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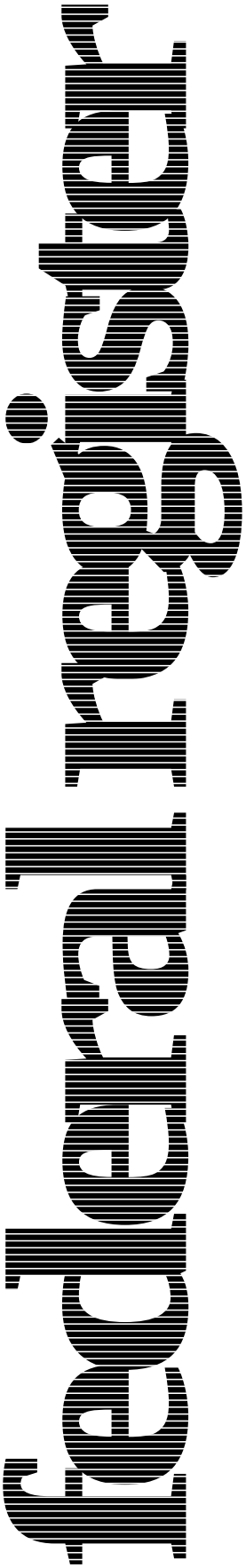


Monday
April 3, 1995

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For information on briefings in Washington, DC, and Salt Lake City, UT, see announcement on the inside cover of this issue.

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4. An introduction to the finding aids of the FR/CFR system.

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

### WASHINGTON, DC

**WHEN:** April 20 at 9:00 am

**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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Federal Register
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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

**RIN 0563–AB22**

### Common Crop Insurance Regulations; Regulations for the 1995 and Subsequent Contract Years

**AGENCY:** Federal Crop Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** This rule incorporates into crop insurance policy language the common law principle that Federal Government programs and contracts are subject to appropriations. This rule makes final the interim rule published in the **Federal Register** on September 6, 1994.

**EFFECTIVE DATE:** April 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Diana Moslak, Federal Crop Insurance Corporation, Regulatory and Procedural Development Staff, Suite 500, 2101 L Street NW., Washington, DC 20036. Telephone (202) 254–8314.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under United States Department of Agricultural (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations remains January 1, 1996.

This rule has been determined to be ''not-significant'' for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (''OMB'').

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), no information or record-keeping requirements are found in this rule.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Under the Regulatory Flexibility Act (5 U.S.C. 605), this regulation will not have a significant impact on a substantial number of small entities. The rule would not increase the amount of work required by reinsured companies and their agents, and provides a mechanism for the uninterrupted coverage to the policyholders. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778.

The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J or promulgated by the National Appeals Division must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Tuesday, September 6, 1994, FCIC published an interim rule in the **Federal Register** at 59 FR 45971, to revise the Common Crop Insurance Regulations by adding § 457.9—*Appropriation Contingency*. Following publication of that rule, the public was afforded 60 days to submit written comments, data, and opinions. One comment was received from a private law firm. FCIC's response is as follows:

*Comment:* The comment recommended extending the appropriation contingency clause from the ''1995 crop year only'' to ''future years''.

*Response:* Since the Federal crop insurance program is subject to the availability of appropriated funds by Congress on a fiscal year basis, FCIC agrees with the comment and has made this change.

### List of Subjects in 7 CFR Part 457

Crop insurance.

Accordingly, the interim rule, amending 7 CFR part 457, ''Common Crop Insurance Regulations'' published on September 6, 1994, at 59 FR 45971, is adopted as final without change and is applicable for the 1995 and succeeding crop years.

Done in Washington, DC, on March 27, 1995.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 95–8047 Filed 3–31–95; 8:45 am]
BILLING CODE 3410–08–M

## Agricultural Marketing Service

### 7 CFR Part 925

**[Docket No. FV94–925–1–FIR]**

### Grapes Grown in a Designated Area of Southeastern California; Expenses for the 1995 Fiscal Year

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule that authorized expenses for the California Desert Grape Administrative Committee (Committee) under Marketing Order No. 925 for the 1995 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer its program.

