual members. Moreover, even though the Exchange represents that most as-of-adds are the result of late submission by individual members rather than by clearing members, the Commission believes that clearing members have some ability to encourage individual members to reduce their number of as-of-adds, for example, by charging fees to individual members who regularly submit as-of-adds to the clearing member for processing. Additionally, assuming that the portion of the proposal to incorporate violations of Rule 2.26 into the Minor Rule Plan is ultimately approved,<sup>29</sup> the Commission notes that it will be possible for individual members who submit a significant number of as-of-adds in

relation to their total number of monthly trades to be fined for violating the Minor Rule Plan without reaching the cap on fees pursuant to Rule 2.26. Finally, the fines proposed for violating the Minor Rule Plan for as-of-add submissions are the same for individual members and for clearing members. Even with the lower monthly cap on fees, therefore, the Commission believes that the proposal provides significant incentives for individual members to reduce their as-of-add submissions. As a result, the Commission believes that the difference between the cap levels for individual members and clearing members is reasonable and consistent with the Act.

The Commission also notes that in prior extensions of the Pilot Program, the Commission expressed concern over the Exchange's inability to determine, without examining each individual trade, whether particular as-of-adds are submitted due to the fault of an individual member or that member's clearing firm.<sup>30</sup> As a result, in determining whether a member has exceeded its stated monthly percentage of allowable as-of-adds, each as-of-add processed by a clearing member is counted against both the clearing member and the individual member who executed the transaction. For several reasons, however, the Commission now believes that this does not prevent a finding that the Pilot Program is consistent with the Act. First, data gathered by the Exchange from the first year of operation of the Pilot Program support the Exchange's representation that most as-of-adds are the result of late submissions by individual members, not clearing firms. From October 1, 1993, through September 31, 1994, there were 463 assessments of fees against individual members pursuant to the Pilot Program but only 13 such assessments against clearing members.<sup>31</sup> Second, during that same period, only one individual member requested verification of the fee assessed by the Exchange and that member did not appeal the assessment upon receipt of verification from the Exchange.<sup>32</sup> Finally, the Commission has not received any comment concerning the Pilot Program, in general, or this aspect of the Pilot Program, in particular. As a result, the Commission does not believe that individual members are being damaged as a result of the CBOE's inability to efficiently identify the party actually responsible for each as-of-add, especially given that members may

request verification of, and may appeal, any as-of-add fee assessed by the Exchange.

Finally, the Commission believes that the proposal to add paragraph (d) to Rule 2.26 concerning waivers of the as-of-add fees in unusual circumstances is also consistent with the Act. Proposed paragraph (d) substantively mirrors paragraph (g) of Rule 2.30, which was previously approved by the Commission. Rule 2.30 is similar to Rule 2.26 in that both rules are concerned with the late submission of trade data.<sup>33</sup> As a result, the Commission believes that if Rule 2.30 can be waived in the event of exigent circumstances, a similar provision should also apply to Rule 2.26. The Commission believes that when unusual circumstances exist that affect the ability of a significant number of members to submit trade information to the Exchange in a timely manner it may not be appropriate to assess fees, and possibly fines (assuming the amendment to the Minor Rule Plan discussed herein is ultimately approved as adopted), against individual members and clearing members. The Commission expects the CBOE to use its power to waive as-of-add fees only in highly unusual circumstances. In addition, while the CBOE has indicated that the power to waive as-of-add fees will usually be used in conjunction with the similar power in Rule 2.30, the Commission expects the CBOE to examine each situation on its merits to determine whether just Rule 2.30 or both Rules 2.26 and 2.30 should be waived in a particular situation.<sup>34</sup>

The Commission finds good cause for approving the following portions of the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**: (1) The request for permanent approval of the Pilot Program; (2) the proposal to impose caps on the monthly fee that can be assessed against members; and (3) the portion adopting paragraph (d) to Rule 2.26 to allow the Exchange to waive application of the rule in unusual circumstances.

First, granting permanent approval of the Pilot Program will permit the Pilot Program to remain in effect without

Minor Rule Plan is consistent with the Commission's prior suggestions regarding the Pilot Program, for the reasons discussed below, this portion of the proposed rule change is being published for comment and is not being approved by the Commission on an accelerated basis herein with the remainder of the proposal.

<sup>26</sup> See *supra* note 4.

<sup>27</sup> See *supra* notes 6 and 7.

<sup>28</sup> See Pilot Report, *supra* note 10.

<sup>29</sup> See *supra* note 25.

<sup>30</sup> See *supra* note 5.

<sup>31</sup> See Pilot Report, *supra* note 10.

<sup>32</sup> *Id.*

<sup>33</sup> See *supra* note 12.

<sup>34</sup> For example, situations could arise for which it may be appropriate for the Exchange to waive Rule 2.30, but if the unusual circumstances last only a few hours, it may be inappropriate to conclude that trade data could not be submitted by most members on the same day that the trades occur. In such a situation, the Commission believes that it would not be appropriate for the Exchange to also waive Rule 2.26.

interruption. For the reasons discussed above and in prior orders concerning the Pilot Program,<sup>35</sup> the Commission believes that reducing the number of as-of-adds submitted to the Exchange may benefit investors by reducing the Exchange's processing costs, making the CBOE more efficient in terms of the time involved in trade processing, and reducing risk exposure to investors and Exchange member firms. Additionally, the Exchange has represented that no problems have arisen and no formal complaints have been received by the Exchange concerning the Pilot Program since its implementation.<sup>36</sup>

Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve, on an accelerated basis, that portion of the proposed rule change requesting permanent approval of the Pilot Program.

For the reasons discussed above, the Commission also believes that it is appropriate to accelerate approval of the proposal to impose caps on the monthly as-of-add fees assessed against members. The Commission believes that this portion of the proposal addresses a significant concern that the Commission previously raised regarding the Pilot Program by ensuring that members are not assessed fees that are inordinately high, or punitive.<sup>37</sup> The Commission continues to believe that it is inappropriate for the CBOE to promote and enforce compliance with Exchange rules solely through the assessment of fees. Further, this proposal is a limitation on the existing Pilot Program, which has no upper limit on the monthly fee that can be assessed. As a result, because the Commission has not received comment on the existing Pilot Program, the Commission believes it is appropriate to approve this aspect of the proposal on an accelerated basis.

With regard to proposed paragraph (d) to Rule 2.26, the Commission believes that this amendment will promote uniformity between Rule 2.26 and existing Rule 2.30. The logic for waiving application of Rule 2.30 in the existence of unusual circumstances also applies to Rule 2.26, *i.e.*, if circumstances prevent a significant number of members from processing trade information, it generally may be inappropriate to assess fees against those members for violating Rules 2.26 and 2.30. Accordingly, the Commission believes it is appropriate to approve this portion of the proposal on an accelerated basis in order to promote uniformity between the Exchange's

rules and thus minimize potential confusion, and to avoid inconsistent results where for the same set of "unusual circumstances," the Exchange is able to waive application of Rule 2.30 but not Rule 2.26.<sup>38</sup>

At this time the Commission is not approving that portion of the proposed rule change that would incorporate the Pilot Program into the Minor Rule Plan. Although the Commission believes that this portion of the proposal addresses suggestions previously noted by the Commission concerning the Pilot Program, the Commission believes that prior to approval, Exchange members should be given adequate notice of, and an opportunity to comment on, proposals that could subject them to disciplinary sanctions. As a result, the Commission expects the Exchange to distribute to its members notice of the rule change as approved herein and notice of the proposal to incorporate the Pilot Program into the Minor Rule Plan.<sup>39</sup> Moreover, the Exchange's request for accelerated approval of the proposal was for the sole purpose of avoiding procedural and accounting problems that would result from a lapse in the Pilot Program.<sup>40</sup> The Commission believes this concern has been adequately addressed by accelerating permanent approval of the Pilot Program

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing proposed rule change and Amendment No. 1 thereto. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to

File No. SR-CBOE-94-50 and should be submitted by January 31, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act<sup>41</sup> that the following portions of the proposed rule change (SR-CBOE-94-50), are approved: (1) The amendments to CBOE Rule 2.26 placing a ceiling on the monthly as-of-add fees that can be assessed against individual members and clearing members, and allowing the Exchange to suspend the rule in exigent circumstances; and (2) permanent approval of the Pilot Program.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>42</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 95-483 Filed 1-11-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35192; File No. SR-CBOE-94-44]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Market Maker Appointments

January 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 14, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 8.3(c) concerning the number of trading stations at which a single market maker's appointed classes of options are traded.

#### 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

<sup>35</sup> See *supra* note 5.

<sup>36</sup> See Pilot Report, *supra* note 10.

<sup>37</sup> See *supra* note 5.

<sup>38</sup> See *supra* note 34 and accompanying text.

<sup>39</sup> See *supra* note 16.

<sup>40</sup> See Amendment No. 1, *supra* note 3.

<sup>41</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>42</sup> 17 CFR 200.30-3(a)(12) (1993).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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*

The purpose of the proposed rule change is to revise CBOE Rule 8.3(c) to give the Market Performance Committee ("MPC") authority to designate the maximum number of trading stations at which a single market maker's appointed classes of options are traded, and to add Interpretation and Policy .02 to CBOE Rule 8.3 to state that the MPC has designated such maximum number as ten trading stations. CBOE Rule 8.3 currently sets a five station upper limit on the maximum number of trading stations that may be covered by a single market maker's appointment.

In light of the recent and anticipated increases in both the number of options classes traded on the Exchange and the number of trading stations on the floor, the Exchange has determined that it needs greater flexibility to increase this limit from time to time in order to be able to respond promptly to any need for greater market maker participation that may result from such expansion. By granting authority to fix this number to the MPC, which already has the authority to grant exceptions to the current five-station limit on a case-by-case basis, the Exchange believes it will have achieved the flexibility it needs. When and if the MPC changes the limit from ten stations as it is here proposing, the new limit will be reflected in a revision to Interpretation and Policy .02 under the Rule filed under Section 19(b)(3)(A)(i) of the Act as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of Rule 8.3.<sup>2</sup>

The CBOE believes that the proposed increase in the current limit under Rule 8.3(c) from five to ten stations reflects that, in light of the expansion of the number of options classes traded in CBOE's marketplace and in the number of stations at which options are traded, a five-station limit is unduly restrictive and places CBOE's market makers at a

competitive disadvantage in relation to options market makers on other exchanges. Currently, the five-station maximum limits an individual market maker's affirmative market making obligations to, at most, slightly more than 9% of the trading stations on the floor, or less than 25% of all CBOE classes. To assure adequate market maker coverage of all classes traded on the CBOE, enlargement of the current five station limit to ten stations is needed.

In addition, CBOE believes that the importance of maintaining comparability among exchanges regarding the percentage of the classes traded in which a market maker may hold an appointment is not limited to general reasons of competitive fairness and equality. Comparability is also important because under the new short sale rule applicable to stocks traded in the Nasdaq market, the exception to the short sale rule for options market makers only applies to stocks underlying options in which the market maker holds an appointment. So long as CBOE market makers limited to holding appointments in less than 25% of the classes traded on the Exchange, CBOE's market makers will be at a competitive disadvantage in respect of their ability to hedge their options positions pursuant to the market maker exemption from the NASD short sale rule. CBOE recently filed a proposed rule change that would amend its Rule 15.10 by eliminating the provision that restricts the market maker exemption to Nasdaq National Market securities underlying options traded at no more than three stations. Instead, the market maker exemption would be available for all options classes to which a market maker holds an appointment.<sup>3</sup>

The proposed amendment is intended to enhance the ability of the Exchange to provide fair and orderly markets in options and to provide for competitive equality among exchanges, and therefore the Exchange believes that its proposal is consistent with the promotion of just and equitable principles of trade and the protection of investors and the public interest as required by Section 6(b)(5) of the Act.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer 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 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-CBOE-94-44 and should be submitted by February 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 95-717 Filed 1-11-95; 8:45 am]

**BILLING CODE 8010-01-M**

<sup>2</sup> Although the CBOE has stated its desire to rely on section 19(b)(3)(A) of the Act if it should seek to change the limit, the Commission has requested that the CBOE provide it with additional information to justify the appropriateness of such reliance.

<sup>3</sup> See Securities Exchange Act Release No. 34947 (November 7, 1994), 59 FR 59262 (File No. SR-CBOE-94-38), proposing to amend CBOE Rule 15.10(c)(2)(ii)(B).

<sup>4</sup> 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-35189; File No. SR-NASD-94-76]

**Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Subscriber Fees for Nasdaq Workstation II and Systems-Related Testing Fees**

January 3, 1995.

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 December 14, 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. The NASD has designated this proposal as one establishing or changing a fee under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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**

Pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, the following is the full text of a proposed rule change that will revise the fee structure applicable to NASD members receiving the second generation of Nasdaq Workstation™ Service (hereinafter referred to as "NWII") functionality.<sup>1</sup> Additionally, the NASD is proposing to implement fees that member firms would pay to test certain communications interfaces. The proposed fees would take effect on January 1, 1995 and be reflected in Sections A(9) and E(5), respectively, of Part VIII of Schedule D to the NASD By-Laws. The full text of the proposed rule change is set forth below. (New language is underlined and deletions are bracketed.)

**Part VIII—Schedule of NASD Charges for Services and Equipment**

a. System Services

\* \* \* \* \*

9. *Nasdaq Workstation™ Service*

\* \* \* \* \*

*The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and*

<sup>1</sup> The computer facilities that support the provisions of NWII are operated by The Nasdaq Stock Market, Inc. ("NSMI"), a wholly owned subsidiary of the NASD.

*communications linkages prescribed for the Nasdaq Workstation II service.*

*Service Charge—\$100/month per server  
Display Charge—\$500/month per  
presentation device*

*Additional Circuit—\$1,150 per month*

\* \* \* \* \*

E. Other Services

1. No change.
2. No change.
3. No change.

4. *Testing Services.*

*Subscribers that conduct tests of their computer-to-computer interface ("CTCI") or digital interface ("DIS/CHIPS") with the central processing facilities of The Nasdaq Stock Market, Inc. ("NSMI") shall pay the following charges:*

*\$285/hour—For CTCI/DIS/CHIPS testing between 9:00 a.m. and 5:00 p.m. E.T. on business days;*

*\$333/hour—For testing at all other times on business days, or on weekends and holidays.*

*The foregoing fees shall not apply to testing occasioned by (i) new or enhanced services and/or software provided by NSMI or (ii) modifications to software and/or services initiated by NSMI in response to a contingency.*

**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 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*

The purpose of this rule change is to amend the subscriber fees applicable to NASD member firms that use the NWII to support their trading in The Nasdaq Stock Market ("Nasdaq") and/or the OTC Bulletin ("OTCBB") component of the over-the-counter ("OTC") equities market. The rule change also would establish a new category of fees to be paid by member firms (either directly or through billings from their service bureaus) for testing communication interfaces with central processing facilities that support Nasdaq.

The roll-out of NWII, which began in November, 1994, constitutes a significant milestone in the upgrade of hardware, software, and network facilities that comprise the infrastructure of Nasdaq. The software driving NWII is windows-based and provides several data management features that are not available in the original version of Nasdaq Workstation service (hereinafter referred to as "NWI"). Moreover, a new network—known as the Enterprise Wide Network ("EWN")—has been developed to deliver NWII functionality. The capacity of the EWN is more than five times that of the network developed for NWI (i.e., 56,000 baud versus 9,600 baud). Since the NWII roll-out has now begun, it is appropriate to implement service fees calculated to recover the higher costs of operating and maintaining the NWII functionality and the EWN.<sup>2</sup>

Under the NWII, each subscriber location will have at least one service delivery platform or server that resides on the EWN. (The server functions as the subscriber's gateway to the EWN.) Each server will be capable of supporting up to eight presentation devices (i.e., Workstations). To recover the operational and maintenance costs associated with providing NWII, the proposed fee structure would establish a charge of \$100/month per server and a charge of \$500/month for each workstation or presentation device linked to that server. Thus, an NWII subscriber with 8 Workstations and 1 server would pay \$4,100/month under the proposed fee structure. Although it is possible to support as many as eight Workstations on a single server, and NWII subscriber might wish to configure its operating environment, for example, with two servers, each supporting 4 Workstations. In this circumstance, the subscriber would pay \$1,150/month for the second circuit at the same location, \$200/month for the two servers, and \$4,000/month for receipt of NWII functionality on 8 Workstations. The proposed fees are premised on the assumption that a subscriber will maximize the capacity of each server before adding a second telecommunications circuit and server. However, if a firm elects to add servers and circuits without maximizing, that firm will bear the additional circuit cost of \$1150/month which constitutes a

<sup>2</sup> The NWII roll-out will occur in five phases with the final phase scheduled for completion in mid-1996. Each phase consists of installing NWII at all subscriber sites in a defined geographic area. Thus, while the roll-out proceeds, some subscribers will continue to utilize NWI and will pay the existing charges for that service.

pass-through of the actual cost borne by NSMI.

Regarding the proposed testing fees, these have been calculated to recover NSMI's actual costs in accommodating members' requests for testing of specialized communications interfaces with NSMI's central processing facilities. Typically, such testing occurs when new broker-dealer subscribers are added to an existing computer-to-computer interface ("CTCI") maintained by a service bureau or when a broker-dealer (with its own digital interface) has effected a major change in its internal systems/software applications. The scope, purpose, and longevity of the test are determined by the subscriber. NSMI participates in the testing process by providing a test environment that closely approximates the production environment for the service(s) which the subscriber wishes to test (e.g., the Automated Transaction ("ACT") service). Derivation of the testing fees involved a review of NSMI testing logs for 1993; the computation of direct and indirect costs allocable to tests actually performed; and the breakdown of those costs into hourly rates. In sum, the proposed testing fees would pass-through the actual costs incurred by NSMI in accommodating subscribers' testing needs. No testing fee would be assessed in circumstances where major systems/software change instituted by NSMI have prompted the subscriber's test.