**EFFECTIVE DATE:** January 1, 1995, through December 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 690–3670; or Rose Aguayo, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 925 (7 CFR Part 925) regulating the handling of table grapes grown in a designated area of California. 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.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule authorizes expenditures for the 1995 fiscal year, beginning January 1, 1995, through December 31, 1995. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 20 handlers of grapes regulated under the marketing order each season and approximately 90 grape producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

The table grape marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable grapes handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of California table grapes. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of table grapes. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on October 20, 1994, and unanimously recommended expenses of $54,427 and an assessment rate of $0.005 per lug. However, the reserve fund was in excess of the amount of expenses for one year. Section 925.42 of the order specifies that the reserve fund may not exceed approximately one fiscal year's expenses. Accordingly, the Department returned the recommendation to the Committee for reconsideration.

The Committee conducted a telephone vote on November 21, 1994, and approved by a majority vote a revised budget with an additional $20,000 for salaries. There were two Committee members who were unavailable to vote. The Committee's recommended revised total expense is $74,427, which is $29,117 less in expenses than the previous year.

The Committee also recommended not to have an assessment rate for the 1995 fiscal year. The $2,500 in interest income and $71,927 from the Committee's authorized reserves will adequately cover estimated expenses.

Major expense categories for the 1995 fiscal year include $24,000 for the Western Grape Leaf Skeletonizer project, $12,487 for salaries, $20,000 for salaries of Los Angeles Market inspectors and $4,440 for rent. Funds in the reserve at the end of the 1995 fiscal year are estimated at $93,431.

This action will not impose additional costs on handlers. The Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action was issued as an interim final rule on January 12, 1995, and published in the **Federal Register** (60 FR 3725, January 19, 1995). A 30-day comment period was provided for interested persons. No comments were received.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was originally recommended by the Committee at a public meeting and reconsidered and approved by the Committee through a telephone vote and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

**List of Subjects in 7 CFR Part 925**

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

## PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 925 which was published at 60 FR 3725 on January 19, 1995, is adopted as a final rule without change.

Dated: March 28, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95–8097 Filed 3–31–95; 8:45 am]

BILLING CODE 3410–02–P

## 7 CFR Part 979

**[Docket No. FV94–979–1FIR]**

## South Texas Melons; Increased Expenses and Establishment of Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an amended interim final rule that increased the level of authorized expenses and established an assessment rate that generated funds to pay those expenses. Authorization of this budget enables the South Texas Melon Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATE:** October 1, 1994, through September 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas. 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.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas melons are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons handled during the 1994–95 fiscal period, which began October 1, 1994, and ends September 30, 1995. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 40 producers of South Texas melons under this marketing order, and approximately 19 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas melon producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the South Texas Melon Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $207,500 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $207,500 were published in the **Federal Register** as an interim final rule November 15, 1994 (59 FR 58760). That interim final rule added § 979.217, authorizing expenses for the Committee, and provided that interested persons could file comments through December 15, 1994. No comments were filed.

The Committee subsequently met on December 13, 1994, and unanimously recommended an increase of $9,700 for administrative expenses, plus $158,426 in research expenses, for a total budget of $375,626. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Office salaries, $22,000 ($15,600), insurance, $6,250 ($5,250), accounting and audit $2,600 ($2,300), rent and utilities, $6,000 ($4,000), disease management programs, $86,716 ($82,000), melon breeding and cultivar development, $43,824 ($23,118), and variety evaluation, $9,186 ($8,460). Items which have decreased compared to the amount budgeted for 1993–94 (in parentheses) are: Insect management programs, $18,700 ($34,390), and $3,823 for cultural practices for which no funding was recommended this year. All other items are budgeted at last year's amounts.

The initial 1994–95 budget, published on November 15, 1994, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of

$0.07 per carton. This rate, when applied to anticipated shipments of approximately 45,000 cartons, will yield $315,000 in assessment income, which, along with $60,626 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of January 31, 1995, were $367,369, which is within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the **Federal Register** on January 30, 1995 (60 FR 5560). That interim final rule amended § 979.217 to increase the level of authorized expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through March 1, 1995. No comments were received.

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

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal period began on October 1, 1994. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable melons handled during the fiscal period. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an amended interim final rule.

### List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

## PART 979—MELONS GROWN IN SOUTH TEXAS

Accordingly, the interim final rule revising § 979.217 which was published at 60 FR 5560 on January 30, 1995, is adopted as a final rule without change.

Dated: March 28, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95–8098 Filed 3–31–95; 8:45 am]

BILLING CODE 3410–02–W–P

## 7 CFR Part 982

**[Docket No. FV94–982–3FIR]**

## Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1994–95 Marketing Year

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which established interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1994–95 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages allocate the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export, and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This rule was recommended by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

**EFFECTIVE DATE:** May 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., room 369, Portland, OR 97204; telephone (503) 326–2725 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2536–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 982 (7 CFR part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington, hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is intended that this action apply to all merchantable filberts/hazelnuts handled during the 1994–95 marketing year. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 1,000 producers of filberts/hazelnuts in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less

than $5,000,000. The majority of producers and handlers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this final rule are based on requirements specified in the order. The interim final rule was issued on January 24, 1995, and published in the **Federal Register** (60 FR 5561, January 30, 1995), with an effective date of January 30, 1995. That rule established the amount of inshell filberts/hazelnuts that may be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the finalization of interim and final free and restricted percentages will continue to benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns. That rule provided a 30-day comment period which ended March 1, 1995. No comments were received.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the handlers may ship to the domestic market throughout the season, and the percentages release the volume of filberts/hazelnuts necessary to meet the inshell trade demand. The preliminary percentages provide for the release of 80 percent of the inshell trade demand. The interim final percentages release 100 percent of the inshell trade demand. The inshell trade demand equals the average of the preceding three ''normal'' years' trade acquisitions of inshell filberts/hazelnuts, rounded to the nearest whole number. The Board may increase such figure by no more than 25 percent, if market conditions warrant such an increase. The final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell filberts/hazelnuts for desirable carryout.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported, shelled, or otherwise disposed of (restricted) early in the 1994–95 season. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates. The majority of domestic inshell filberts/hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

At its August 25, 1994, meeting, the Board computed and announced preliminary free and restricted percentages of 16 percent and 84 percent, respectively, to release 80 percent of the inshell trade demand. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage was to guard against underestimates of crop size. The preliminary free percentage released 3,020 tons of filberts/hazelnuts from the 1994 crop for domestic inshell use. The preliminary restricted percentage is 100 percent minus the free percentage.

On or before November 15, the Board must meet again to recommend interim final and final percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

In accordance with order provisions, the Board met on November 8, 1994, reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. Interim final percentages were recommended at 19 percent free and 81 percent restricted, and final free and restricted percentages were recommended at 23 percent and 77 percent, respectively. The interim final percentages made an additional 208 tons of inshell filberts/hazelnuts available for the domestic inshell market. The interim final marketing percentages are based on the industry's final production estimates and released 3,775 tons to the domestic inshell market from the 1994 supply subject to regulation. The final marketing percentages released an additional 626 tons from the 1994 crop for domestic use. Thus, a total of 4,401 tons of inshell filberts/hazelnuts was available from the 1994 supply subject to regulation for domestic use when the final percentages were established. The Oregon Agricultural Statistics Service (OASS) provided an early estimate of 19,000 tons total filbert/hazelnut production for the Oregon and Washington area. The Board unanimously voted to accept the OASS estimate of 19,000 tons.

The Board determined that the inshell domestic market conditions would allow more supply without depressing the market and recommended immediate release of the additional 15 percent (the final percentages). The Board believed that the immediate release of filberts/hazelnuts by the final percentages would benefit the industry with increased returns to growers and more inshell filberts/hazelnuts available for consumers.

The marketing order also requires that, procedurally, the Board recommend interim final and final percentages. Therefore, the interim final percentages were recommended even though they will not be utilized this marketing season.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1994–95 marketing year:

| | Tons |
|---|---|
| Inshell Supply: | |
| (1) Total production (OASS estimate) | 19,000 |
| (2) Less substandard, farm use (disappearance) | 1,083 |
| (3) Merchantable production (the Board's adjusted crop estimate) | 17,917 |
| (4) Plus undeclared carryin as of July 1, 1994, subject to regulation | 1,527 |
| (5) Supply subject to regulation (Item 3 plus Item 4) | 19,444 |
| Inshell Trade Demand: | |
| (6) Average trade acquisitions of inshell filberts/hazelnuts for three prior years | 4,170 |