The NASD believes that the proposed rule change is consistent with the requirements of Section 15A(b)(5) of the Act. 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. It should be noted that the proposed NWII fees will be payable exclusively by NASD member firms that receive Level 2 or Level 3 Nasdaq service via the NWII offering. As described earlier, NWII is being implemented in phases with all current NWI subscribers in a defined area being converted to NWII.<sup>3</sup> Thus, beginning January 1, 1995, all NASD members that

<sup>3</sup> NWI and NWII both permit the deliver of either Level 2 or Level 3 Nasdaq service. Subscription to Level 3 is limited to NASD members that meet the financial and operational requirements for market making. Subscription to Level 2 Nasdaq service is open to non-members as well as members because it does not provide the functionality needed to enter quotations as a market maker. Extension of the NWII fees to non-member subscribers will be the subject of a separate Rule 19b-4 filing. Meanwhile, any non-members converted to NWII will continue to pay the prevailing rate for NWI functionality.

are converted to NWII will be liable for the new fees; NWI subscribers will continue to pay the NWI service fees until they are converted.

The NASD believes that the proposed NWII fees are reasonable in that they were calculated to recover the projected costs of operating and maintaining the NWII software, hardware, and the EWN. The development costs associated with NWII have been expensed by NSMI and will not be recovered through the proposed NWII fees. Although higher than the existing fees for NWI, the NWII fees are believed reasonable that subscribers will be provided the increased functionality embedded in the new software package, increased network capacity to accommodate future growth in traffic and business volume, and upgraded hardware capable of more rapid processing of message traffic to and from market participants.

Regarding the proposed testing fees, these have been calculated to recover the actual costs incurred by NSMI to accommodate the testing requirements of CTCI and digital interface subscribers. All entities that would be required to pay these testing fees are either NASD members or service bureaus that incur testing charges will pass them on to their broker-dealer customers. Hence, the affected NASD members will ultimately pay the testing charge incurred by their service bureaus.

Based on the foregoing factors, the NASD submits that both categories of proposed fees are reasonable and designed to achieve an equitable allocation of operating costs among NASD members utilizing the affected NSMI services.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the proposed rule change will not result in 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder, because the proposal

constitutes a change in a "due, fee or other charge" or specific automated services provided to NASD member firms. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-716 Filed 1-11-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35193; File No. SR-PSE-94-27]

**Self-Regulatory Organizations; Pacific Stock Exchange Incorporated; Notice of Filing of Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard**

January 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 19, 1994, the Pacific Stock Exchange Incorporated ("PSE") filed with the Securities and Exchange

<sup>4</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by PSE. 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

PSE proposed to modify its rules to implement a three business day settlement standard for securities transactions.

### II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, PSE 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 PSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

On October 6, 1993, the Commission adopted Rule 15c6-1 under the Act which establishes three business days after the trade date ("T+3") instead of five business days ("T+5") as the standard settlement cycle for most securities transactions.<sup>2</sup> The rule will become effective June 7, 1995.<sup>3</sup> In the release adopting Rule 15c6-1, the Commission concluded that a T+3 settlement cycle, as compared to the current T+5 settlement cycle, will reduce credit and liquidity risks and will increase efficiency in broker-dealer and clearing agency operations. Accordingly, in order to accommodate the implementation of the new settlement standard established by the Commission's Rule 15c6-1, PSE will amend the following rules.

Rule 5.7 currently provides that transactions in stocks traded "regular" shall be "ex-dividend" or "ex-rights" as the case may be, on the fourth business day preceding the record date fixed by the company or the date of the closing of transfer books, except when the Board rules otherwise. PSE is proposing to replace the term "fourth" in this

provision with the term "second." Rule 5.7 also currently provides that should such record date or such closing of transfer books occur upon a day other than a business day this rule shall apply for the fifth preceding business day. The PSE is proposing to replace the term "fifth" in this provision with the term "third."

Rule 5.9(a)(2) currently provides that for transactions settling on a "regular way" basis, bids and offers in securities admitted to dealings on an "issued" basis shall be made for delivery on the fifth business day following the day of the contract. The PSE proposes to replace the term "fifth" with the term "third."

Rule 5.9(a)(3) currently provides that for transactions settling on a "seller's option" basis, bids and offers in securities admitted to dealings on an "issued" basis shall be made for delivery at the option of the seller within the time specified in the option, which time shall be not less than six business days nor more than sixty days following the date of the contract, except that the PSE may provide otherwise in specific issues of securities. The PSE proposes to replace the term "sixth" in this rule with the term "fourth."

Rule 5.9(a)(4) currently provides that for transactions settling on a "next day" basis, bids and offers in securities admitted to dealings on an "issued" basis shall be made for delivery on the next full business day following the day of the contract. For rights and warrants this rule generally is applicable only during the five business days preceding the final day for trading therein. The PSE proposes to replace the term "fifth" in this rule with the term "third."

Rule 9.12(a)(4) currently provides that no member organization shall grant delivery versus payment ("DVP") or receipt versus payment ("RVP") privileges to a customer without obtaining an agreement from the customer to provide instructions to its agent no later than the fourth day after the trade date for RVP trades or no later than the third business day after trade date for DVP trades. The PSE proposes to shorten these time frames to the second day after trade date for RVP trades and the first day after trade date for DVP trades.

Finally, the PSE has agreed to an implementation plan proposed by the National Securities Clearing Corporation ("NSCC") for transition to a T+3 settlement cycle.<sup>4</sup> The schedule is as follows.

Trade date	Settlement cycle	Settlement date
June 2 Friday	5 day	June 9 Fri.
June 5 Monday	4 day	June 9 Fri.
June 6 Tuesday	4 day	June 12 Mon.
June 7 Wednesday	3 day	June 12 Mon.

If the Commission determines to alter the exemptions currently provided in Rule 15c6-1, the PSE may be required to file additional rule amendments.

The PSE believes that the proposal 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

PSE does not believe that the proposed rule change will impose 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

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety 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 PSE 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

scheduled for Friday, June 9, will incorporate trades from Friday, June 2 (the last T+5 settlement day) and from Monday, June 5 (a T+4 settlement day). The second double-day settlement, scheduled for Monday, June 12, will include trades from Tuesday, June 6 (a T+4 settlement day) and from Wednesday, June 7 (the first T+3 settlement day).

<sup>2</sup> Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

<sup>3</sup> Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

<sup>4</sup> NSCC will use two double-settlement days for the conversion. The first double-day settlement,

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-94-27 and should be submitted by February 21, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-814 Filed 1-11-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35191; File No. SR-PHLX-94-70]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Proposing To Extend its OTC/UTP Pilot Program**

January 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 27, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx, pursuant to Rule 19b-4 of the Act, proposes to extend the

effectiveness of the pilot program and its accompanying rules regarding the trading of Nasdaq/National Market ("Nasdaq/NMS") securities on the Exchange pursuant to unlisted trading privileges ("Phlx OTC/UTP Pilot Program") for a six-month period ending June 30, 1995.

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. Due to the non-controversial nature of the Phlx OTC/UTP Pilot Program, coupled with its previously scheduled expiration date of December 31, 1994, the Phlx respectfully requests accelerated approval of this filing.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In 1985, the Commission published its policy to allow the extension of unlisted trading privileges ("UTP") by national securities exchanges in certain over-the-counter ("OTC") securities, provided that certain terms and conditions are satisfied. On June 26, 1990, the Commission approved a joint transaction reporting plan ("Joint OTC/UTP Plan" or "Plan") submitted by the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange ("MSE," currently operating as the Chicago Stock Exchange, or "Chx"), and the Phlx.<sup>3</sup> The Joint OTC/UTP Plan

governs the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/NMS securities traded on exchanges and by NASD market makers.

The current proposed rule change will continue the Phlx OTC/UTP Pilot Program that provides for trading of Nasdaq/NMS securities on the Exchange pursuant to UTP. Although the Chx has been trading Nasdaq/NMS securities since 1987, the Phlx obtained temporary approval of its rules to facilitate trading Nasdaq/NMS securities in late 1992,<sup>4</sup> and began trading the securities in February 1993. Since that time, the Phlx has been operating the program without any adverse consequences or developments which negatively effect the program. Therefore, the Exchange seeks an extension of the Phlx OTC/UTP Pilot Program to further develop the overall OTC/UTP program.

Since April 1994, the Phlx has temporarily suspended making markets in OTC/UTP securities. However, the Phlx desires to keep the program in place for future use once certain elements of the Joint OTC/UTP Plan are worked out between the NASD and the other participants in the Plan.

2. Statutory Basis

This proposal is consistent with the Section 6(b)(5) of the Act and the rules and regulations promulgated thereunder. Specifically, the proposal is calculated to promote just and equitable principles of trade and to protect investors and the public interest. Due to the non-controversial nature of the Phlx OTC/UTP Pilot Program, coupled with the previously scheduled expiration of the Phlx's OTC/UTP privileges, the Phlx requests accelerated approval of this filing.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will be a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and

<sup>3</sup> See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 ("Joint OTC/UTP Plan Order"). The Commission has approved an extension of the effectiveness of the Joint OTC/UTP Plan through January 12, 1995. See Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (order approving Amendment No. 1 to File No. S7-24-89) ("Joint OTC/UTP Plan Extension Order").

<sup>4</sup> See Securities Exchange Act Release No. 31672 (December 30, 1992), 58 FR 3054 (order approving File No. SR-PHLX-92-04) ("1992 Phlx Pilot Order"). See also Securities Exchange Act Release No. 33408 (December 30, 1994), 59 FR 1045 ("1993 Phlx Pilot Extension Order").

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1991).

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-PHLX-94-70 and should be submitted by February 2, 1995.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission believes that the Phlx's proposal to extend the effectiveness of the Phlx OTC/UTP Pilot Program and accompanying rules with respect to UTP in OTC securities is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> Specifically, the Commission believes that the proposed rule change is consistent with Sections 6(b)(5), 11A and 12(f) of the Act.<sup>6</sup>

In 1985, the Commission published its policy to extend UTP to national securities exchanges in certain OTC securities provided certain terms and conditions are satisfied.<sup>7</sup> The Commission's policy stated that UTP approval would be conditioned, in part,

<sup>5</sup> For a more detailed discussion of the Commission's findings with respect to the Phlx OTC/UTP Pilot Program and its consistency with the Act, see 1992 Phlx Pilot Order and 1993 Phlx Pilot Extension Order, *supra* note 4.

<sup>6</sup> 15 U.S.C. 78f(b)(5), 78k-1 (1988), and 78j(f) (1988) (as amended October 22, 1994). Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 11A provides, among other things, that it is in the public interest and appropriate for the protection of investors to assure fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets. Section 12(f), as amended, provides, among other things, that exchanges may extend UTP to securities that are registered, but not listed on any exchange, provided that certain conditions are met.

<sup>7</sup> See Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640.

on the approval of a plan to consolidate and disseminate exchange and OTC quotation data and transaction data upon which UTP is granted. As noted above, in 1990, the Commission approved the Plan which provides for the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/NMS securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.<sup>8</sup> Transactions in securities pursuant to the Plan are and will continue to be reported in the consolidated transaction reporting system established under the Plan.

In the 1993 Phlx Pilot Order and the 1993 Phlx Pilot Extension Order, the Commission emphasized that Phlx specialists trading Nasdaq/NMS securities pursuant to the grant of UTP are subject to Plan requirements as well as the Phlx By-Laws and Rules. Moreover, the Commission stated its intent to monitor any potential abuse of the informational advantage that options traders could acquire from the Phlx equity floor with respect to securities traded under the Phlx OTC/UTP Pilot Program.

In extending the Phlx OTC/UTP Pilot Program for an additional six months, the Commission again emphasizes that, if the Exchange removes its temporary suspension of OTC/UTP on its trading floor, Phlx specialists trading Nasdaq/NMS securities pursuant to UTP will continue to be subject to Plan requirements as well as the Phlx By-Laws and Rules. The Commission also will continue to monitor side-by-side trading concerns during this extension of the pilot procedures.

In approving the Plan, the Commission noted that the Plan should enhance market efficiency and fair competition, avoid investor confusion, and facilitate regulatory surveillance of concurrent exchange and OTC trading. The Commission has requested that the participants to the Plan submit evaluations to the Commission concerning the operation and status of OTC/UTP as it relates to these and other national market system objectives.<sup>9</sup>

In the present filing, the Phlx states that it has been operating its pilot program with no adverse consequences or developments that have a negative impact on the program. The Phlx also has attached a letter to the present filing which provides a detailed discussion of the status and operation of OTC/UTP

<sup>8</sup> See note 4, *supra*.

<sup>9</sup> See 1992 Phlx Pilot Order and 1993 Phlx Pilot Extension Order, *supra* note 4. See also Joint OTC/UTP Plan Order and Joint OTC/UTP Plan Extension Order, *supra* note 3.

under both the Phlx OTC/UTP Pilot Program and the Joint OTC/UTP Plan.<sup>10</sup> The evaluation does not report any negative impact to the securities markets caused by OTC/UTP, but does make certain recommendations concerning the overall status of, and issues raised by the Joint OTC/UTP Plan. The Commission will address those recommendations in the Commission's evaluation of the continued effectiveness of the Joint OTC/UTP Plan, which currently is scheduled to expire on January 12, 1995.

The Commission believes that it is appropriate to extend the Phlx OTC/UTP Pilot Program for an additional six months while the Commission evaluates the overall program for OTC/UTP and any enhancements or changes to the program that may be necessary to further the purposes of the Act. In the interim, however, the Commission continues to believe that the Phlx OTC/UTP Pilot Program, as limited by the Joint OTC/UTP Plan, generally furthers the objectives of a national market system and is consistent with the maintenance of fair and orderly markets and the protection of investors as required by Sections 6(b)(5), 11A and 12(f) of the Act.

#### V. Conclusion

For the reasons stated above, the commission believes that it is appropriate to extend the Phlx OTC/UTP Pilot Program for an additional six months.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the Phlx to continue to have rules in place for OTC/UTP trading. Further, the Phlx OTC/UTP Pilot Program and the accompanying rules have been noticed previously in the **Federal Register** for the full statutory period, and the Commission received no comments on the proposal.<sup>11</sup>

It is therefore ordered, pursuant to Section 19(b)(2)<sup>12</sup> that the proposed rule change is hereby approved on a pilot basis through June 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

<sup>10</sup> See letter from William W. Uchimoto, First Vice President and General Counsel, Phlx, to Elizabeth Prout, Esq., Commission, dated December 21, 1994.

<sup>11</sup> See *supra* note 4.

<sup>12</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>13</sup> 17 CFR 200.30-3(a)(12) (1991).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc 95-715 Filed 1-11-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-26214]

**Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")**

January 6, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 30, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Appalachian Power Company, et al. (70-8503)**

Appalachian Power Company ("APCo"), 40 Franklin Road, Roanoke, Virginia 24022, a public utility subsidiary of American Electric Power Company, Inc., a registered holding company ("AEP") and Kanawha Valley Power Company ("KVPCo"), 1 Riverside Plaza, Columbus, Ohio 25327, a subsidiary of APCo, have filed an application and declaration pursuant to Sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rule 43 thereunder.

APCo owns all of the outstanding shares of stock of KVPCo. KVPCo owns and operates hydroelectric power facilities in West Virginia and sells that power to APCo. APCo and KVPCo

propose that KVPCo merge with and into APCo, the separate corporate existence of KVPCo will cease, and that APCo will be the continuing and surviving corporation (the "Surviving Corporation"). As a result of such merger, APCo will acquire all of the assets and assume all of the liabilities of KVPCo.

At the time of such merger, each outstanding share of capital stock of APCo will continue to be one outstanding share of stock of the Surviving Corporation and will continue to have the same rights, privileges and preferences as before the Merger. Each outstanding share of capital stock of KVPCo will be cancelled and extinguished.

**General Public Utilities Corporation, et al. (70-8537)**

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and Energy Initiatives, Inc. ("EI"), One Upper Pond Road, Parsippany, New Jersey 07054, a non-utility subsidiary of GPU, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 thereunder.

EI proposes from time to time through January 31, 2002 to acquire limited partner interests in EnviroTech Investment Fund I Limited Partnership, a Delaware partnership, and any successor or affiliated limited partnership having substantially similar investment objectives and terms (the EnviroTech Investment Fund I Limited Partnership and all such successor or affiliated limited partnership's are herein collectively referred to as the "EnviroTech Partnership"). The amount of all such purchases by EI will, in the aggregate, not exceed \$10 million.

In addition, GPU proposes from time to time through such date to make capital contributions of up to \$10 million to EI for purposes of making such acquisitions. The interests to be acquired by EI will in the aggregate represent not more than 9.9% of the limited partner interests in any EnviroTech Partnership. The sole general partner of the EnviroTech Partnership ("General Partner") will be Advent International Limited Partnership, a Delaware limited partnership, of which Advent International Corporation ("AIC") is the general partner. AIC is a venture capital investment firm.

A key objective of the EnviroTech Partnership is to make investments in companies (each a "Portfolio Company") that will contribute to the reduction, avoidance or sequestering of

greenhouse gas emissions; help utilities and their customers handle waste by-products more effectively or produce or manufacture goods or services more cost effectively; improve the efficiency of the production, storage, transmission, and delivery of energy; and provide investors with attractive opportunities relating to the evolving utility business climate which meet the above objectives.

In selecting suitable investments, the EnviroTech Partnership will focus on the following technology sectors, among others: alternate and renewable energy technologies; environmental and waste treatment technologies and services; energy efficiency technologies, processes and services; electrotechnologies used in the reduction of medical waste; technologies and processes promoting alternative energy for transportation; and other technologies related to improving the generation, transmission and delivery of electricity.

The term of the EnviroTech Partnership is 10 years from the date of the partnership agreement, subject to extension for up to two years upon agreement of the General Partner and limited partners holding 66 $\frac{2}{3}$ % of the combined capital contributions of all limited partners. Subject to certain limitations set forth in the partnership agreement, the management, operation, and implementation of policy of the EnviroTech Partnership will be vested exclusively in the General Partner. Among other powers, the General Partner will have discretion to invest the partnership's funds in accordance with investment guidelines. The investment guidelines may be amended or modified only upon the affirmative vote of limited partners representing at least 75% of the commitments of all limited partners.