| | Tons |
|---|---|
| (7) Increase to encourage increased sales (5 percent of Item 6) | 208 |
| (8) Less declared carryin as of July 1, 1994, not subject to regulation | 603 |
| (9) Adjusted Inshell Trade Demand | 3,775 |
| (10) 15 percent of the average trade acquisitions of inshell filberts/hazelnuts for three prior years (Item 6) | 626 |
| (11) Adjusted Inshell Trade Demand plus 15 percent for carryout (Item 9 plus Item 10) | 4,401 |

| | Free | Restricted |
|---|---|---|
| Percentages: | | |
| (12) Interim final percentages (Item 9 divided by Item 5) ×100 | 19 | 81 |
| (13) Final percentages (Item 11 divided by Item 5) ×100 | 23 | 77 |

In addition to complying with the provisions of the marketing order, the Board also considered the Department's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. The volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market have available a quantity equal to 110 percent of prior years' shipments in those outlets before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. At its August 25, 1994, meeting, the Board recommended that an increase of 5 percent (208 tons) for market expansion be included in the inshell trade demand. The established final percentages, which release 100 percent of the inshell trade demand, will make available 4,401 tons from the 1994 crop plus 603 tons of declared carryin which is 120 percent of prior years' sales, thus exceeding the goal of the Guidelines.

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

After consideration of all relevant material presented, the information and recommendations submitted by the Committee, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (60 FR 5561, January 30, 1995), will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 982**

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

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

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

Accordingly, the interim final rule amending 7 CFR part 982, which was published at 60 FR 5561 on January 30, 1995, is adopted as a final rule without change.

Dated: March 28, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95–8100 Filed 3–31–95; 8:45 am]

BILLING CODE 3410–02–W

## 7 CFR Part 985

**[Docket No. FV95–985–1IFR]**

## Spearmint Oil Produced in the Far West; Expenses and Assessment Rate for the 1995–96 Fiscal Year

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

**ACTION:** Interim Final Rule with Request for comments.

**SUMMARY:** This interim final rule authorizes expenses and establishes an assessment rate for the Spearmint Oil Administrative Committee (Committee) under Marketing Order No. 985 for the 1995–96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

**DATES:** Effective beginning June 1, 1995, through May 31, 1996. Comments received by May 3, 1995 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 720–5127; or Robert Curry, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204, telephone: (503) 326–2724.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West. 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.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, spearmint oil produced in the Far West is subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable oil produced during the 1995–96 fiscal year, beginning June 1, 1995, through May 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with

law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are 8 handlers of spearmint oil regulated under the marketing order each season and approximately 260 spearmint oil producers in the Far West. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A minority of these producers and handlers may be classified as small entities.

The marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable spearmint oil handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of spearmint oil. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of spearmint oil. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on February 22, 1995, and unanimously recommended a total expense amount of $233,272 for its 1995–96 budget. This is $4,567 less in expenses than the 1994–95 budget.

The Committee also unanimously recommended an assessment rate of $.10 per pound for the 1995–96 fiscal year, which is $.01 more than the assessment rate from the 1994–95 fiscal year. The assessment rate, when applied to anticipated shipments of 2,000,000 pounds from the 1995–96 spearmint oil production, would yield $200,000.00 in assessment income. This, along with approximately $24,272 from the Committee's authorized reserves, and $9,000 interest will be adequate to cover estimated expenses.

Major expense categories for the 1995–96 fiscal year include $101,300 for salaries, $20,000 for market development, and $23,000 for travel. Funds in the reserve at the beginning of the 1995–96 fiscal year are estimated at $160,000, which is within the maximum permitted by the order of one fiscal year's expenses.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1995–96 fiscal year starts on June 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable spearmint oil handled during the fiscal year; (3) handlers are aware of this rule which was recommended by the Committee at a public meeting; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 985**

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

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

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

1. The authority citation for 7 CFR Part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

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

2. A new § 985.315 is added to read as follows:

**§ 985.315 Expenses and assessment rate.**

Expenses of $233,272.00 by the Spearmint Oil Administrative Committee are authorized and an assessment rate of $.10 per pound of assessable spearmint oil is established for the fiscal year ending May 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: March 28, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95–8099 Filed 3–31–95; 8:45 am]

BILLING CODE 3410–02–W

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 226

**[Regulation Z; Docket No. R–0863]**

### Truth in Lending

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; official staff interpretation.