Under the terms of the partnership agreement the General Partner will be paid an annual management fee equal to 2 $\frac{1}{2}$ % of the total amount of the capital commitments of the partners through the first six years, thereafter declining by  $\frac{1}{4}$  of 1% on each anniversary to 1.5% commencing on the ninth anniversary date. In addition, the General Partner shall be entitled to reimbursement for all reasonable expenses incurred in the organization of the EnviroTech Partnership up to \$195,000, and for other third party expenses incurred on behalf of the EnviroTech Partnership.

All EnviroTech Partnership income and losses (including income and losses deemed to have been realized when securities are distributed in kind) will generally be allocated 80% to and

among the limited partners and 20% to the General Partner. All cash distributions to the partners shall be made first to the limited partners until such time as the limited partners shall have received aggregate distributions equal to the aggregate of their respective capital contributions, and thereafter 20% to the General Partner and 80% to the limited partners. Distributions in kind of the securities of Portfolio Companies that are listed on or otherwise traded in a recognized over-the-counter or unlisted securities market may be made at the option of the General Partner.

The Partnership Agreement also provides that in the event it is likely that an investment by the EnviroTech Partnership would cause a limited partner ("Conflicted Partner") to violate, among other things, any law or regulation, under certain circumstances other limited partners (each, a "Purchasing Partner") may purchase from the Conflicted Partner a proportionate interest in such an investment by delivering to the Conflicted Partner a note in the principal amount of the Conflicted Partner's capital contributions attributable to the portion of such interest in the investment being purchased. Such note will be non-recourse to the Purchasing Partner and will bear interest at a rate equal to 200 basis points over comparable U.S. Treasury obligations having a five year maturity, such interest and principal being payable only to the extent that the Purchasing Partner receives distributions or payments attributable to the interest purchased.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-813 Filed 1-11-95; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

[Public Notice 2147]

### Shipping Coordinating Committee Maritime Safety Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 A.M. on Tuesday, January 31, 1995, in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC. The purpose of this meeting will be to report on the sixty-fourth session of the Marine Safety Committee (MSC) of the

International Maritime Organization (IMO) held 5-9 December 1994. The U.S. delegation to MSC 64 will report on the activities of the session.

Specific items will include:

- a. Ro/Ro vessel safety
- b. Bulk carrier safety
- c. Role of the human element in maritime casualties
- d. Existing ships' safety standards (grandfather clause)
- e. Reports of various subcommittees (Stability, Load Lines and Fishing Vessel Safety; Life-Saving, Search and Rescue; Containers and Cargoes; Fire Protection; Training and Watchkeeping; Safety of Navigation; and Bulk Chemicals.)

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, U.S. Coast Guard Headquarters (G-MI), 2100 Second Street, S.W., Room 2408, Washington, DC 20593-0001 or by calling (202) 267-2970.

Dated: December 29, 1994.

**Charles A. Mast,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 95-785 Filed 1-11-95; 8:45 am]

BILLING CODE 4710-07-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Application To Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Blue Grass Airport, Lexington, KY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Blue Grass Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before February 13, 1995.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131-0301.

In addition, one copy of any comments submitted to the FAA must

be mailed or delivered to Mr. Michael Flack, Executive Director of the Blue Grass Airport at the following address; Lexington Fayette Urban County Airport Board, 4000 Versailles Road, Lexington, KY 40510. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Blue Grass Airport under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Southern Region, Memphis Airports District office, Cynthia K. Wills, Planner, 2851 Directors Cove, Suite #3, Memphis, TN 38131-0301, (901) 544-3495. The application may be reviewed in person at this location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to: impose and use the revenue from a PFC at Blue Grass Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 3, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Lexington Fayette Urban County Airport Board was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 21, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00  
Proposed charge effective date:

November 1, 1993

Proposed charge expiration date:

August 26, 2005

Total estimated PFC revenue:

\$1,616,030

Brief description of proposed project(s):

Use Only:

(1) Implement Noise Abatement Program—Phase I

(2) Purchase Lift Device (ADA Phase II)

Projects To Impose And Use:

(3) Local Share of Regional Airport Rescue & Fire Fighting Training Facility.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 or Part 298 (Air Taxi Operators).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the

application in person at the Blue Grass Airport.

Issued in Memphis, Tennessee, on January 5, 1995.

**Peggy S. Kelley,**

*Manager, Airports District Office, Southern Region.*

[FR Doc. 95-698 Filed 1-11-95; 8:45 am]

BILLING CODE 4910-13-M

## Federal Highway Administration

### Environmental Impact Statement: Hawaii County, HI

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Hawaii County, Hawaii.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Cook, Division Administrator, Federal Highway Administration, Box 50206, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850, Telephone: (808) 541-2700.

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation with the Hawaii Department of Transportation and the County of Hawaii Department of Public Works will prepare an environmental impact statement (EIS) for a proposed widening and extension of a portion of Hawaii State Highway 2000, Puainako Street. The proposed project will provide a highway connection between the Saddle Road (State Highway 200) and State Highway 11. The project entails (1) realignment and widening of the existing Puainako Street from 2 to 4 lanes; and (2) construction of a 2-lane (future 4-lane), 4.6-mile extension of Puainako Street from Komohana Street, in a westerly direction, to Country Club Road in Kaumana.

The purpose of this project is to improve arterial traffic flow of the State Highway System by providing a direct link between the existing Puainako Street (Highway 2000) and the Saddle Road (Highway 200) and to alleviate congested and unsafe traffic conditions on Kaumana Drive. Alternatives being evaluated, include the "no project" alternative and two alternative alignments.

Notice describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have expressed interest in this project. Interagency scoping meetings will be held as required.

To ensure that the full range of issues relating to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Michael A. Cook,**

*Division Administrator, Honolulu, Hawaii.*

[FR Doc. 95-786 Filed 1-11-95; 8:45 am]

BILLING CODE 4910-22-M

### Environmental Impact Statement: Williamson and Travis Counties, Texas

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed new location highway project in Williamson and Travis Counties, Texas.

**FOR FURTHER INFORMATION CONTACT:** John Mack, P.E., Federal Highway Administration, Room 850, Federal Building, 300 East 8th Street, Austin, Texas 78701. Sharon Barta, P.E., Advanced Project Development Engineer, Texas Department of Transportation, P.O. Box 15426, Austin, Texas 78761-5426.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Texas Department of Transportation (TxDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to construct the northern segment of State Highway 130, an approximately 138.4 kilometer (86 mile) controlled access highway to be located parallel to and east of Interstate 35 and the urbanized areas Austin, San Marcos, and New Braunfels in Central Texas. The northern segment (Segment A) of the proposed State Highway 130 extends from the junction of Interstate 35 and State Highway 195 north of Georgetown in Williamson County, Texas, to U.S. Highway 290 east of Austin in Travis County, Texas. The length of the project varies, depending on the selected alternative, from approximately 43.5 kilometers (27.0 miles) to 45.9 kilometers (28.5 miles). The proposed action is intended to provide improved access and increased mobility to

urbanized areas in the proposed corridor; help support planned business and residential growth in various areas throughout the project corridor; provide needed freeway access from surrounding areas to the proposed Austin Bergstrom International Airport; provide an alternative route to drivers desiring to bypass the central business areas of Austin, Round Rock, Georgetown, San Marcos, and New Braunfels, thereby relieving existing congestion on Interstate 35.

Alternatives to the proposed action to be discussed in the EIS consist of (1) taking no action; and (2) improving existing roadways in the urbanized areas of Williamson and Travis Counties. The build alternatives include multiple alternative alignments along new location rights-of-way connecting Interstate 35 to U.S. Highway 290.

Impacts caused by the construction and operation of State Highway 130 will vary according to the alternative alignments utilized. Generally, impacts would include the following: Transportation impacts (construction detours, construction traffic, and mobility improvement); air and noise impacts from construction equipment and operation of the roadway; water quality impacts from construction areas and roadway stormwater runoff; impacts to waters of the United States including wetlands from right-of-way encroachment; and impacts to residents and businesses due to potential relocations.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. A Major Investment Study is being completed in compliance with the Intermodal Surface Transportation Efficiency Act. Public meetings were held on October 25, 1994, at Everett Williams Elementary School in Georgetown, Texas, and on October 27, 1994, at Manor High School in Manor, Texas, at which public comments on the proposed action and alternatives were requested. In addition, a public hearing will be held after publication of the Draft EIS. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be

directed to the FHWA or TxDOT at the address provided above.

[Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program].

Issued on January 5, 1995.

**G. E. Olvera,**

*District Engineer.*

[FR Doc. 95-787 Filed 1-11-95; 8:45 am]

BILLING CODE 4910-22-M

### National Highway Traffic Safety Administration

[Docket No. 94-55; Notice 2]

#### Decision That Nonconforming 1993 Volkswagen Golf III Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA) DOT.  
**ACTION:** Notice of decision by NHTSA that nonconforming 1993 Volkswagen Golf III passenger cars are eligible for importation.

**SUMMARY:** This notice announces the decision by NHTSA that 1993 Volkswagen Golf III passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1993 Volkswagen Golf III), and they are capable of being readily altered to conform to the standards.

**DATES:** This decision is effective January 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C.

30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland ("J.K.") (Registered Importer R-90-006) petitioned NHTSA to decide whether 1993 Volkswagen Golf III passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on July 20, 1993 (59 FR 37124) to afford an opportunity for public comment. The notice identified the vehicle that is the subject of the petition as the "1994 Volkswagen Golf III." In its comments responding to the notice, Volkswagen, the vehicle's manufacturer stated that the vehicle identification number (VIN) assigned to the specific vehicle that the petitioner seeks to import identifies that vehicle as a 1993 model. After being apprised of this comment, the petitioner acknowledged that the petition was in error, and that the manufacturer properly identified the vehicle as a 1993 model. In view of this correction, this notice describes the petition as pertaining to a 1993 model vehicle.

As stated in the notice of the petition, the vehicle that J.K. claimed to be substantially similar is the version of the 1993 Volkswagen Golf III that was manufactured for importation into and sale in the United States and certified by its manufacturer, Volkswagenwerke A.G., as conforming to all applicable Federal motor vehicle safety standards. The petitioner claimed that it had carefully compared the two vehicles, and found them to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Specifically, the petitioner claimed that the non-U.S. certified 1993 Volkswagen Golf III is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 Transmission Shift Lever Sequence

\* \* \*, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver from the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 214 Side Door Strength, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, 301 Fuel System Integrity, and 302 Flammability of Interior Materials.

Petitioner also contended that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp; (d) replacement of bulb failure modules with U.S.-model components.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 111 Rearview Mirror: Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 Theft Protection: Installation of a key microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 Occupant Crash Protection: (a) Installation of a seat belt warning buzzer, wired to the seatbelt latch; (b) installation of a passive restraint system consisting of a door-anchored automatic belts and a knee

bolster. The petitioner noted that the non-U.S. certified 1993 Volkswagen Golf III is supplied with mounting points and bolt holes for the installation of this equipment and that no structural changes are necessary.

Additionally, the petitioner stated that bumper shocks must be installed on the non-U.S. certified 1993 Volkswagen Golf III to comply with the Bumper Standard found in 49 CFR Part 581. The petitioner further noted that it may be necessary to install a U.S.-model bumper cover on some vehicles to accommodate the market lights.

One comment was received in response to the notice of the petition, from Volkswagen of America, Inc. ("Volkswagen"), the United States representative of the vehicle's manufacturer. In its comment, Volkswagen stated that in order to conform the non-U.S. certified 1993 Volkswagen Golf III to the requirements of Standard No. 108, all of the vehicle's lamps would have to be changed because they all lack DOT certification markings. Additionally, Volkswagen noted that sidemarkers and a high mounted stop lamp would have to be added to the vehicle, requiring wiring harness connections, and that the headlamp bulb connector plug must be changed to accommodate a U.S.-model headlamp.

Volkswagen further claimed that there are major differences between the U.S. certified and non-U.S. certified versions of the 1993 Volkswagen Golf III that affect compliance with Standard Nos. 207, 209, and 210. Specifically, Volkswagen stated that the non-U.S. certified version of the vehicle is equipped with a smaller engine (1.8 vs. 2.0 liters) that has its intake manifold mounted closer to the firewall, and that this difference could affect the manner in which the engine contacts the vehicle structure during frontal crash tests. Volkswagen further noted that the grill and radiator support structure in the non-U.S. certified 1993 Volkswagen Golf III is made from plastic rather than metal, and that this difference could affect energy absorption characteristics that have a bearing on frontal crash test performance.

Volkswagen also stated that in order to comply with Standard Nos. 207, 108 and 210, seat tracks that are welded to the floor on the non-U.S. certified 1993 Volkswagen Golf III would have to be removed and replaced with U.S.-model equipment. Volkswagen noted that the seat adjustment positions are different on U.S.-certified vehicles in order to assure crash test compliance for this vehicle, which is equipped with automatic shoulder belts to meet the

passive restraint requirements of Standard No. 208. Volkswagen also noted that because the retractor for the automatic shoulder belt is anchored to the vehicle tunnel, an anchorage reinforcement structure must be welded in place on non-U.S. certified models to assure compliance with Standard No. 210. Additionally, Volkswagen asserted that a manual lap belt would have to be installed for the non-U.S. certified Volkswagen Golf III to be equivalent to its U.S. certified counterpart. Volkswagen further noted that even if the restraint system and seat components were to be modified on the non-U.S. certified 1993 Volkswagen Golf III, there is no assurance that the vehicle would comply with Standards 207, 208, and 210 unless the petitioner conducts a full scale crash test on a modified vehicle.

Volkswagen also stated that, in order to comply with the Bumper Standard found in 49 CFR Part 581, the front and rear bumpers on the non-U.S. certified 1993 Volkswagen Golf III must be replaced with U.S.-model components. Volkswagen claimed that this would require modifications to the frame attachment points for the front and rear bumper that could also affect Standard No. 208 crash test performance.

Volkswagen concluded its comments by asserting that "substantial similarities between the European and the United States certified versions of the Golf III vehicle are lacking and that the European version cannot readily be modified to conform to U.S. standards."

NHTSA accorded J.K. an opportunity to respond to Volkswagen's comments. In its response, J.K. stated that in order to install U.S.-model headlights and marker lights on a non-U.S. certified 1993 Volkswagen Golf III, it must change everything on the front end of the vehicle except for the front fenders. In the process, J.K. asserts that all of the plastic front end parts that Volkswagen referred to in its discussion of Standard No. 208 are eliminated and replaced with U.S.-model steel parts that are bolted to existing mounting points, eliminating the need for any cutting or welding.

With respect to the Standard No. 208 compliance issues raised by Volkswagen, J.K. stated that the intake manifold on the non-U.S. certified 1993 Volkswagen Golf III's 1.8 liter engine is only one quarter of an inch closer to the firewall than the intake manifold on the 2.0 liter engine of its U.S. certified counterpart. J.K. asserts that this difference will not affect the crashworthiness of the non-U.S. certified vehicle.

Addressing Volkswagen's comments on Standard No. 210, J.K. stated that it examined the seat tracks on the non-U.S. certified 1993 Volkswagen Golf III, and found them to bear U.S. part numbers. As a consequence, J.K. stated that it was able to bolt manual lap belts to the seats without the need for modifications. Additionally, J.K. asserted that it carefully compared the tack and seat angle of the non-U.S. certified 1993 Volkswagen Golf III to that of its U.S. certified counterpart, and found these characteristics to be identical. J.K. further asserted that in order to install center passive restraint belt retractors on the non-U.S. certified 1993 Volkswagen Golf III, it replaced the entire center console with a U.S. model component, which could be bolted into existing holes without the need for modifications.

With respect to the Bumper Standard issues raised by Volkswagen, J.K. stated that the front bumper bolts directly to the new steel front end that it installs on the non-U.S. certified 1993 Volkswagen Golf III to accommodate U.S.-model headlamps. J.K. further asserted that it adds a reinforcing beam to assure compliance with the Bumper Standard, and that with these modifications, the vehicle meets or exceeds that standard's requirements.

NHTSA accorded Volkswagen an opportunity to respond to J.K.'s comments. In its response, Volkswagen stated that the inboard front seat tracks are identical on the U.S. certified and non-U.S. certified versions of the 1993 Volkswagen Golf III, but that the outboard tracks differ so that U.S. certified models can meet Standard 208 passive restraint requirements. Volkswagen further contended that in order to assure compliance with Standard No. 210, reinforcement plates must be welded to the tunnel for mounting the passive restraint retractor assembly. Volkswagen finally asserted that without conducting crash tests, J.K. "relies on intuition to justify FMVSS 208 compliance."

NHTSA accorded J.K. an opportunity to respond to these comments. In its response, J.K. stated that European and U.S.-model seat tracks cannot be interchanged on the 1993 Volkswagen Golf III. J.K. further asserted that Volkswagen equipped U.S.-model seat tracks on both the U.S.- and the non-U.S. certified versions of the vehicle after the company completed U.S. crash tests on the vehicle. J.K. additionally stated that it added reinforcement plates to the tunnel between the seats, on which it bolted the new seat retractors. J.K. finally observed that even if Volkswagen has not crash tested a 1993

Volkswagen Golf III with a 1.8 liter engine, the company did conduct such tests on the same vehicles equipped with 2.0 liter and V6 engines. J.K. contended that because of its lower mass and reduced inertia impact testing, a vehicle equipped with a 1.8 liter engine would yield better results than vehicles equipped with larger engines.

NHTSA has reviewed each of the issues that Volkswagen has raised regarding J.K.'s petition. NHTSA believes that J.K.'s responses adequately address each of those issues. NHTSA further notes that the modifications described by J.K. have been performed with relative ease on thousands of nonconforming vehicles imported over the years, and would not preclude the non-U.S. certified Volkswagen Golf III from being found "capable of being readily modified to comply with all Federal motor vehicle safety standards."

NHTSA has accordingly decided to grant the petition.

#### **Vehicle Eligibility Number for Subject Vehicles**

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 92 is the vehicle eligibility number assigned to vehicles admissible under this decision.

#### **Final Determination**

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1993 Volkswagen Golf III not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1993 Volkswagen Golf III originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

**Authority:** 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 6, 1995.

**William A. Boehly,**

*Associate Administrator for Enforcement.*  
[FR Doc. 95-754 Filed 1-11-95; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 94-89; Notice 2]

#### **Decision That Nonconforming 1990 Porsche 944 S2 Cabriolet Convertible Passenger Cars Are Eligible for Importation**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of decision by NHTSA that nonconforming 1990 Porsche 944 S2 Cabriolet convertibles are eligible for importation.

**SUMMARY:** This notice announces the decision by NHTSA that 1990 Porsche 944 S2 Cabriolet convertibles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with safety standards (the U.S.-certified version of the 1990 Porsche 944 S2 Cabriolet convertible), and they are capable of being readily altered to conform to the standards.

**DATES:** This decision is effective January 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ted Baylor, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the

petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (Registered Importer R-90-005) petitioned NHTSA to decide whether 1990 Porsche 944 S2 Cabriolet convertibles are eligible for importation into the United States. NHTSA published notice of the petition on November 8, 1994 (59 FR 55737) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

#### **Vehicle Eligibility Number for Subject Vehicles**

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 97 is the vehicle eligibility number assigned to vehicles admissible under this decision.

#### **Final Determination**

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1990 Porsche 944 S2 Cabriolet convertible not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1990 Porsche 944 S2 Cabriolet convertible originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

**Authority:** 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 6, 1995.

**William A. Boehly,**

*Associate Administrator for Enforcement.*  
[FR Doc. 95-758 Filed 1-11-95; 8:45 am]

BILLING CODE 4910-59-P

[Docket No. 94-88; Notice 2]

#### **Decision That Nonconforming 1991 BMW 325i 4-Door Passenger Cars Are Eligible for Importation**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of decision by NHTSA that nonconforming 1991 BMW 325i 4-

Door passenger cars are eligible for importation.

**SUMMARY:** This notice announces the decision by NHTSA that 1991 BMW 325i 4-Door passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1991 BMW 325i 4-Door passenger car), and they are capable of being readily altered to conform to the standards.

**DATES:** This decision is effective January 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R-90-007) petitioned NHTSA to decide whether 1991 BMW 325i 4-Door passenger cars are eligible for

importation into the United States. NHTSA published notice of the petition on November 2, 1994 (59 FR 54946) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

**Vehicle Eligibility Number for Subject Vehicles**

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 96 is the vehicle eligibility number assigned to vehicles admissible under this decision.

**Final Determination**

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1991 BMW 325i 4-Door passenger car not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1991 BMW 325i 4-Door passenger car originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards

**Authority:** 49 U.S.C. 30141 (a)(1)(A) and (b) (1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 6, 1995.

**William A. Boehly,**

*Associate Administrator for Enforcement.*

[FR Doc. 95-757 Filed 1-11-95; 8:45 am]

**BILLING CODE 4910-59-P**

**[Docket No. 94-87; Notice 2]**

**Decision That Nonconforming 1972 MG-B GT Coupe Passenger Cars Are Eligible for Importation**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of decision by NHTSA that nonconforming 1972 MG-B GT Coupe passenger cars are eligible for importation.

**SUMMARY:** This notice announces the decision by NHTSA that 1972 MG-B GT Coupe passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle

originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1972 MG-B GT Coupe), and they are capable of being readily altered to conform to the standards.

**DATES:** This decision is effective January 12, 1994.

**FOR FURTHER INFORMATION CONTACT:** Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer 90-009) petitioned NHTSA to decide whether 1972 MG-B GT Coupe passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on November 2, 1994 (59 FR 54945) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

### Vehicle Eligibility Number for Subject Vehicles

The importer is a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 98 is the vehicle eligibility number assigned to vehicles admissible under this decision.

#### Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1972 MG-B GT Coupe not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1972 MG-B GT Coupe originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

**Authority:** 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 6, 1995.

**William A. Boehly,**

*Associate Administrator for Enforcement.*

[FR Doc. 95-756 Filed 1-11-95; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 94-85; Notice 2]

### Decision That Nonconforming 1993 BMW 840Ci Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of decision by NHTSA that nonconforming 1993 BMW 840Ci passenger cars are eligible for importation.

**SUMMARY:** This notice announces the decision by NHTSA that 1993 BMW 840Ci passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into the sale in the United States and certified by its manufacturer as complying with the safety standards (the 1993 BMW 840Ci), and they are capable of being readily altered to conform to the standards.

**DATES:** The decision is effective January 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into the sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R-90-009) petitioned NHTSA to decide whether 1993 BMW 840Ci passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on November 2, 1994 (59 FR 54942) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

##### Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 99 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

#### Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1993 BMW 840Ci is substantially similar to a 1993 BMW 850Ci originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

**Authority:** 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 6, 1995.

**Williams A. Boehly,**

*Associate Administrator for Enforcement.*

[FR Doc. 95-755 Filed 1-11-95; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-58; Notice 3]

### Kewet Industri; Petition for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Kewet Industri of Hadsund, Denmark, has petitioned for a two-year renewal of its temporary exemption from the automatic restraint requirements of Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*. The exemption, NHTSA Temporary Exemption No. 93-1, was published on February 10, 1993, and expired on January 1, 1995 (58 FR 7905). The basis of the petition is that a continued exemption would facilitate the development and field evaluation of a low-emission motor vehicle and would not unreasonably lower the safety level of the vehicle.

This notice of receipt of the petition is published in accordance with agency regulations on the subject and does not represent any judgment by the agency about the merits of the petition.

Kewet manufactures a passenger car called the El-Jet. The vehicle is powered by on-board rechargeable batteries which drive an electric traction motor. The El-Jet, which produces no emissions, is therefore a "low-emission motor vehicle" within the meaning of NHTSA's authority to provide temporary exemptions.

In 1992, Kewet argued that the granting of a temporary exemption would facilitate the development of an electric vehicle industry in the United States. The vehicle is so small that it could serve as a replacement for the 3-wheel Cushman type meter reader vehicle in municipal fleets. It provides greater safety for the operator at a substantially lower price. Further, an exemption would promote learning and exchange of information between the

Danish electric vehicle industry and the U.S. one. Finally, the El Jet would demonstrate the commercial viability of a "neighborhood electric vehicle."

Petitioner also argued that an exemption would not unreasonably degrade the safety of the vehicle. The El-Jet is equipped with a 3-point restraint system, and will otherwise comply with all applicable Federal motor vehicle safety standards. It complies with all current European motor safety standards and has passed a crash test at 50 kph (30 mph). Its top speed is only 40 mph, reducing the risk of injury. Although Kewet expected to be able to provide a driver's side air bag in all cars manufactured after September 1993, the target date is now the 1996 model year. Originally, Kewet projected sales of 30 to 50 vehicles through 1993; in actuality, sales in 1994 as of August 30 were "less than 35."

In Kewet's opinion, a temporary exemption would be in the public interest and consistent with traffic safety objectives because it is a participant in the Advanced Research Projects Agency Electrical Vehicle Testing Program. It comments that "[p]roviding test data to the national testing program . . . is an important development to the electric vehicle industry." Kewet does not feel that lack of an air bag "has been a safety hazard" because of the El-Jet's low top speed, and intended non-freeway use. The vehicle is equipped with lap and torso belts, and employs "steel roll cage construction."

Interested persons are invited to submit comments on the petition described above. Comments should refer to Docket No. 92-58; Notice 3, and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 13, 1995.

**Authority:** 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on January 5, 1995.

**Barry Felrice,**

*Associate Administrator for Rulemaking,*

[FR Doc. 95-750 Filed 1-11-95; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF THE TREASURY

### Customs Service

[T.D. 95-7]

#### Customs Approval of International Marine Consultant, Inc., as a Commercial Gauger

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of approval of International Marine Consultants, Inc., Houston, Texas facility as a commercial gauger.

**SUMMARY:** International Marine Consultants, Inc., of Mineola, New York has recently applied to U.S. Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under Part 151.13 of the Customs Regulations (19 CFR 151.13) in their Houston, Texas facility. Customs has determined that the Houston, Texas office meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with Part 151.13(f) of the Customs Regulations, International Marine Consultants, Inc., Houston, Texas facility is approved to gauge the products named above in all Customs districts.

#### Location

International Marine Consultants' approved site is located at 3506 Audubon Place, Houston, Texas 77006.

**EFFECTIVE DATE:** December, 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229 at (202) 927-1060.

Dated: January 4, 1995.

**A.W. Tennant,**

*Director Office of Laboratories and Scientific Services.*

[FR Doc. 95-718 Filed 1-11-95; 8:45 am]

BILLING CODE 4820-02-P

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to

the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "*Claes Oldenburg: An Anthology*" (See list <sup>1</sup>), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at National Gallery of Art from on or about February 12, 1995 to May 7, 1995, at The Museum of Contemporary Art, Los Angeles, California from June 18, 1995 to September 3, 1995 and at the Solomon R. Guggenheim Museum, New York, N.Y. from October 7, 1995 to January 14, 1996 is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: January 5, 1995.

**Les Jin,**

*General Counsel.*

[FR Doc. 95-712 Filed 1-11-95; 8:45 am]

BILLING CODE 8230-01-M

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Visions of Love and Life: PRE-RAPHAELITE ART from the Birmingham Collection, England." (See list <sup>1</sup>), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Asian Art Museum of Modern Art of San

<sup>1</sup> A copy of this list may be obtained by contacting Mrs. Carol B. Epstein, Assistant General Counsel, at 619-6981, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547.

<sup>1</sup> A copy of this list may be obtained by contacting Mr. Paul W. Manning, Assistant General Counsel, at 619-5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547.

Francisco, from on or about February 28, 1995 through April 30, 1995, and at the Seattle Art Museum, Seattle, Washington, from on or about September 9, 1995 through March 31, 1996, and at the Peabody Essex Museum of Salem, Massachusetts, from on or about April 25, 1996 through July 22, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**  
Dated: January 6, 1995.

**Les Jin,**

*General Counsel.*

[FR Doc. 95-710 Filed 1-11-95; 8:45 am]

BILLING CODE 8230-30-M

### **Workshop/Seminar Grants in the People's Republic of China**

**ACTION:** Notice—Request for Proposals.

**SUMMARY:** The Office of Academic Programs of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Educational institutions and law associations meeting the provisions as described in IRS regulation 501 (c) may apply to develop workshop/seminars in "American Corporations" and "American Law" in the People's Republic of China Support is offered for Workshops and Seminars. There will be two separate workshops and/or seminars. This is a request for proposals from educational institutions and professional associations only.

Overall grant making authority for this program is continued in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries \* \* \*; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations \* \* \* and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

**ANNOUNCEMENT NAME AND NUMBER:** All communications with USIA concerning the announcement should refer to the

above title and reference number E/AEF-95-07.

**DATES:** Deadline for proposals: All copies must be received at the U.S. Information Agency by 5:00 p.m. EST on Friday, February 10, 1995. Faxed documents will not be accepted, nor will documents postmarked on February 10, 1995 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

**FOR FURTHER INFORMATION CONTACT:** William Shine, Room 208, E/AEF, 301 4th Street, S.W., Washington, DC 20547, FAX: 202-401-1728, or E-Mail: WSHINE@USIA.GOV to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Requests via Fax are encouraged. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Academic Programs or submitting their proposals. Once the RFP deadline has passed, the Office of Academic Programs may not discuss this competition in any way with applicants until the Bureau proposal process has been completed.

**ADDRESSES:** The original and 12 complete copies of the application, including required forms, should be addressed as follows: U.S. Information Agency, Ref: E/AEF-95-07, Office of Grants Management, E/XE, Room 336, 301 4th Street, S.W., Washington, DC 20547.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

**Overview:** The overall purpose of this RFP is to provide opportunities for U.S. educational institutions and law associations to conduct scholarly workshops/seminars in the People's Republic of China in the theory and practice of the American Corporation and of American Law and thereby give the opportunity for Chinese institutions to offer their members access to recent information and perspectives in these fields as well as to allow for the

substantive exchange of ideas. The focus of the proposals should be on the academic study of the American Corporation and the Rule of Law in American Society respectively. An approach combining theoretical sessions and sessions emphasizing the implementation of theory in practice is requested.

Workshops/seminars should take place in one Chinese city. American organizations are encouraged, however, to propose programs that would include participants from a variety of Chinese institutions from across the People's Republic of China. A workshop on American judicial process, for example, could include law professors, law students, as well as legal and judicial officials. Applicants should specify the workshop length and venue, the intended audience, the audience's level of sophistication, e.g., faculty, graduate students, researchers, government officials, and whether there would be any co-sponsor.

#### **A. Workshop/Seminar in American Corporations**

Such a program is intended to outline the legal foundation, organization and structure, management principles and status of the corporation in the United States; and the sociology of corporate life and the place of the corporation in American society. The project seeks to satisfy two goals. The first is to satisfy the need of the Chinese universities to get a better understanding of how an American corporation works in a market economy as they examine models for China's economic development. The second goal is to promote understanding of American life and society by looking at the American corporation from a sociological and cultural point of view. The venue will be People's University in Beijing. The American institution will be required to coordinate its program with the Foreign Affairs Office of People's University.

#### **B. Seminar/Workshop in American Law**

Grant funding under this category is intended to enhance and expand the scope of American legal studies programs in the People's Republic of China. Proposals with a particular emphasis upon the rule of law in American Society and its relevance to China are encouraged. Familiarity with the functioning of Chinese civil law is a preference factor. Intense, scholarly 3-4 week summer programs are preferred. Individual participants on the American side must be citizens of the U.S. Both projects that have been previously conducted and new projects are eligible.

*Duration:* Applications will be accepted for projects from at least 21 days to no more than 30 days duration. Programs should be completed by September 30, 1995.

*Guidelines:* Preference will be given to organizations with demonstrated expertise in the proposed workshop/seminar fields.

Previous experience with conducting scholarly seminars in the People's Republic of China and/or current working relations with Chinese educational institutions will be considered a plus. A substantive history of organizing subject-specific programs led by acknowledged experts in the field who also have considerable teaching experience is highly advantageous. Proposals should present a very clearly designed program plan that shows specific objectives and that demonstrates the likelihood of substantive follow-through. Be specific as to what issues the workshop/seminar will address and who the intended audience is. In the context of the intended audience(s), please describe clearly the proposed approach, e.g., didactic, participatory, etc., and resource materials to be used.

#### **Proposed Budget**

Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. Project awards to U.S. institutions can be made in a range of amounts but will not exceed \$75,000. The Agency reserves the right to reduce, revise or increase budgets. For organizations with less than four years of experience in international exchange activities, total grants will be limited to a maximum of \$60,000 from USIA, and total proposed budgets should not exceed this amount.

**Please Note:** Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide a separate sub-budget for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

#### **Review Process**

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Solicitation Package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of East Asian and Pacific Affairs, the USIS section of the American Embassy in Beijing, and the Agency contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel or other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs.

Final technical authority for grant awards resides with USIA's contracting officer.

#### **Review Criteria**

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier Effect/impact:* Proposed program should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA

support) which insures that USIA supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the program's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administration components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area office and overseas offices of program need, potential impact, and significance in the partner country.

#### **Notice**

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

#### **Notification**

All applicants will be notified of the results of the review process on or about May 12, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: January 5, 1995.

**John P. Loiello,**

*Associate Director for Educational and Cultural Affairs.*

[FR Doc. 95-711 Filed 1-11-95; 8:45 am]

BILLING CODE 8230-01-M

**U.S. Advisory Commission on Public Diplomacy Meeting**

**AGENCY:** United States Information Agency.

**ACTION:** Notice.

**SUMMARY:** A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on January 11 in Room 600, 301 4th Street, SW., Washington DC from 11:00 a.m.–12:00 noon.

The Commission will meet with members of the United States Information Agency's Office of Research and Media Reaction to discuss public diplomacy research: Ann Pincus, Director, Office of Research and Media Reaction; Stephen Shaffer, Deputy Director, Office of Research and Media Reaction; Mary McIntosh, Chief, European Research and David Pollock, Chief, Near East, South Asia, Africa Research.

**FOR FURTHER INFORMATION:**

Please call Betty Hayes, (202) 619-4468, if you are interested in attending the

meeting. Space is limited and entrance to the building is controlled.

Dated: January 6, 1995.

**Rose Royal,**

*Management Analyst, Federal Register Liaison.*

[FR Doc. 95-709 Filed 1-11-95; 8:45 am]

**BILLING CODE 8230-01-M**

**DEPARTMENT OF VETERANS AFFAIRS****Advisory Committee on Women Veterans, Notice of Meeting**

The Department of Veterans Affairs gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Women Veterans will be held March 28-30, 1995, in Washington, DC. The purpose of the Advisory Committee on Women Veterans is to advise the Secretary regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the

Department of Veterans Affairs, and the activities of the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

The sessions will convene on March 28 9 a.m. to 4:30 p.m.; March 29 9 a.m. to 4:30 p.m.; March 30 9 a.m. to 12 noon in Room 230, VA Central Office Building, 810 Vermont Avenue, N.W., Washington, DC. All sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Maryanne Carson, Department of Veterans Affairs (phone 202/273-5078) prior to March 8, 1995.

Dated: January 5, 1995.

By Direction of the Secretary.

**Heyward Bannister,**

*Committee Management Officer.*

[FR Doc. 95-794 Filed 1-11-95; 8:45 am]

**BILLING CODE 8320-01-M**

# Sunshine Act Meetings

Federal Register

Vol. 60, No. 8

Thursday, January 12, 1995

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).

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## UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-95-03]

**TIME AND DATE:** January 31, 1995 at 10:00 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436.

**STATUS:**

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. Nos. 731-TA-678-682 (Final)  
(Stainless Steel Bar from Brazil, India, Italy, Japan, and Spain)—briefing and vote.
5. Outstanding action jackets:
  1. GC-94-120, Initial determination in Inv. No. 337-TA-368 (Certain Rechargeable

Nickel Metal Hydride Anode Materials and Batteries).

2. GC-94-121, Final initial determination finding no violation of section 337 in Inv. No. 337-TA-358 (Certain Recombinantly Produced Human Growth Hormones).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: January 9, 1995

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95-996 Filed 1-10-95; 3:01 pm]

**BILLING CODE 7020-02-P**

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## NATIONAL LABOR RELATIONS BOARD

**TIME AND DATE:** 9:30 a.m., Thursday, December 8, 1994.

**PLACE:** Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

**STATUS:** Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (matters relating solely to the internal personnel rules and practices of the Agency).