**SUMMARY:** The Board is publishing revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The revisions clarify regulatory provisions and provide further guidance on issues of general interest, such as the treatment of various fees and taxes associated with real estate-secured loans and a creditor's

responsibilities when investigating a claim of the unauthorized use of a credit card.

**DATES:** This rule is effective April 1, 1995. Compliance is optional until October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** For Subparts A and B (open-end credit), Jane Jensen Gell or Obrea Otey Poindexter, Staff Attorneys; for Subparts A and C (closed-end credit), Kyung Cho-Miller, Sheilah A. Goodman, W. Kurt Schumacher, Natalie E. Taylor, or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 et seq.) is to promote the informed use of consumer credit. The act requires creditors to disclose credit terms and the cost of credit as an annual percentage rate (APR). The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. It also imposes limitations on some credit transactions secured by a consumer's principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226). The regulation authorizes the issuance of official staff interpretations of the regulation. (See Appendix C to Regulation Z.) The Board has published a staff commentary to Regulation Z which clarifies existing law and provides guidance to creditors in applying the regulation to specific transactions (Supplement I of this part). The Board updates the commentary periodically as a substitute for individual staff interpretations.

In December, the Board published proposed amendments to the commentary to Regulation Z (59 FR 64351, December 14, 1994). The Board received about 150 comments. Nearly 90% were from creditors or their representatives; the remainder were from consumer advocates, government officials, and individuals. Overall, commenters generally supported the proposed amendments. Views were mixed on a number of comments, and some commenters expressed concerns about issues not addressed in the proposal. Except as discussed below, the commentary has been revised as proposed; some technical suggestions or concerns raised by commenters are addressed. Compliance with the amendments is mandatory on October 1, 1995.

## II. Commentary Revisions

*Subpart A—General*

Section 226.2—Definitions and Rules of Construction

*2(a) Definitions*

*2(a)(17) Creditor*

*Paragraph 2(a)(17)(i)*

Comment 2(a)(17)(i)–8 clarifies the identity of the creditor for participant loans from an employee savings plan, such as 401(k) plans. The proposal would have clarified that the plan (and not the plan trust or trustee) is the creditor for purposes of the TILA.

Some commenters asked for further guidance when the plan's trust or trustee provide disclosures for the plan's participant loan program. The comment is revised from the proposal for clarity. Creditors should look to the plan (not the trust or trustee) to determine whether the numerical tests for coverage have been met. The person to whom the participant's loan is initially made payable (whether the plan, the trust, or the trustee) is responsible for Regulation Z compliance for participant loans.

Section 226.4—Finance Charge

*4(a) Definition*

Comment 4(a)–1 is revised as proposed to indicate that section 12 of the Real Estate Settlement Procedures Act (RESPA; 12 U.S.C. 2610) prohibits creditors from charging fees for preparing TILA disclosure statements in RESPA-covered transactions. The comments generally supported the revisions.

The Board received a substantial number of comments relating to the proposed revision to comment 4(a)–3 on fees charged by third parties. While most commenters believed that the comment helped clarify the treatment of third-party fees generally, the examples of settlement agent charges, mortgage broker fees, and taxes raised a number of questions.

Creditors had expressed concern about some charges imposed by loan-closing agents being imputed to the creditor. Some had indicated that despite the fact that they require the use of a closing agent (and in limited ways the agent acts on behalf of the creditor), in the modern mortgage lending environment, creditors do not have control over certain fees that may be charged to consumers by these entities, particularly where there is no affiliation between the creditor and the third party, as is often the case. To address this concern, the proposed revision to comment 4(a)–3 provided by example that if a particular fee imposed by a settlement agent is not required or retained by the creditor, the fee is not a finance charge, even though the creditor requires use of a third party.

Comment 4(a)–3, which applies to all types of credit extensions (not just home-purchase or other home-secured loans), is revised in the final version to clarify the general third-party rule. Upon further analysis, guidance about fees charged by settlement agents in real estate-secured transactions is provided in a separate comment 4(a)–4. This new comment gives the general rule for evaluating settlement agent fees, and is followed by an example. Comments previously numbered 4(a)–4 through –6 are now renumbered.