**MATTERS TO BE CONSIDERED:** Case handling procedures.

**CONTACT PERSON FOR MORE INFORMATION:** John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 273-1940.

Dated, Washington, DC, December 23, 1994.

By direction of the Board:

**John C. Truesdale,**

*Executive Secretary, National Labor Relations Board.*

[FR Doc. 94-925 Filed 1-10-94; 2:06 pm]

**BILLING CODE 7545-01-M**

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.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 222

[Docket No. 940822-4334; I.D. 101194C]

#### Endangered and Threatened Species; Status of Snake River Spring/Summer Chinook Salmon and Snake River Fall Chinook Salmon

##### *Correction*

Proposed rule document 94-31869 was inadvertently published in the Rules and Regulations section of the issue of Wednesday, December 28, 1994

beginning on page 66784. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 630

RIN 3206-AE95

#### Absence and Leave; Sick Leave

##### *Correction*

In rule document 94-29820 beginning on page 62266, in the issue of Friday, December 2, 1994, make the following corrections:

##### **§ 630.403 [Corrected]**

On page 62271, in the second column, the amendatory instructions for § 630.403 was omitted and should read "5. Section 630.403 is revised to read as follows:" and the section heading should read:

##### **§ 630.403 Supporting evidence.**

\* \* \* \* \*

BILLING CODE 1505-01-D

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Extension of 301 Investigation of the People's Republic of China's Protection of Intellectual Property and Provision of Market Access to Persons Who Rely on Intellectual Property Protection; Proposed Determinations; Request for Public Comment; and Notice of Public Hearing

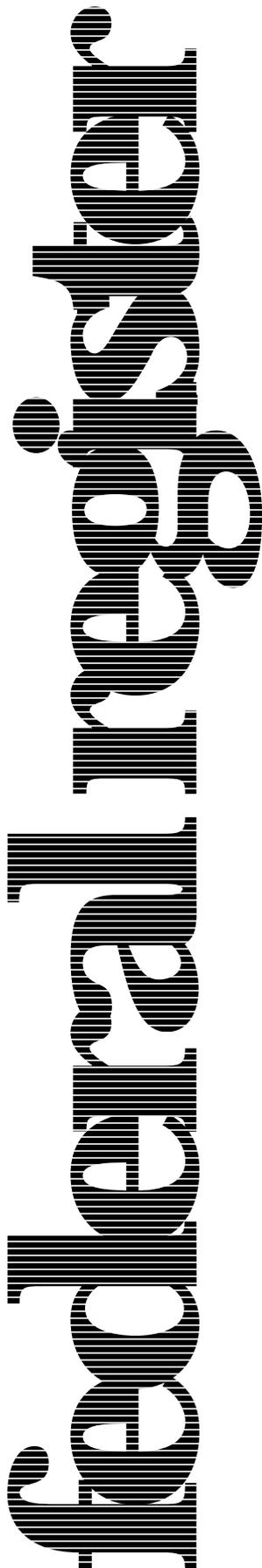
##### *Correction*

In notice document 95-261 beginning on page 1829, in the issue of Thursday, January 5, 1995, make the following corrections:

1. On page 1830, in the second column, under the heading "Proposed Determination and Action", in the 2d paragraph, in the 13th line, "2.5 billion" should read "2.8 billion".

2. On the same page, in the third column, in the fourth paragraph, in the fourth line, "January 19, 1995." should read "January 18, 1995."

BILLING CODE 1505-01-D



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Thursday  
January 12, 1995

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**Part II**

**Department of  
Housing and Urban  
Development**

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Office of the Assistant Secretary for  
Community Planning and Development

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**24 CFR Part 597  
Designation of Empowerment Zones and  
Enterprise Communities; Final Rule**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for  
Community Planning and  
Development**

**24 CFR Part 597**

[Docket No. R-95-1702; FR-3580-F-03]

RIN 2506-AB65

**Designation of Empowerment Zones  
and Enterprise Communities**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule makes final an interim rule published on January 18, 1994 that implemented that portion of Subchapter C, Part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget Reconciliation Act of 1993 dealing with the designation of urban Empowerment Zones and Enterprise Communities. The interim rule, consistent with the statute, authorized the Secretary of HUD to designate not more than six urban Empowerment Zones and not more than 65 urban Enterprise Communities based upon the effectiveness of the strategic plan submitted by a State or States and local government(s) nominating an area for designation.

**EFFECTIVE DATE:** February 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Savage, Deputy Director, Office of Economic Development, Room 7136, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 708-2290; TDD (202) 708-2565. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The information collection requirements contained in this rule were approved by the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB Control Number 2506-0148.

**I. Background—the January 18, 1994 Interim Rule**

On January 18, 1994 (59 FR 2700), HUD published an interim rule that implemented that portion of Subchapter C, Part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget

Reconciliation Act of 1993 which addresses the designation of urban Empowerment Zones and Enterprise Communities. Title XIII also provides for the designation of rural Empowerment Zones and Enterprise Communities. As noted in the January 18, 1994 interim rule, the urban part of the program is administered by HUD as a Federal-State-local partnership. The rural part of the program is administered by the Department of Agriculture. The Department of Agriculture also published an interim rule on January 18, 1994 (59 FR 2686). (The program is hereafter referred to as the EZ/EC program.)

The EZ/EC program is a key step in rebuilding communities in America's poverty-stricken inner cities and rural heartland. It is designed to empower people and communities across the nation in developing and implementing strategic plans to create job opportunities and sustainable community development. The program combines tax benefits with substantial investment of Federal resources and enhanced coordination among Federal agencies.

Designated Enterprise Communities are eligible for new Tax-Exempt Facilities Bonds for certain private business activities. States with designated Enterprise Communities will receive approximately \$3 million in Empowerment Zone/Enterprise Community Social Service Block Grant (EZ/EC SSBG) funds to pass through to each designated area for approved activities identified in their strategic plans. Enterprise Communities will receive special consideration in competition for funding under numerous Federal programs, including the new National Service and proposed Community Policing initiatives. The Federal Government will focus special attention on working cooperatively with designated Enterprise Communities to overcome regulatory impediments, to permit flexible use of existing Federal funds, and to assist these Communities in meeting essential mandates.

Designated Empowerment Zones will receive all the benefits provided to Enterprise Communities and other communities with innovative visions for change. Empowerment Zones are awarded substantial Empowerment Zone/Enterprise Community Social Service Block Grant funds, in the amount of \$100 million for each urban Zone. An Employer Wage Credit for Zone residents is extended to qualified employers engaged in trade or business, in designated Empowerment Zones. Businesses are afforded an increased deduction under section 179 of the

Internal Revenue Code for qualified properties.

The preamble to the January 18, 1994 interim rule described in detail the eligibility requirements for Empowerment Zones and Enterprise Communities and the nomination process. This information is not repeated in this final rule.

The Department also published on January 18, 1994, a notice inviting applications on nominations for areas as Empowerment Zones and Enterprise Communities (59 FR 2711). Title XIII of the Omnibus Budget Reconciliation Act of 1993 authorized the Secretary of HUD to designate up to six urban Empowerment Zones and up to 65 urban Enterprise Communities. The purpose of this document is to make final the interim regulations published on January 18, 1994. The designated Empowerment Zones and Enterprise Communities will be announced by separate notice published in the **Federal Register**.

**II. Differences Between Final Rule and Interim Rule**

This final rule makes only editorial and technical correction changes to the January 18, 1994 interim rule. As will be discussed in the following section of this preamble, HUD received several good suggestions and recommendations of matters that the rule should address or expand upon, or terms that should be defined. These changes are largely directed to the nomination process, to the eligibility process, to the contents of the strategic plan or to the evaluation of the plan. Because of the need to have applications submitted by June 30, 1994 so that HUD and the Department of Agriculture could make designations within the time period set by statute, any significant or substantial revisions to the interim rule would have delayed the application process, and therefore delayed the designation process. Any significant or substantial revisions made at this time to the nomination process, evaluation process, etc., would have no effect since the designation process is complete.

HUD anticipates that if another round of designations is authorized by the Congress, there will be accompanying legislation that may make changes to the existing EZ/EC program, and thus require amendments to the regulations in 24 CFR part 597. At the time of this rulemaking, HUD will again consider the comments received on the January 18, 1994, and if they remain applicable to the new round of designations (the issue of applicability depends upon the type of legislative changes, if any, made to the EZ/EC program by the Congress),

these comments will be adopted in new regulations.

The technical changes made by this final rule are largely directed to that section of the rule (§ 597.200(d)) which addresses the use of EZ/EC SSBG funds and therefore are relevant even after the designation process is complete. The following provides a list of the editorial/technical changes made to the interim rule by this final rule.

1. In § 597.3 (Definitions), the second paragraph of the definition of "urban area" inadvertently omitted the phrase "jurisdiction of the" before the words "nominating local government." (See 59 FR 2704, second column.)

2. In § 597.200 (Nominations by State and local governments), HUD sets forth the procedures for nominations by State and local governments of areas for designation as an Empowerment Zone and/or Enterprise Community. Paragraph (d) of that section addresses the elements of the strategic plan which must be developed as part of the application for designation, and paragraph (d)(12) specifically addresses how the Social Services Block Grant (SSBG) funds for designated Empowerment Zones and Enterprise Communities will be utilized. Several technical errors were made in paragraph (d)(12), and these are as follows:

a. Paragraph (d)(12)(i)(A) discusses the commitment concerning the use of EZ/EC SSBG funds. The rule provides for the commitment to be made by the "applicant as well as by the State government(s)." In this paragraph, HUD inadvertently omitted reference to the full range of nominating entities that would have to make this commitment, and only listed "State governments." (Note that § 597.501 provides for nomination by States and local governments [the preamble also discusses this at page 2701, second column] and § 597.502 provides for nominations by State-chartered economic development corporations.) Accordingly, the final rule corrects this paragraph to include not only State governments, but local governments and State-chartered economic development corporations. The final rule also explains that the "services or activities" referenced in this paragraph are the "services or activities which can be used to achieve or maintain the goals set forth in paragraph (d)(12)."

b. Paragraph (d)(12)(ii) provides, in error, that Empowerment Zone or Enterprise Community SSBG funds (EZ/EC SSBG funds) may be used to achieve certain goals set forth in this paragraph by "undertaking one of the below specified options." (See 59 FR 2706, first and second columns.) The correct

wording should provide that States and local governments may undertake "one or more" of the options set forth in the paragraph. One option available to States and local governments for the use of EZ/EC SSBG funds was inadvertently omitted from the interim rule. This option provides for the use of EZ/EC SSBG funds to promote the economic independence of low-income residents, such as capitalizing revolving or micro-enterprise loan funds for their benefit.

c. In paragraph (d)(12)(ii), the interim rule provides that EZ/EC SSBG funds "may" be used to maintain the goals set forth in paragraph (d)(12). (See page 2706, first column.) The rule should have stated that the EZ/EC SSBG funds "must" be used to maintain the goals set forth in paragraph (d)(12), and that the goals "may be achieved" by undertaking the program options listed in (d)(12)(ii).

d. The interim rule inadvertently omitted the paragraph that provides guidance concerning how designated empowerment zones and enterprise communities may meet the goals specified in paragraph (d)(12). (See 59 FR 2706, middle column.) This paragraph does not dictate how the goals may be met, but offers guidance as to how they may be met. This rule makes this correction by adding a new paragraph (iii), and the succeeding paragraphs are redesignated accordingly.

e. In paragraph (d)(12)(v) of the interim rule, the Department provided that the State must obligate EZ/EC SSBG funds in accordance with the strategic plan within two years from the "date of designation of the Empowerment Zone or Enterprise Community." (See page 2706, middle column.) This time frame is incorrect. This paragraph should have provided that the State must obligate funds two years from the date "the funds are paid to the State." This paragraph is also corrected by this document to add that "funds not obligated must be remitted to the Secretary of Health and Human Services." This sentence was inadvertently dropped in the rule text.

f. Two requirements pertaining to the strategic plan were inadvertently omitted from paragraph (d)(12). One requirement provides that the strategic plan must indicate how the EZ/EC SSBG funds will be invested and used for the period of designation, and the second provides that the strategic plan must provide for periodic reporting of information by the relevant State. These requirements are now set forth in (d)(12)(vii) and (viii).

g. In addition to the above corrections, this document corrects missing or erroneous punctuation in paragraph

(d)(12). For example, some paragraphs ended in periods, and should have ended in semicolons.

4. In § 597.200, paragraph (d)(17) is corrected by removing the "and" which follows the semicolon at the end of this paragraph. (See 59 FR 2706, third column.)

5. In § 597.200, paragraph (d)(18) is corrected by removing the period at the end of the paragraph, and replacing it with a semicolon. (See 59 FR 2706, third column.)

6. In § 597.201 (Evaluating the strategic plan), paragraph (b)(9) should end with a semicolon and not a period. (See 59 FR 2707, third column.)

7. In § 597.201 (Evaluating the strategic plan), paragraph (c)(1) should end with a semicolon and not a period. (See 59 FR 2708, first column.)

8. In § 597.301 (Selection factors for designation of nominated urban areas), paragraphs (a) (1), (2) and (3) should each end with a semicolon instead of a period, and the word "and" should follow the semicolon in paragraph (a)(3). (See 59 FR 2709, first column.)

The above changes are the only ones that have been made to the interim rule by this final rule.

### III. The Public Comments

#### General Comments

The January 18, 1994 interim rule provided for a 30-day public comment period. The public comment period expired on February 17, 1994. Comments, however, were accepted through March 1, 1994. By this date, a total of 45 comments had been received. The commenters consisted of State and local jurisdictions (or agencies of such jurisdictions), State legislators and non-profit organizations. Twenty-two (22) of the commenters were from the State of California.

The majority of the commenters gave the interim regulations favorable marks, stating that, overall, the interim rule clearly delineates the role of the State and participating entities. As noted earlier in this preamble, HUD received several good suggestions and recommendations from the commenters that will be considered in any future rulemaking needed for a new round of designation. Other suggestions raised by commenters, although equally with merit, could not be adopted (even if HUD were making substantive changes at this time) given the current statutory framework of the EZ/EC Program, and other requests for changes or clarification were determined to be adequately addressed by the January 18, 1994 interim rule. The following provides a summary of the significant

issues raised by the public commenters, and HUD's response to these issues.

### General Comments on the Rule

*Comment.* One commenter stated that the interim rule as a whole did not adequately address the needs of extremely low-income persons.

*Response.* HUD disagrees with the commenter. The eligibility for designation as an Empowerment Zone or Enterprise Community requires a significant level of poverty, and the strategic plan required various descriptions of how the nominated area would address the need of low-income persons, for example, through the creation of economic opportunities, home ownership, education or other route to economic independence for low-income families, youth and other individuals. (See § 597.200.)

*Comment.* Two commenters stated that the rule should explicitly address the need of areas in which military base closures have occurred or will occur.

*Response.* Military base closure was explicitly referenced in the rule. Note that § 597.102(b)(1) of the rule provides in relevant part that "Unemployment shall be demonstrated by \* \* \* (2) Evidence of especially severe economic conditions, such as military base or plant closings, or other conditions which have brought about significant job dislocation within the nominated area."

*Comment.* One commenter stated that the rule should have taken into consideration areas which have both rural and urban characteristics.

*Response.* HUD strived to the extent possible, given the statutory framework and requirements, to be as flexible as possible in describing eligibility for nominated areas, and to recognize that some urban areas will have rural characteristics. To a significant degree, however, this flexibility was limited by the statutory requirements for eligible urban areas.

*Comment.* One commenter stated that the rule and program structure perpetuate the inner city as a place for only low-income persons to live. The commenter stated that while EZ/EC SSBG eligible expenditures give latitude for communities to address social problems, they leave little room for needed neighborhood economic development programs that could make urban neighborhoods better places to live, to raise families, to shop, to work and to grow businesses.

*Response.* The entire EZ/EC program is directed to uplifting the economic and social environment of the designated urban area. HUD believes that the four key principles of the

program, set forth in § 597.200, and the specific elements embodied in each principle, clearly make this point.

### Comments on Terms Used

*Comment.* One commenter stated that the rule should have defined the terms "community" and "low-income." Another commenter stated that the interim rule should have defined the term "long-term unemployed."

*Response.* HUD acknowledges the merit of these suggestions, and definitions for these terms will be considered for any future rulemaking that may be necessary for a new round of designations.

*Comment.* Two commenters stated that the term "disadvantaged" should be defined in the regulation. The commenter stated that this term should be defined to mean household or individual income below 30 percent or 50 percent of the area-wide income.

*Response.* This term appears in § 507.200(d)(12) which addresses the use of EZ/EC SSBG funds. EZ/EC SSBG funds are administered by the Department of Health and Human Services. Accordingly, HHS has responsibility for defining this term. Although this term is not defined in the HHS regulations governing Social Service Block Grant Funds (see 45 CFR part 96, subpart G), HHS should be able to provide guidance to grantees on the meaning of this term.

*Comment.* One commenter stated that the definition of "State-chartered economic development corporation" was not very clear.

*Response.* The statute defined this term, and the rule simply incorporated the statutory definition.

### Comments on Census Tracts and Census Tract Data

*Comment.* Twenty-four (24) commenters objected to the failure to use census block data instead of census tract data. The commenters pointed out that many city boundaries do not coincide with census boundaries, and these cities would be disqualified. In addition to requesting use of census block data in lieu of census tract data, other suggestions submitted by commenters included: Excluding significantly-sized public facilities from calculation of a city's total mileage; and allowing an entity to request EC designation to be extended on a case-by-case basis to coterminous properties adjacent to an eligible poverty census tract.

*Response.* HUD is unable to adopt the suggestions of the commenters. The statute requires the use of census tract data, and does not permit the exclusions

or case-by-case exceptions as suggested by the commenters.

*Comment.* One commenter requested that the rule exclude portions of census tracts incapable of development, such as those that may be covered by water.

*Response.* In determining what constitutes census tracts, and what areas are not included or excluded in census tracts, HUD follows existing regulations applicable to census tracts issued by the U.S. Census Bureau.

*Comment.* Another commenter stated that census retail trade data does not accurately characterize central business districts. The commenter stated that the rule excludes central business districts (CBDs) as defined by the 1987 Census Retail Trade unless poverty rate for each tract in the CBD is not less than 35 percent for an EZ and 30 percent for an EC.

*Response.* Central business districts are addressed in § 597.100(f). HUD's rule provides some flexibility since the last Census of Retail Trade was in 1982. The issue of characterization of CBDs is not a question of whether an area was listed in the Census of Retail Trade, but whether the area fits characteristics of CBDs. HUD's rule allows applicants to demonstrate that the character of an area has changed, and does not meet the definition of CBD as used in the most recent Census of Retail Trade.

### Comments on Population Levels

*Comment.* Twelve commenters stated that the 50,000 population limitation excludes many cities in need of EZ/EC assistance, and requested that the population limit be increased to 200,000 for all urban nominated areas.

*Response.* The population limitation of 50,000 found in § 597.100(a)(2) is directly from the statute.

*Comment.* Another commenter said that the rule should have excluded prison and hospital populations from the populations caps.

*Response.* This concern was accommodated by HUD at the time of issuance of the January 18, 1994 interim rule. The application process allowed cities to deduct institutional populations or populations in group quarters.

### Comments on Pervasive Poverty and Unemployment

*Comment.* One commenter stated that the test for pervasive poverty should meet all three criteria, not simply one, and that a higher test should be utilized to determine unemployment.

*Response.* HUD believes that each of the three factors presented in § 597.102(a), in and of itself, adequately exemplifies an area that has pervasive

poverty. Similarly, HUD believes that each of the two factors presented in § 597.103(b) adequately exemplifies an area of unemployment. However, these comments will certainly be considered if another round of designations is authorized by the Congress.

#### Comments on Poverty Rate

*Comment.* Sixteen commenters stated that the definition of low or zero population industrial or commercial census tracts should be extended to include zero population census blocks which meet the same criteria. Two other commenters stated that the requirement for a non-contiguous area to separately meet the poverty rate criteria makes no sense where the non-contiguous area consists of a single census tract.

*Response.* Poverty rate is addressed in § 597.103 of the rule. The existing EZ/EC legislation provides no flexibility to adopt the comments suggested by the commenters.

*Comment.* Other commenters asked that HUD take into consideration the unique poverty rates of their own States or communities due to the high cost of living.

*Response.* HUD believes that the poverty rate factors in the rule are sufficiently broad to encompass the unique poverty and high cost of living characteristics of any individual State or community.

#### Comments on the Strategic Plan

*Comment.* Three commenters stated that the strategic plan principle concerning employment should emphasize job creation for low-income persons. Another commenter stated that the strategic plan principle concerning employment should emphasize job creation for minority businesses.

*Response.* HUD agrees with the commenters and such emphasis will be considered in future rulemaking that may be necessary for any additional rounds of designations that may be authorized.

*Comment.* Two commenters stated that the rule should require an explanation of how participants in the planning process are representative of the "affected" community.

*Response.* This requirement was included in the application, and HUD will consider including this requirement in the text of the regulation in any future rulemaking that may be needed.

*Comment.* Two commenters stated that the rule should emphasize that public funds cannot be used to encourage plant relocations or pirating of jobs from one place to another.

*Response.* This issue was addressed in § 597.200(3) of the rule, and the EZ/

EC application included a certification to this effect.

*Comment.* Two commenters stated that the rule should allow designated communities to use funds and other resources identified in the strategic plan for properties directly adjacent to the boundaries of the designated census tracts.

*Response.* HUD provides flexibility on this issue. Businesses and enterprise communities do not receive tax incentives and the only funding that flows from EZ/EC designation is title 20 funding. The latter can be used outside of the EC if the use of the funds benefits the EC residents directly.

*Comment.* Two commenters stated that the rule did not discuss the applicability of existing plans (e.g., CHAS) to the strategic planning process.

*Response.* Although the rule does not specifically reference the CHAS, the rule contains reference to other local planning efforts and to consolidated planning efforts (See §§ 597.200(d)(15) and 597.201(b).) Once the Consolidated Plan final rule is published, it will bring all plans into conformance.

*Comment.* One commenter stated that the rule should require jurisdictions to disclose areas considered for nomination, but not selected, and to explain why they were not selected.

*Response.* This issue is addressed to some extent in § 597.201(c) of the rule, but HUD will consider expanding on this issue in any future rulemaking that may be needed.

*Comment.* One commenter, in response to the requirements of § 597.200(d)(14), (15), and (16), stated that the rule should require applicants to explain which existing resources (including the amounts) will be shifted from other geographic locations to the EZ/EC area to fulfill the applicant's commitment to resources to the EZ/EC area.

*Response.* HUD believes that such a requirement would be an unwarranted intrusion in local government processes.

*Comment.* Two commenters stated that the rule should identify specific regulatory and other impediments to implementing the strategic plan, and indicate whether waivers can be accomplished administratively or through statutory changes.

*Response.* HUD cannot identify specific regulatory barriers for each applicant. The applicant is in a better position to advise HUD where there are barriers and other impediments to implementation of the plan, and HUD asks applicants to identify such barriers in § 597.200(d)(17) and (18).

*Comment.* Other commenters made several other suggestions for the

strategic plan, including: requiring the same standards for citizen participation for strategic plan revisions as required for initial development of the plan, requiring benchmarks that identify benefits to low-income persons and long-term unemployed persons, and encouraging activities that specifically meet the needs of low-income persons.

*Response.* All these suggestions have merit and HUD will consider these in any future rulemaking that may be needed.

#### Comments on Evaluation of the Strategic Plan

*Comment.* Several commenters made suggestions for changes to § 597.201 which describes how the strategic plan will be evaluated. The suggestions included evaluating the plan based on the number of *quality* jobs provided to low-income persons; allowing community-based partnerships to include labor unions; allowing community-based partnerships to include low-income persons, long-term unemployed persons, and residents of the area to be designated; providing minimum standards for participation in the development of the plan; and providing for low-income persons to monitor the implementation of the plan.

*Response.* All of these suggestions will be taken into consideration in any future EZ/EC rulemaking.

*Comment.* One commenter stated that the rule must promote affordable housing and without affordable housing in proposed zones, the EZ/EC program will fail.

*Response.* Affordable housing was promoted through the rule. See §§ 597.200(d)(12)(ii)(B)(3) and (g)(3), and 597.201(b)(8).

*Comment.* One commenter stated that a city's compliance with the affordable housing requirement may make the city ineligible for EZ/EC designation. The commenter stated that as a result of compliance with this requirement, some cities do not have concentration of poverty described in the threshold requirements for EZ/EC designation. Another commenter stated that the evaluation of a plan should have included a review of whether a jurisdiction is affirmatively furthering fair housing, and also required applicants to submit a certification that they are in compliance with fair housing laws. The commenter also stated that the rule should provide for revocation of designation as a zone or community if the jurisdiction fails to comply with these laws.

*Response.* With respect to the first commenter's concern, the poverty rates set forth in the interim rule are based on

the 1990 Census, which HUD believes provides a fair and impartial measure of poverty level. With respect to the second commenter's concern, these suggestions will be considered in future rulemaking.

#### Comments on Submission of Nomination of Designation

*Comment.* Two commenters stated that the affected community should have access to the same information and reports, at no cost, that are available to HUD.

*Response.* Following completion of the designation process, the information contained in applications will be available to the public through requests made under the Freedom of Information Act.

*Comment.* One commenter suggested that the rule require the affected State to receive a copy of notice of intent to participate by the community, at the same time the local community sends the notice to HUD.

*Response.* HUD will consider adopting this suggestion in future rulemaking.

#### Comments on the Selection Factors for Designation

*Comment.* One commenter stated that the rule should include procedures for appealing selections based on geographic diversity. The commenter notes the rule allows HUD to designate a lower rated application over a higher rated application in the interests of geographic diversity of the designations (see § 597.301). Another commenter states that the geographic diversity provision should be strengthened by providing that each State will receive at least one urban designation as either an EZ or EC. A third commenter stated that HUD should reserve two of the six urban zone designations for small cities with populations under 100,000.

*Response.* HUD is not inclined to adopt any of these commenters' suggestions as regulatory requirements. These suggestions limit the flexibility that is needed in the selection process. However, HUD will re-evaluate these issues at the time of any future rulemaking.

#### Comments on Other Provisions

*Comment.* One commenter stated that the rule should be explicit about the eligibility of areas for designation within the Commonwealth of Puerto Rico.

*Response.* Pursuant to Title XIII, no areas of Puerto Rico were eligible for designation.

#### IV. Other Matters

*National Environmental Policy Act.* A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the interim rule. That Finding remains applicable to this final rule and is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW, Washington, DC 20410.

*Executive Order 12866, Regulatory Planning and Review.* This rule was reviewed and approved by the Office of Management and Budget as a significant rule, as that term is defined in Executive Order 12866, which was signed by the President on September 30, 1993. Any changes to the rule as a result of that review are contained in the public file of the rule in the office of the Department's Rules Docket Clerk.

*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 the rule will not have a significant economic impact on a substantial number of small entities within the intent and purpose of that Act. The Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. To the extent that this rule affects those entities, its purpose is to reduce any disproportionate burden by providing for the waiver of regulations and by affording other incentives directed toward a positive economic impact. Therefore, no regulatory flexibility analysis under the Act is necessary.

*Executive Order 12611, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, *Federalism*, has determined that, although the policies contained in this rule may have a substantial direct effect on States or their political subdivisions that are designated as Empowerment Zones or Enterprise Communities, this effect is intended by the legislation authorizing the program. The purpose of the rule is to provide a cooperative atmosphere between the Federal government and States and local governments, and to reduce any regulatory burden imposed by the Federal government that impedes

the ability of States and local governments to solve pressing economic, social, and physical problems in their communities.

*Executive Order 12606, The Family.* The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the provisions of this rule will not have a significant impact on family formation, maintenance or well being, except to the extent that the program authorized by the rule will empower communities and their residents to take effective action to solve difficult and pressing economic, human, community and physical development challenges that have a negative impact on families. Any such impact is beneficial and merits no further review under the Order.

*Semiannual Agenda.* This rule was listed as sequence number 1851 in the Department's semiannual agenda of regulations published on November 14, 1994 (59 FR 57632, 57665) under Executive Order 12866 and the Regulatory Flexibility Act.

#### List of Subjects in 24 CFR Part 597

Community development, Empowerment zones, Enterprise communities, Economic development, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Urban renewal.

In accordance with the reasons set out in the preamble, 24 CFR part 597 is revised to read as follows:

#### PART 597—URBAN EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

##### Subpart A—General Provisions

Sec.

- 597.1 Applicability and scope.
- 597.2 Objective and purpose.
- 597.3 Definitions.
- 597.4 Secretarial review and designation.
- 597.5 Waivers.

##### Subpart B—Area Requirements

- 597.100 Eligibility requirements and data usage.
- 597.101 Data utilized for eligibility determinations.
- 597.102 Tests of pervasive poverty, unemployment and general distress.
- 597.103 Poverty rate.

##### Subpart C—Nomination Procedure

- 597.200 Nominations by State and local governments.
- 597.201 Evaluating the strategic plan.
- 597.202 Submission of nominations for designation.

##### Subpart D—Designation Process

- 597.300 HUD action and review of nominations for designation.
- 597.301 Selection factors for designation of nominated urban areas.

597.302 Number of Empowerment Zones and Enterprise Communities designated.

#### Subpart E—Post-Designation Requirements

597.400 Reporting.  
597.401 Periodic performance reviews.  
597.402 Validation of designation.  
597.403 Revocation of designation.

#### Subpart F—Special Rules

597.500 Indian Reservations.  
597.501 Governments.  
597.502 Nominations by economic development corporations or the District of Columbia.  
597.503 Use of census data.

**Authority:** 26 U.S.C. 1391; 42 U.S.C. 3535(d).

#### Subpart A—General Provisions

##### § 597.1 Applicability and scope.

(a) This part establishes policies and procedures applicable to urban Empowerment Zones and Enterprise Communities, authorized under Subchapter U of the Internal Revenue Code of 1986, as amended, relating to the designation and treatment of Empowerment Zones, Enterprise Communities and Rural Development Investment Areas.

(b) This part contains provisions relating to area requirements, the nomination process for urban Empowerment Zones and urban Enterprise Communities, and the designation and administration of these Zones and Communities by HUD. Provisions dealing with the nomination and designation of rural Empowerment Zones and Enterprise Communities will be promulgated by the Department of Agriculture. HUD and the Department of Agriculture will consult in all cases in which nominated areas possess both urban and rural characteristics, and will utilize a flexible approach in determining the appropriate designation.

##### § 597.2 Objective and purpose.

The purpose of this part is to provide for the establishment of Empowerment Zones and Enterprise Communities in urban areas, to stimulate the creation of new jobs, particularly for the disadvantaged and long-term unemployed, and to promote revitalization of economically distressed areas.

##### § 597.3 Definitions.

*Designation* means the process by which the Secretary designates urban areas as Empowerment Zones or Enterprise Communities eligible for tax incentives and credits established by Subchapter U of the Internal Revenue Code of 1986, as amended (26 U.S.C. 1391 *et seq.*) and for special

consideration for programs of Federal assistance.

*Empowerment Zone* means an urban area so designated by the Secretary pursuant to this part. Up to six such Zones may be designated, *provided, that* if the Secretary designates the maximum number of zones, not less than one shall be in a nominated urban area the most populous city of which has a population of 500,000 or less; and no less than one shall be a nominated urban area which includes areas in two States and which has an area population of 50,000 or less.

*Enterprise Community* means an urban area so designated by the Secretary pursuant to this part. Not more than 65 such communities may be so designated.

*HUD* means the Department of Housing and Urban Development.

*Local government* means any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and any combination of these political subdivisions which is recognized by the Secretary.

*Nominated area* means an area nominated by one or more local governments and the State or States in which it is located for designation pursuant to this part.

*Population census tract* means a census tract, or, if census tracts are not defined for the area, a block numbering area.

*Poverty* means the number of persons listed as being in poverty in the 1990 Decennial Census.

*Revocation of designation* means the process by which the Secretary may revoke the designation of an urban area as an Empowerment Zone or Enterprise Community pursuant to § 597.403.

*Secretary* means the Secretary of Housing and Urban Development.

*State* means any State of the United States

*Strategic plan* means a strategy developed and agreed to by the nominating local government(s) and State(s), which have provided certifications of their authority to adopt such a strategy in their application for nomination, in consultation and cooperation with the residents of the nominated area, pursuant to the provisions of § 597.200(c). The plan must include written commitments from the local government(s) and State(s) that they will adhere to that strategy.

*Urban area* means:

(1) Any area that lies inside a Metropolitan Area (MA), as designated by the Office of Management and Budget; or

(2) Any area outside an MA if the jurisdiction of the nominating local

government has a population of 20,000 or more, or documents the urban character of the area.

##### § 597.4 Secretarial review and designation.

(a) *Designation.* The Secretary will review applications for the designation of nominated urban areas to determine the effectiveness of the strategic plans submitted by nominating State and local government(s) in accordance with § 597.200(c). The Secretary will designate up to six urban Empowerment Zones and up to 65 urban Enterprise Communities.

(b) *Period of Designation.* The designation of an urban area as an Empowerment Zone or Enterprise Community shall remain in full effect during the period beginning on the date of designation and ending on the earliest of:

(1) The close of the tenth calendar year beginning on or after the date of designation;

(2) The termination date designated by the State and local governments in their application for nomination; or

(3) The date the Secretary modifies or revokes the designation, in accordance with §§ 597.402 or 597.403.

##### § 597.5 Waivers.

The Secretary of HUD may waive for good cause any provision of this part not required by statute, where it is determined that application of the requirement would produce a result adverse to the purpose and objectives of this part.

#### Subpart B—Area Requirements

##### § 597.100 Eligibility requirements and data usage.

A nominated urban area may be eligible for designation pursuant to this part only if the area:

(a) Has a maximum population which is the lesser of:

(1) 200,000; or

(2) The greater of 50,000 or ten percent of the population of the most populous city located within the nominated area;

(b) Is one of pervasive poverty, unemployment and general distress, as described in § 597.102;

(c) Does not exceed twenty square miles in total land area;

(d) Has a continuous boundary, or consists of not more than three noncontiguous parcels;

(e) Is located entirely within the jurisdiction of the unit or units of general local government making the nomination, and is located in no more than two contiguous States; and

(f) Does not include any portion of a central business district, as this term is

used in the most recent Census of Retail Trade, unless the poverty rate for each population census tract in the district is not less than 35 percent for an Empowerment Zone and 30 percent for an Enterprise Community.

**§ 597.101 Data utilized for eligibility determinations.**

(a) *Source of data.* The data to be employed in determining eligibility pursuant to the criteria set forth at § 597.102 shall be based upon the 1990 Decennial Census, and from information published by the Bureau of the Census and the Bureau of Labor Statistics. The data shall be comparable as to point or period of time and methodology employed. Specific information on appropriate data to be submitted will be provided in the application.

(b) *Use of statistics on boundaries.* The boundary of an urban area nominated for designation as an Empowerment Zone or Enterprise Community must coincide with the boundaries of census tracts, or, where tracts are not defined, with block numbering areas.

**§ 597.102 Tests of pervasive poverty, unemployment and general distress.**

(a) *Pervasive poverty.* Pervasive poverty shall be demonstrated by the nominating entities by providing evidence that:

(1) Poverty is widespread throughout the nominated area; or

(2) Poverty has become entrenched or intractable over time (through comparison of 1980 and 1990 census data or other relevant evidence); or

(3) That no portion of the nominated area contains any component areas of an affluent character.

(b) *Unemployment.* Unemployment shall be demonstrated by:

(1) Data indicating that the weighted average rate of unemployment for the nominated area is not less than the national average rate of unemployment; or

(2) Evidence of especially severe economic conditions, such as military base or plant closings or other conditions which have brought about significant job dislocation within the nominated area.

(c) *General distress.* General distress shall be evidenced by describing adverse conditions within the nominated urban area other than those of pervasive poverty and unemployment. A high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline, are examples of appropriate indicators of general distress.