Many commenters also requested further clarification on the example of mortgage broker fees as a finance charge. The proposed clarification responded to questions about the existing mortgage broker fee example, which had been added to address programs offering lower rates and clearly more favorable terms to borrowers who use the creditor's affiliated mortgage broker than to borrowers who apply to the creditor directly. The particular example has been deleted; while the mortgage broker fee charged in this instance is still considered a finance charge, it is a much less common practice today, and therefore has caused confusion. The example of mortgage broker fees is amended to simply reflect the general rule that a fee is a finance charge if the creditor retains the fee.

With regard to taxes, some commenters noted that the commentary addresses in several areas the issue of whether taxes are finance charges. These commenters requested that all comments referring to taxes be consolidated into one comment. To ease compliance, the reference to taxes currently contained in comment 4(a)–3 is removed. The general rules on the treatment of taxes under the TILA are contained in renumbered and revised comment 4(a)–7, formerly comment 4(a)–6. The current reference to taxes under 4(e)–1 has been revised and the current reference to taxes under 4(a)–1 remains unaffected.

*4(c) Charges Excluded From the Finance Charge*

*Paragraph 4(c)(7)*

Comment 4(c)(7)–1 clarifies certain real-estate and residential mortgage

transaction costs that are excluded from the finance charge. In response to commenters' suggestions and upon further analysis, the comment is revised to state that fees excludable under this section include not only the cost of the charges excludable under this section, but also the cost of verifying or confirming information relating to excludable item itself. The previous language specifically stated that a credit report fee included the cost of verifying information in the report. This language was intended to be read only as an example. It is now more clearly shown as such. Verification or confirmation fees, like other excludable charges under this section, must be bona fide and reasonable in amount.

The language addressing lump sum charges has been moved to a new comment, 4(c)(7)–2. This provision has been adopted as proposed, with some revisions for clarity. The comment states that a lump sum charge for conducting or attending a closing (charged, for example, by a lawyer or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in § 226.4(c)(7) (such as reviewing or completing documents), even if other incidental services, such as explaining various documents or disbursing funds for the parties, are performed. This is an exception to the general rule on the treatment of lump sum fees. Most commenters supported the proposal as a clarification of the Board's existing position. Several, however, opposed allowing creditors to exclude fees for incidental services where the charge is primarily for services related to items listed in § 226.4(c)(7), believing that this would result in less accurate disclosures.

Comment 4(c)(7)–3 (proposed as 4(c)(7)–2) has been adopted as proposed, with minor changes for clarity. The comment states that charges excludable under § 226.4(c)(7) are those imposed in connection with the initial decision to grant credit—for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The comment also clarifies that fees for services to be performed during the loan term, for example, to monitor a consumer's continued compliance with contract provisions, such as paying property taxes or purchasing flood insurance, are *not* excludable under § 226.4(c)(7), regardless of when they are paid. These recurring administrative fees, paid by the consumer to protect the creditor's security interest, are finance charges.

Commenters generally agreed with the proposed language. Many, however, had concerns regarding the treatment of fees paid at closing for services attributable *both* to the initial credit decision and to services to be performed periodically over the term of the loan. For example, certain flood certification providers charge a consolidated fee, and it may not be clear to creditors what portion of the fee relates to the services connected with the initial credit decision. The final commentary addresses these concerns by specifying that a creditor may treat the entire charge as a finance charge if the creditor is uncertain of the portion properly attributable to the finance charge. Such sum need not be labelled as an estimate.

*4(e) Certain Security Interest Charges*

Comment 4(e)–1 provides examples of security interest charges that are and are not excludable as finance charges. The proposal stated that only recording fees relating to the obligation between the creditor and the consumer were excludable. Most commenters supported the proposal, although some were opposed. The comment is adopted as proposed, but indicates that fees to record documents such as an assignment between a creditor and a third party are finance charges.

In response to comments and for clarity, the portion of comment 4(e)–1 dealing with taxes has been revised. As discussed above, comment 4(a)–7 (formerly 4(a)–6) contains the general rules on the treatment of taxes.

*Subpart B—Open-End Credit*

Section 226.5—General Disclosure Requirements

*5(b) Time of Disclosures*

*5(b)(1) Initial Disclosures*

Comment 5(b)(1)–1 provides that initial disclosures must be provided before the consumer makes the first purchase under an open-end plan. The comment provides an example to illustrate that when a consumer makes a purchase and opens an account with a retailer contemporaneously, initial disclosures must be given to the consumer at that time.

Comment 5(b)(1)–5 addresses the general rule as it relates to the timing of initial disclosures when a creditor offers consumers an option to transfer outstanding balances with other creditors as part of a preapproval or general solicitation of an open-end credit plan. The proposal required creditors to comply with initial disclosure requirements under § 226.6 before the consumer authorized the balance transfer. The purpose of the proposal was to ensure that consumers receive initial disclosures before the first transaction is made under the plan.

Commenters were divided on the proposal. Several commenters believed that the disclosures required under § 226.5a at the time of solicitation adequately protect and sufficiently inform the consumer about the terms of the credit plan. The initial disclosures required under § 226.6, however, contain important terms that are not included in the solicitation disclosures. For example, the initial disclosures give the cash advance APR, information that could be an important factor in a consumer's decision to authorize a balance transfer. To ease compliance, card issuers that are subject to the requirements of § 226.5a may establish procedures that comply with both sections in a single disclosure statement. Comment 5a–2 provides guidance on the appropriate format for combined disclosures. For example, a creditor could provide the § 226.5a disclosures in a tabular format, along with the additional disclosures required by § 226.6 outside the table.

Other commenters requested an ''opt-out'' provision that would allow card issuers to comply by establishing a procedure under which a consumer could cancel or reverse the balance transfer after receiving initial disclosures. This option raises concerns about the effect such an approach would have on a consumer whose balance with a third party would be paid by the card issuer. It could be difficult to cancel or reverse the balance transfer transaction.

Commenters suggested that a creditor could comply with the initial disclosure requirements under § 226.6 by delaying the requested transfer for a period of time after the initial disclosures are sent. The delay would ensure that the initial disclosures are received by the consumer before the transferred balance is applied to the new plan. Under the revised commentary, a creditor complies with this section if initial disclosures required under § 226.6 are furnished before a balance transfer transaction occurs.

Section 226.6—Initial Disclosure Statement

*6(b) Other Charges*

Comment 6(b)–1 provides guidance for disclosing a termination fee imposed in an open-end credit plan, as proposed. Commenters generally supported the disclosure of a termination fee as an ''other charge.'' Some commenters believed disclosing the fee as a finance charge might better assist consumers in shopping for a credit plan. But this approach would not facilitate consumer

shopping based on the APR, since the APR in the initial disclosures reflects on finance charges based on periodic rates, and thus would not be affected by a termination fee. Furthermore, the consumer would gain little from receiving an APR (disproportionately high in some cases) on what might be the last periodic statement for a fee imposed when the consumer closes the plan.

Section 226.12—Special Credit Card Rules

*12(b) Liability of Cardholder for Unauthorized Use*

Comments 12(b)–2 and –3 address a card issuer's rights and responsibilities in responding to a claim of unauthorized use under § 226.12. Comment 12(b)–2 clarifies that a card issuer is not required to impose any liability. Comment 12(b)–3 clarifies that a card issuer wishing to impose liability must investigate claims in a reasonable manner.

Comment 12(b)–3 lists some of the procedures that may be involved in the investigation of a claim. The procedures involved in conducting a reasonable investigation depend on the facts of the situation; neither a minimum nor a maximum number of steps is required to deem a particular investigation ''reasonable.'' Some commenters expressed concern about card issuers advising consumers that they may be required to appear in a court action. These commenters believed such statements would possibly be misleading and intimidating, and that in any case a court action was independent of a card issuer's investigation. The reference to court appearances has been deleted.

Commenters suggested a variety of other actions that a card issuer may take, in addition to those proposed, in a reasonable investigation of a claim of unauthorized use. The list has been expanded to clarify that a card issuer may request documentation to verify the claim and may request information regarding the cardholder's knowledge of the person who allegedly used the card or of that person's authority to do so.

Many commenters expressed concern that the proposed comment prohibited a card issuer from denying a claim because a cardholder refused to comply with any request for cooperation, such as the failure to submit a signed statement. A card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request. For example, a cardholder may return an unsigned questionnaire about the claim but may refuse to submit a sworn statement. The card issuer may not automatically deny the claim because it is unaccompanied by an affidavit. However, the comment also makes clear that the cardholder's failure to cooperate may affect the card issuer's ability to investigate the claim of unauthorized use. For example, if the cardholder fails to respond to requests for information the card issuer can reasonably obtain only from the cardholder, the comment provides that the card issuer, without further information, may reasonably terminate its investigation.