**§ 597.103 Poverty rate.**

(a) *General.* The poverty rate shall be established in accordance with the following criteria:

(1) In each census tract within a nominated urban area, the poverty rate shall be not less than 20 percent;

(2) For at least 90 percent of the population census tracts within the nominated urban area, the poverty rate shall not be less than 25 percent; and

(3) For at least 50 percent of the population census tracts within the nominated urban area, the poverty rate shall be not less than 35 percent.

(b) *Special rules relating to the determination of poverty rate.* (1) *Census Tracts with no population.* Census tracts with no population shall be treated as having a poverty rate which meets the standards of paragraphs (a)(1) and (2) of this section, but shall be treated as having a zero poverty rate for purposes of applying paragraph (a)(3) of this section.

(2) *Census tracts with populations of less than 2,000.* A population census tract which has a population of less than 2,000 shall be treated as having a poverty rate which meets the requirements of paragraphs (a)(1) and (a)(2) of this section if more than 75 percent of the tract is zoned for commercial or industrial use.

(3) *Adjustment of poverty rates for Enterprise Communities.* Where necessary to carry out the purposes of this part, the Secretary may reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the census tracts, or, if fewer, five population tracts in the nominated urban area:

(i) The 20 percent threshold in paragraph (a)(1) of this section;

(ii) The 25 percent threshold in paragraph (a)(2) of this section; and

(iii) The 35 percent threshold in paragraph (a)(3) of this section; *Provided that*, the Secretary may in the alternative reduce the 35 percent threshold by 10 percentage points for three population census tracts.

(4) *Rounding up of percentages.* In making the calculations required by this section, the Secretary shall round all fractional percentages of one-half percent or more up to the next highest whole percentage figure.

(c) *Noncontiguous areas.* A nominated urban area may not contain a noncontiguous parcel unless such parcel separately meets the criteria set forth at paragraphs (a)(1), (2), and (3) of this section.

(d) *Areas not within census tracts.* In the case of an area which does not have population census tracts, the block numbering area shall be used.

**Subpart C—Nomination Procedure**

**§ 597.200 Nominations by State and local governments.**

(a) *Nomination criteria.* One or more local governments and the State or States in which an urban area is located may nominate such area for designation as an Empowerment Zone and/or as an Enterprise Community, if:

(1) The urban area meets the requirements for eligibility set forth in §§ 597.100 and 597.103;

(2) The urban area is within the jurisdiction of a State or States and local government(s) that have the authority to nominate the urban area for designation and that provide written assurances satisfactory to the Secretary that the strategic plan described in paragraph (c) of this section will be implemented;

(3) All information furnished by the nominating State(s) and local government(s) is determined by the Secretary to be reasonably accurate; and

(4) The State(s) and local government(s) certify that no portion of the area nominated is already included in an Empowerment Zone or Enterprise Community or in an area otherwise nominated to be designated under this section.

(b) *Nomination for designation.* No urban area may be considered for designation pursuant to subpart D of this part unless the nomination for designation:

(1) Demonstrates that the nominated urban area satisfies the eligibility criteria set forth at § 597.100;

(2) Includes a strategic plan, as described in paragraph (c) of this section; and

(3) Includes such other information as may be required by HUD in the application or in a Notice Inviting Applications, to be published in the **Federal Register**.

(c) *Strategic plan.* Each application for designation must be accompanied by a strategic plan, which must be developed in accordance with four key principles, which will also be utilized to evaluate the plan. These principles are:

(1) Economic opportunity, including job creation within the community and throughout the region, as well as entrepreneurial initiatives, small business expansion and training for jobs that offer upward mobility;

(2) Sustainable Community Development, to advance the creation of liveable and vibrant communities through comprehensive approaches that coordinate economic, physical, community and human development;

(3) Community-Based Partnerships, involving the participation of all segments of the community, including

the political and governmental leadership, community groups, health and social service groups, environmental groups, religious organizations, the private and non-profit sectors, centers of learning and other community institutions; and

(4) Strategic vision for change, which identifies what the community will become and a strategic map for revitalization. The vision should build on assets and coordinate a response to community needs in a comprehensive fashion. It should also set goals and performance benchmarks for measuring progress and establish a framework for evaluating and adjusting the revitalization plan.

(d) *Elements of strategic plan.* The strategic plan should:

(1) Indicate and briefly describe the specific groups, organizations, and individuals participating in the production of the plan and describe the history of these groups in the community;

(2) Explain how participants were selected and provide evidence that the participants, taken as a whole, broadly represent the racial, cultural and economic diversity of the community;

(3) Describe the role of the participants in the creation, development and future implementation of the plan;

(4) Identify two or three topics addressed in the plan that caused the most serious disagreements among participants and describe how those disagreements were resolved;

(5) Explain how the community participated in choosing the area to be nominated and why the area was nominated;

(6) Provide evidence that key participants have the capacity to implement the plan;

(7) Provide a brief explanation of the community's vision for revitalizing the area;

(8) Explain how the vision creates economic opportunity, encourages self-sufficiency and promotes sustainable community development;

(9) Identify key needs of the area and the current barriers to achieving the vision for it, including a description of poverty and general distress, barriers to economic opportunity and development and barriers to human development;

(10) Discuss how the vision is related to the assets and needs of the area and its surroundings;

(11) Describe the ways in which the community's approaches to economic development, social/human services, transportation, housing, sustainable community development, public safety, drug abuse prevention, and educational

and environmental concerns will be addressed in a coordinated fashion; and explain how these linkages support the community's vision;

(12) Indicate how all Social Services Block Grant funds for designated Empowerment Zones and Enterprise Communities (EZ/EC SSBG funds) will be utilized.

(i) In doing so, the strategic plan shall provide the following information:

(A) A commitment by the applicant, as well as by the nominating State-chartered economic development corporation or State government(s) and local governments, that the EZ/EC SSBG funds will be used to supplement, not replace, other Federal or non-Federal funds available for financing for services or activities which can be used to achieve or maintain the goals outlined in paragraph (d)(12) of this section;

(B) A description of the entities that will administer the EZ/EC SSBG funds;

(C) A certification by such entities that they will provide periodic reports on the use of the EZ/EC SSBG funds; and

(D) A detailed description of all the activities to be financed with the EZ/EC SSBG funds and how all such funds will be allocated.

(ii) The EZ/EC SSBG funds must be used to achieve or maintain the following goals. The goals may be achieved by undertaking one or more of the following program options:

(A) The goal of economic self-support to prevent, reduce or eliminate dependencies, through one or more of the following program options:

(1) Funding community and economic development services focused on disadvantaged adults and youths, including skills training, transportation services and job, housing, business, and financial management counseling;

(2) Supporting programs that promote home ownership, education or other routes to economic independence for low-income families, youths, and other individuals;

(3) Assisting in the provision of emergency and transitional shelter for disadvantaged families, youths, and other individuals;

(B) The goal of self-sufficiency, including reduction or prevention of dependencies, through one or more of the following program options:

(1) Providing assistance to non-profit organizations and/or community and junior colleges that provide disadvantaged adults and youths with opportunities for short-term training courses in entrepreneurial and self-employment skills and other training that promotes individual self-

sufficiency, and the interest of the community;

(2) Funding programs to provide training and employment for disadvantaged adults and youths in construction, rehabilitation or improvement of affordable housing, public infrastructure and community facilities; and

(C) The goal of prevention or remedying the neglect, abuse or exploitation of children and/or adults unable to protect their own interest; and the goal of preservation, rehabilitation, or reuniting of families, through one or more of the following program options:

(1) Providing support for residential or non-residential drug and alcohol prevention and treatment programs that offer comprehensive services for pregnant women, and mothers and their children;

(2) Establishing programs that provide activities after school hours, including keeping school buildings open during evenings and weekends for mentor and study programs.

(iii) Designated Empowerment Zone and Enterprise Communities may work to achieve or maintain the goals outlined in paragraphs (d)(12)(ii) (A) and (B) of this section by using EZ/EC SSBG funds to capitalize revolving or micro-enterprise loan funds which benefit low-income residents of the designated Empowerment Zones and Enterprise Communities. Similarly, the Zones and Communities may work to achieve or maintain the goals outlined in paragraphs (d)(12)(ii) (A) and (B) of this section by using the EZ/EC SSBG funds to create jobs and promote economic opportunity for low-income families and individuals through matching grants, loans, or investments in community development financial institutions.

(iv) If the EZ/EC SSBG funds are to be used for program options not included in paragraph (d)(12)(ii) of this section, the strategic plan must indicate how the proposed activities meet the goals set forth in paragraph (d)(12)(ii) of this section and the reasons the approved program options were not pursued.

(v) To the extent that the EZ/EC SSBG funds are to be used for the program options included in paragraph (d)(12)(ii) of this section, they may be used for the following activities, in addition to those activities permitted by Section 2005 of the Social Security Act (42 U.S.C. 1379d):

(A) To purchase or improve land or facilities;

(B) To make cash payments to individuals for subsistence or room and board;

(C) To make wage payments to individuals as a social service;

(D) To make cash payments for medical care; and

(E) To provide social services to institutionalized persons.

(vi) The State must obligate the EZ/EC SSBG funds in accordance with the strategic plan within 2 years from the date of payment to the State, or remit the unobligated funds to the Secretary of Health and Human Services (HHS).

(vii) The strategic plan must indicate how all the EZ/EC SSBG funds will be invested and used for the period of designation of the Empowerment Zone or Enterprise Community.

(viii) The strategic plan must provide for periodic reporting of information by the State in which the Empowerment Zone or Enterprise Community is located.

(13) Indicate how tax benefits for designated Zones and Communities, State and local resources, existing Federal resources available to the locality and additional Federal resources believed necessary to implement the strategic plan will be utilized within the Empowerment Zone or Enterprise Community;

(14) Indicate a level of commitment necessary to ensure that these resources will be available to the area upon designation;

(15) Identify the Federal resources applied for or for which applications are planned; if a strategic plan indicates how Community Development Block Grant (CDBG), HOME, Emergency Shelter Grant, and Housing Opportunities for People with AIDS (HOPWA) funds will be expended (for the entire locality including the nominated area), the strategic plan will be considered by the Office of Community Planning and Development at HUD toward satisfying the consolidated planning requirements that will soon be issued for these programs;

(16) Identify private resources and support, including assistance from business, non-profit organizations and foundations, which are available to be leveraged with public resources; and provide assurances that these resources will be made available to the area upon designation;

(17) Identify changes necessary to Federal rules and regulations necessary to implement the plan, including specific paperwork or other Federal program requirements that must be altered to permit effective implementation of the strategic plan; and

(18) Identify specific regulatory and other impediments to implementing the strategic plan for which waivers are

requested, with appropriate citations and an indication whether waivers can be accomplished administratively or require statutory changes;

(19) Demonstrate how State and local governments will reinvent themselves to help implement the plan, by identifying changes that will be made in State and local organizations, processes and procedures, including laws and ordinances;

(20) Explain how different agencies in State and local governments will work together in new responsive ways to implement the strategic plan;

(21) Identify the specific tasks and timetable necessary to implement the plan;

(22) Describe the partnerships that will be established to carry out the plan;

(23) Explain how the plan will be regularly revised to reflect new information and opportunities; and

(24) Identify benchmarks and goals that should be used in evaluating performance in implementing the plan.

(e) *Prohibition against business relocation.* The strategic plan may not include any action to assist any establishment in relocating from one area outside the nominated urban area to the nominated urban area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if:

(1) The establishment of a new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations; and

(2) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

(f) *Implementation of strategic plan.* The strategic plan may be implemented by the local government(s) and/or by the State(s) nominating an urban area for designation and/or by nongovernmental entities identified in the strategic plan. Activities included in the plan may be funded from any source, Federal, State, local, or private, which provides assistance in the nominated area.

(g) *Activities included in strategic plan.* A strategic plan may include, but is not limited to, activities which address:

(1) Economic problems, through measures designed to create job training and employment opportunities; support

for business start-up or expansion; or development of community institutions;

(2) Human concerns, through the provision of social services, such as rehabilitation and treatment programs or the provision of training, education, or other services within the affected area;

(3) Community needs, such as the expansion of housing stock and homeownership opportunities, efforts to reduce homelessness, efforts to promote fair housing and equal opportunity, efforts to reduce and prevent crime and improve security in the area; and

(4) Physical improvements, such as the provision or improvement of recreational areas, transportation or other public services within the affected area, and improvements to the infrastructure and environmental protection.

#### § 597.201 Evaluating the strategic plan.

The strategic plan will be evaluated for effectiveness as part of the designation process for nominated urban areas described in § 597.301. On the basis of this evaluation, HUD may negotiate reasonable modifications of the strategic plan or of the boundaries of a nominated urban area or the period for which such designation shall remain in full effect. The effectiveness of the strategic plan will be determined in accordance with the four key principles set forth in § 597.200(c). HUD will review each plan submitted in terms of the four equally weighted key principles, and of such other elements of these key principles as are appropriate to address the opportunities and problems of each nominated area which may include:

(a) *Economic opportunity.* (1) The extent to which businesses, jobs, and entrepreneurship increase within the Zone or Community;

(2) The extent to which residents will achieve a real economic stake in the Zone or Community;

(3) The extent to which residents will be employed in the process of implementing the plan and in all phases of economic and community development;

(4) The extent to which residents will be linked with employers and jobs throughout the entire region or metropolitan area, and the way in which residents will receive training, assistance, and family support to become economically self-sufficient;

(5) The extent to which economic revitalization in the Zone or Community interrelates with the broader regional or metropolitan economies; and

(6) The extent to which lending and investment opportunities will increase within the Zone or Community through

the establishment of mechanisms to encourage community investment and to create new economic growth.

(b) *Sustainable Community Development.* (1) *Consolidated planning.* The extent to which the plan is part of a larger strategic community development plan for the nominating locality and is consistent with broader regional development strategies;

(2) *Public safety.* The extent to which strategies such as community policing will be used to guarantee the basic safety and security of persons and property within the Zone or Community;

(3) *Amenities and design.* The extent to which the plan considers issues of design and amenities that will foster a sustainable community, such as open spaces, recreational areas, cultural institutions, transportation, energy, land and water uses, waste management, environmental protection, and the quality of life in the community;

(4) *Sustainable development.* The extent to which economic development will be achieved in a manner that protects public health and the environment;

(5) *Supporting families.* The extent to which the strengths of families will be supported so that parents can succeed at work, provide nurture in the home, and contribute to the life of the community;

(6) *Youth development.* The extent to which the development of children, youth, and young adults into economically productive and socially responsible adults will be promoted, and the extent to which young people will be provided with the opportunity to take responsibility for learning the skills, discipline, attitude, and initiative to make work rewarding;

(7) *Education goals.* The extent to which schools, religious institutions, non-profit organizations, for-profit enterprises, local governments and families will work cooperatively to provide all individuals with the fundamental skills and knowledge they need to become active participants and contributors to their community, and to succeed in an increasingly competitive global economy;

(8) *Affordable Housing.* The extent to which a housing component, providing for adequate safe housing and ensuring that all residents will have equal access to that housing is contained in the strategic plan;

(9) *Drug Abuse.* The extent to which the plan addresses levels of drug abuse and drug related activity through the expansion of drug treatment services, drug law enforcement initiatives and community based drug abuse education programs;

(10) *Equal opportunity.* The extent to which the plan offers an opportunity for diverse residents to participate in the rewards and responsibilities of work and service. The extent to which the plan ensures that no business within a nominated Zone or Community will directly or through contractual or other arrangements subject a person to discrimination on the basis of race, color, national origin, gender or disability in its employment practices, including recruitment, recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation, or use of facilities.

(c) *Community-Based Partnerships.* (1) *Community partners.* The extent to which residents of the nominated area have participated in the development of the strategic plan and their commitment to implementing it, and the extent to which community-based organizations in the nominated area have participated in the development of the plan and their record of success measured by their achievements and support for undertakings within the nominated area; and the extent to which the plan integrates the local educational, social, civic, environmental and health organizations and reflects the prominent place that these institutions play in the life of a revitalized community;

(2) *Private and non-profit organizations as partners.* The extent to which partnership arrangements include commitments from private and non-profit organizations, including corporations, utilities, banks and other financial institutions, and educational institutions supporting implementation of the strategic plan;

(3) *State and local government partners.* The extent to which State and local governments are committed to providing support to implement the strategic plan, including their commitment to "reinventing" their roles and coordinating programs to implement the strategic plan; and

(4) *Permanent implementation and evaluation structure.* The extent to which a responsible and accountable implementation structure or process has been created to ensure that the plan is successfully carried out and that improvements are made throughout the period of the Zone or Community's designation and the extent to which the partners agree to be bound by their commitments.

(d) *Strategic vision for change.* (1) *Goals and Coordinated strategy.* The extent to which the strategic plan reflects a projection for the community's revitalization which links economic, human, physical, community

development and other activities in a mutually reinforcing, synergistic way to achieve ultimate goals;

(2) *Creativity and innovation.* The extent to which the activities proposed in the plan are creative, innovative and promising and will promote the civic spirit necessary to revitalize the nominated area;

(3) *Building on assets.* The extent to which the vision for revitalization realistically addresses the needs of the nominated area in a way that takes advantage of its assets;

(4) *Benchmarks and learning.* The extent to which the plan includes performance benchmarks for measuring progress in its implementation, including an on-going process for adjustments, corrections and building on what works.

#### § 597.202 Submission of nominations for designation.

(a) *General.* A nomination for designation as an Empowerment Zone and/or Enterprise Community must be submitted for each urban area for which such designation is requested. The nomination shall be submitted in a form to be prescribed by HUD in the application and in the Notice Inviting Applications published in the **Federal Register**, and must contain complete and accurate information.

(b) *Certifications.* Certifications must be submitted by the State(s) and local government(s) requesting designation stating that:

(1) The nominated urban area satisfies the boundary tests of § 597.100(d);

(2) The nominated urban area is one of pervasive poverty, unemployment and general distress, as prescribed by § 597.102;

(3) The nominated urban area satisfies the poverty rate tests set forth in § 597.103;

(4) The nominated urban area contains no portion of an area that is either already designated as an Empowerment Zone and/or Enterprise Community, or is otherwise included in any other area nominated for designation as an Empowerment Zone and/or Enterprise Community;

(5) Each nominating governmental entity has the authority to:

(i) Nominate the urban area for designation as an Empowerment Zone and/or Enterprise Community;

(ii) Make the State and local commitments required by § 597.200(d); and

(iii) Provide written assurances satisfactory to the Secretary that these commitments will be met.

(6) Provide assurances that the amounts provided to the State for the

area under Section 2007 of Title XX of the Social Security Act will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of Section 2007;

(7) Provide that the nominating governments or corporations agree to make available all information requested by HUD to aid in the evaluation of progress in implementing the strategic plan and reporting on the use of Empowerment Zone/Enterprise Community Social Service Block Grant funds; and

(8) Provide assurances that the nominating State(s) agrees to distribute the Empowerment Zone/Enterprise Community Social Service Block Grant funds in accordance with the strategic plan submitted for the designated Zone or Community.

(c) *Maps and area description.* Maps and a general description of the nominated urban area shall accompany the nomination request.

#### Subpart D—Designation Process

##### § 597.300 HUD action and review of nominations for designation.

(a) *Establishment of submission procedures.* HUD will establish a time period and procedures for the submission of nominations for designation as Empowerment Zones or Enterprise Communities, including submission deadlines and addresses, in a Notice Inviting Applications, to be published in the **Federal Register**.

(b) *Acceptance for processing.* (1) HUD will accept for processing those nominations for designation as Empowerment Zones or Enterprise Communities which HUD determines have met the criteria required by this Part. HUD will notify the State(s) and local government(s) whether or not the nomination has been accepted for processing. The criteria for acceptance for processing are as follows:

(2) The nomination for designation as an Empowerment Zone or Enterprise Community must be received by HUD on or before the time on the date established by the Notice Inviting Applications published in the **Federal Register**. The nomination for designation as an Empowerment Zone or Enterprise Community must be complete and must be accompanied by a strategic plan, as required by § 597.200(c), and the certifications required by § 597.202(b).

(c) *Evaluation of nominations.* In the process of reviewing each nomination accepted for processing, HUD may undertake a site visit(s) to any nominated area to aid in the process of evaluation.

(d) *Modification of the strategic plan, boundaries of nominated urban areas, and/or period during which designation is in effect.* Subject to the limitations imposed by § 597.100, HUD may negotiate reasonable modifications of the strategic plan, the proposed boundaries of a nominated urban area, or the term for which a designation is to remain in full effect, to ensure maximum efficiency and fairness in the provision of assistance to such areas.

(e) *Publication of designations.* Announcements of those nominated urban areas designated as Empowerment Zones or Enterprise Communities will be made by publication of a Notice in the **Federal Register**.

##### § 597.301 Selection factors for designation of nominated urban areas.

(a) *Selection factors.* In choosing among nominated urban areas eligible for designation, the Secretary shall consider:

(1) The effectiveness of the strategic plan in accordance with the key principles and evaluative criteria set out in § 597.201;

(2) The effectiveness of the assurances made pursuant to § 597.200(a)(2) that the strategic plan will be implemented;

(3) The extent to which an application proposes activities that are creative and innovative in comparison to other applications; and

(4) Such other factors established by HUD. Such factors include, but are not limited to, the degree of need demonstrated by the nominated area for assistance under this part. If other factors are established by HUD, a **Federal Register** notice will be published identifying such factors, along with an extension of the application due date if necessary.

(b) *Geographic diversity.* HUD, in its discretion, may choose to select for designation a lower rated approvable application over a higher rated application in order to increase the level of geographic diversity of designations approved under this part.

##### § 597.302 Number of Empowerment Zones and Enterprise Communities designated.

(a) *Empowerment Zones.* HUD will designate up to six of the nominated urban areas as Empowerment Zones, provided: that if six such zones are so designated, no less than one shall be designated in an urban area the most populous city of which has a population of 500,000 or less and no less than one shall be a nominated urban area which includes areas in two States and which has a population of 50,000 or less.

(b) *Enterprise Communities.* HUD will designate up to 65 of the nominated

urban areas not designated Empowerment Zones under paragraph (a) of this section as Enterprise Communities.

#### Subpart E—Post-Designation Requirements

##### § 597.400 Reporting.

HUD will require periodic reports for the Empowerment Zones and Enterprise Communities designated pursuant to this part. These reports will identify the community, local government and State actions which have been taken in accordance with the strategic plan. In addition to these reports, such other information relating to designated Empowerment Zones and Enterprise Communities as HUD shall request from time to time, including information documenting nondiscrimination in hiring and employment by businesses within the designated Empowerment Zone or Enterprise Community, shall be submitted promptly.

##### § 597.401 Periodic performance reviews.

HUD will regularly evaluate the progress of the strategic plan in each designated Empowerment Zone and Enterprise Community on the basis of performance reviews to be conducted on site and other information submitted. HUD will also commission evaluations of the Empowerment Zone program as a whole by an impartial third party, at such intervals as HUD may establish.

##### § 597.402 Validation of designation.

(a) *Reevaluation of designations.* On the basis of the performance reviews described in § 597.401, and subject to the provisions relating to the revocation of designation appearing at § 597.403, HUD will make findings on the continuing eligibility for and the validity of the designation of any Empowerment Zone or Enterprise Community. Determinations of whether any designated Empowerment Zone or Enterprise Community remains in good standing shall be promptly communicated to all Federal agencies providing assistance or administering programs under which assistance can be made available in such Zone or Community.

(b) *Modification of designation.* Based on an urban area's success in carrying out its strategic plan, and subject to the provisions relating to revocation of designation appearing at § 597.403 and the requirements as to the number, maximum population and other characteristics of urban Empowerment Zones set forth in § 597.3, the Secretary may modify designations by reclassifying urban Empowerment

Zones as Enterprise Communities or Enterprise Communities as Empowerment Zones.

**§ 597.403 Revocation of designation.**

(a) *Basis for revocation.* The Secretary may revoke the designation of an urban area as an Empowerment Zone or Enterprise Community if the Secretary determines, on the basis of the periodic performance review described at § 597.401, that the State(s) or local government(s) in which the urban area is located:

(1) Has modified the boundaries of the area;

(2) Has failed to make progress in achieving the benchmarks set forth in the strategic plan; or

(3) Has not complied substantially with the strategic plan.

(b) *Letter of warning.* Before revoking the designation of an urban area as an Empowerment Zone or Enterprise Community, the Secretary will issue a letter of warning to the nominating State(s) and local government(s):

(1) Advising that the Secretary has determined that the nominating local government(s) and/or State(s) has:

(i) Modified the boundaries of the area; or

(ii) Is not complying substantially with, or has failed to make progress in achieving the benchmarks set forth in the strategic plan prepared pursuant to § 597.200(c); and

(2) Requesting a reply from all involved parties within 90 days of the receipt of this letter of warning.

(c) *Notice of revocation.* After allowing 90 days from the date of receipt of the letter of warning for response, and after making a determination pursuant to paragraph (a) of this section, the Secretary may issue a final notice of revocation of the designation of the urban area as an Empowerment Zone or Enterprise Community.

(d) *Notice to affected Federal agencies.* HUD will notify all affected Federal agencies providing assistance in an urban Empowerment Zone or Enterprise Community of its determination to revoke any designation pursuant to this section or to modify a designation pursuant to § 597.402(b).

**Subpart F—Special Rules**

**§ 597.500 Indian Reservations.**

No urban Empowerment Zone or Enterprise Community may include any area within an Indian reservation.

**§ 597.501 Governments.**

If more than one State or local government seeks to nominate an urban area under this part, any reference to or requirement of this part shall apply to all such governments.

**§ 597.502 Nominations by economic development corporations or the District of Columbia.**

Any urban area nominated by an Economic Development Corporation chartered by the State in which it is located or by the District of Columbia shall be treated as nominated by a State and local government.

**§ 597.503 Use of census data.**

Population and poverty rate data shall be determined by the most recent decennial census data available.

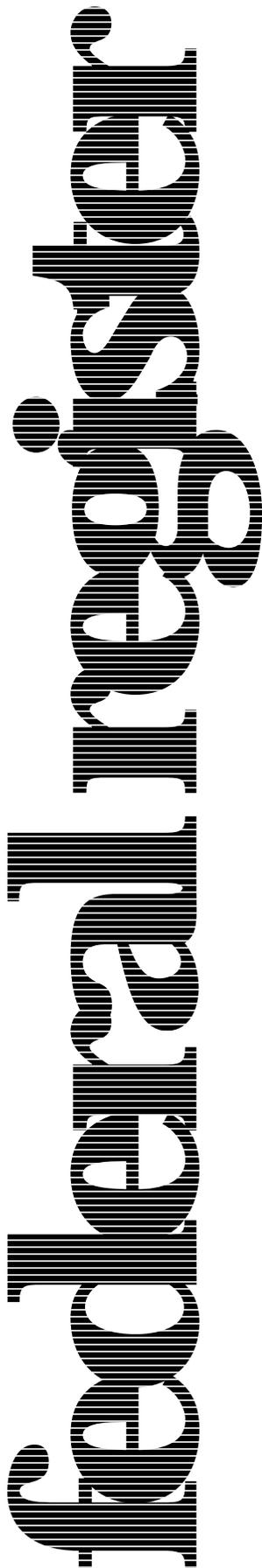
Dated: December 2, 1994.

**Andrew Cuomo,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 95-734 Filed 1-11-95; 8:45 am]

BILLING CODE 4210-29-P



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Thursday  
January 12, 1995

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**Part III**

**Department of  
Education**

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Office of Elementary and Secondary  
Education

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**Records Transfer for Mobile Students;  
Notice**

**DEPARTMENT OF EDUCATION****Office of Elementary and Secondary Education****Records Transfer for Mobile Students****AGENCY:** Department of Education.**ACTION:** Request for comments on records transfer for mobile students.

**SUMMARY:** The Assistant Secretary for Elementary and Secondary Education requests comments on (1) current methods for transferring educational and health records and enrolling highly mobile students, especially migrant students, at the appropriate grade level and documenting their course completion; and (2) how the Federal Government can best work with State educational agencies (SEAs) and local educational agencies (LEAs) to improve existing systems and technologies for transferring records between school districts. The Department will review and analyze information obtained through this notice and will use it to consider what, if any, Federal actions might be useful to those who provide direct services to children.

**DATES:** Comments are requested by February 27, 1995.

**ADDRESSES:** Comments should be addressed to Lori\_Ahmady, U.S. Department of Education, 600 Independence Ave., SW, Room 4100 Portals, Washington, DC 20202-6135. Comments sent by courier should be addressed to Lori Ahmady, 1250 Maryland Ave., SW, Suite 4100, Washington, DC 20024. Comments may also be sent via the Internet to Lori\_Ahmady@ed.gov.

**FOR FURTHER INFORMATION CONTACT:** Lori Ahmady, at the above addresses or by telephone at 202-260-1391. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** For purposes of this discussion, "highly mobile students" includes specific groups targeted by programs the Department administers, i.e., children of migrant agricultural or fishing workers, homeless children, and military dependents, as well as other children whose education is adversely affected by frequent moves (children from poor urban families and children of other itinerant workers). Also, for purposes of this discussion, a "student record" consists of a body of information transferred from one school to another, electronically, by telephone, or in hard

copy, to assist in the enrollment and appropriate placement of the student in the new school. These records may include official transcripts, report cards, cumulative files, health records, and other related information. The content of a student record may differ substantially between elementary and secondary schools, between public and private schools, and among States and localities.

The Department's current interest in records transfer is prompted by a number of factors, including the high rate of mobility within our society as a whole, and the effects of that mobility on educating school-age children. A recent report by the General Accounting Office (GAO), stated that "The United States has one of the highest mobility rates of all developed countries. \* \* \* One in six of the Nation's children who are third-graders—over a half million—have changed school frequently, attending at least three different schools since the beginning of first grade. Unless policymakers focus greater attention on the needs of children who have changed schools frequently—often low-income, inner city, migrant, and limited English proficient (LEP)—these children may continue to be low achieving. \* \* \* Studies such as this one have focused public attention on the need to provide timely and comparable records to help mobile children, who are less likely to receive federally funded services than their more stable peers, get the help they need. This study also questioned the utility and adequacy of current records transfer efforts on behalf of children who move frequently from one district (or even one school) to another. The GAO study reports that "\* \* \* the most commonly used mode of transferring student records—by mail—can be cumbersome and time-consuming. In one State, local officials reported it often takes 2 to 6 weeks before a new child's records arrive. In a school with a high mobility rate, teachers rarely used records to place children \* \* \* because these records usually arrived days or weeks after the children transferred or not at all. \* \* \*" These delays may prove particularly limiting for those subpopulations of students who are highly mobile, such as the children of migrant agricultural workers, children of other itinerant workers, homeless children, children from poor urban families, and military dependents.

In response to recommendations from several groups that the Department explore the potential of new technologies (e.g., FAX technology and electronic data interchange (EDI)) to improve records transfer for all children and particularly for highly mobile

student subpopulations, Department staff have, over the past year, initiated conversations with the Council of Chief State School Officers about its SPEEDE/ExPRESS data transfer protocols, commissioned a report of available data on alternatives to the current Migrant Student Record Transfer System and convened a Departmental workgroup to study records transfer issues. The Department has also discussed issues related to records transfer for mobile students with some SEA and LEA representatives. These initial efforts have indicated, in part, that even with new technologies for linking all State educational records systems and new momentum to expand the automation of SEA and LEA student data systems, the costs of applying technology to records transfer, while unknown, are likely to be considerable.

**Request for Comments**

The Assistant Secretary, in particular, requests comments from knowledgeable education personnel in LEAs and SEAs, especially from those teachers, counselors, school administrators, and other school personnel who are responsible for placement and credit acceptance decisions in schools and LEAs that have a high mobility rate among students. Parents of mobile children are also requested to comment.

In order to determine whether and how the Federal Government might assist States and localities in developing strategies for transferring records for highly mobile students, the Department is seeking public comment about current practices and barriers to the transfer of student records. In addition, information obtained through this notice will contribute to the preparation of a report of findings and recommendations on records transfer to be submitted to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives as required in section 1308(b)(2) of the Elementary and Secondary Education Act, as amended by Pub. L. 103-382. The Department will consider all timely comments received and does not require commenters to identify themselves. The information requested in this notice regarding characteristics of the commenter is needed for analysis only.

**Commenter Characteristics**

1. Indicate either the type of organization you represent or your occupation, e.g., parent, teacher, counselor, local program or school administrator, State educational agency management information systems specialist, advocacy organization, State

or local educational agency staff, or other.

2. Indicate the nature of the mobility you deal with most frequently, (e.g., within district, across districts within your State, or across States), the kind of mobile students you or your organization deals with the most (e.g., migrant children, homeless children, military dependents), and the amount of mobility you deal with (e.g., the approximate percentage of students in your school, district or State who move each year).

#### *Questions for Commenters*

1. How, in your experience, are students' educational and health records currently transferred across schools, districts and States (e.g., by mail, FAX, telephone, electronic transfer)?

2. For newly arriving students, what information do school personnel and classroom teachers use to enroll students, assign them to a grade level or class, and grant credit for coursework completed at previous schools? Where does this information come from (e.g., teacher observations, the student's

cumulative files, migrant student records, formal or informal needs assessments, or other information obtained from the student, the student's family, or the students' previous schools)?

3. To what extent do schools and teachers rely upon records transferred from other schools to make or confirm enrollment, placement, programming and other educational or support service decisions including the transfer of credits for high school graduation? (Commenters are asked to characterize how much they rely on student records in making or confirming these decisions, and how comfortable they are in doing so, as compared to other information sources like those listed in Question #2.)

4. Are existing methods of transferring student records from school to school adequate? If not, what problems or barriers exist and what are their ensuing consequences for highly mobile students, including migrant students? How prevalent are these problems and their subsequent effects on mobile students? Are there particular situations

in which problems occur most frequently?

5. What can States, school districts, and individual schools do to improve the transfer of student records? What can parents do to ensure that their children's records move from school to school?

6. Should the Federal Government work to advance the development of more effective State and local methods of transferring student records? How?

#### **Invitation to Comment**

All comments submitted in response to this notice will be available during and after the comment period in room 4100, Portals Building, 1250 Maryland Avenue, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:30 p.m., Monday, through Friday of each week except Federal holidays.

Dated: January 6, 1995.

**Thomas W. Payzant,**

*Assistant Secretary, Elementary and Secondary Education.*

[FR Doc. 95-810 Filed 1-11-95; 8:45 am]

BILLING CODE 4000-01-P

**Good  
Teens  
Are  
The  
Future**

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Thursday  
January 12, 1995

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**Part IV**

## **The President**

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Proclamation 6764—National Good Teen  
Day



## Title 3—

Proclamation 6764 of January 11, 1995

## The President

National Good Teen Day, 1995

By the President of the United States of America

## A Proclamation

For many of the 24 million teenagers in the United States today, the future can seem uncertain and distant. Confronted with challenges the likes of which their parents could scarcely have imagined, many of our young people are too busy with the trials of daily life to spend much time hoping and dreaming. But empowered with the courage to try, all teens—even those who may feel troubled and lost—have the potential to succeed.

The choices teens make today will determine the future for all of us, and we must strive to set an example of hard work and responsible behavior. On the occasion of National Good Teen Day, we pause to recognize the teens who set just such an example for their peers—young people who make invaluable contributions to our society, bringing their remarkable talents and energies to bear in their studies and activities, in caring for their families and friends, and in helping their communities. We can learn a lot from these youth, from the creativity, optimism, and resilience that enable them to navigate the complex path to adulthood.

In return for all they give, teens need our understanding, compassion, and love. They require our attention, and they deserve our respect. America's young people have so much to look forward to, so much to share with our world. With firm guidance and gentle reassurance, we can help teenagers to recognize their strengths and realize their dreams.

In celebration of teens throughout the Nation, the Congress, by Public Law 103-463, has designated January 16, 1995, as "National Good Teen Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim January 16, 1995, as National Good Teen Day. I urge all Americans to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of January, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.



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Vol. 60, No. 8

Thursday, January 12, 1995

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**NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT.** Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301-713-6905**

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