Section 226.15—Right of Rescission

*15(a) Consumer's Right To Rescind*

*Paragraph 15(a)(1)*

Comments 15(a)(1)–5 and –6 are revised to provide further guidance on the right to rescind a transaction secured by a consumer's principal dwelling. (See also comments 23(a)(1)–3 and –4.)

*15(d) Effects of Rescission*

Comment 15(d)(2)–1 is revised to clarify that if a consumer rescinds a credit transaction, the creditor must refund any broker fee that is part of the credit transaction, even though the consumer paid the fee to the broker rather than to the creditor. (See comment 23(d)(2)–1.)

Section 226.16—Advertising

*16(d) Additional Requirements for Home Equity Plans*

Comment 16(d)–7 clarifies disclosure requirements for balloon payments in home equity plan advertisements. The commentary to § 226.5b(d)(5)(ii) provides that for plans in which a balloon payment will occur if the consumer makes only the minimum payments, the disclosure must state that fact. A comparable requirement applies to advertisements, since the regulatory provisions on treatment of balloon payments in home equity advertising and in disclosures are generally parallel.

A number of commenters thought the proposed comment would require a disclosure about balloon payments in any advertisement for a program in which a balloon payment occurs, regardless of whether the advertisement included a ''trigger term.'' The proposed comment was not intended to impose such a requirement. The comment has been revised to clarify that disclosure is required only if the advertisement contains a statement about a minimum periodic payment. The comment also addresses questions about the required content of the disclosure, including concerns about the effect of the cross-reference to comment 5b(d)(5)(ii)–3.

*Subpart C—Closed-End Credit*

Section 226.17—General Disclosures

*17(a) Form of Disclosures*

*Paragraph 17(a)(1)*

Comment 17(a)(1)–5 is revised to clarify that a late payment fee on a single payment loan is information directly related to the segregated disclosures. The introductory language has been revised to clarify that the list of directly related information is exhaustive.

*17(c) Basis of Disclosures and Use of Estimates*

*Paragraph 17(c)(4)*

Section 226.17(c)(4) allows creditors to disregard in the payment schedule and other calculations any small variations in the first payment due to a long or short first period. Comment 17(c)(4)–4 clarifies that prepaid finance charges, such as ''odd-days'' or ''per-diem'' interest paid at or prior to closing, may not be considered as the first payment on a loan. Thus, ''odd-days'' interest paid at or prior to closing cannot be considered a part of the payment schedule and disregarded as a irregularity in disclosing the finance charges in the payment schedule. The language has been adopted as proposed, with a minor change made to state that the comment applies to ''pre-paid'' and ''odd-days'' interest, using those terms by name.

Commenters favored treating odd-days or per-diem interest collected at closing as being the first payment for the purposes of these ''minor irregularities'' provisions when the consummation date is subject to change outside of the lender's control (for example, in some escrow-closing states). If interest collected at, or prior to, consummation meets the definition of a prepaid finance charge, it must be treated as such.

The regulation does not require creditors to collect odd-days or per-diem interest at, or prior to, consummation. If that interest is collected as part of the first periodic payment, instead, the minor irregularities provisions of § 226.17(c)(4) would apply to the extent the amount is within those parameters.

*17(f) Early Disclosures*

Comment 226.17(f)–1 is revised to clarify that the regulation requires redisclosure not only if the APR, at consummation, differs from the earlier disclosed APR by more than the allowable 1/8 or 1/4 of 1 percent

tolerance, but also if the early disclosures were not marked as estimates, and the terms at consummation, other than the APR, differ from the earlier disclosed terms. Language has been added to the second example to illustrate the case when terms at consummation differ from those previously disclosed, where they were not marked as estimates. To facilitate comparison of the two examples, the dates in the second example have been changed to those stated in the first example. A third example has been added to illustrate circumstances when the regulation does not require redisclosure even though the consummated terms, including the APR, differ from the disclosed terms.

Section 226.18—Content of Disclosures

*18(c) Itemization of Amount Financed*

*Paragraph 18(c)(1)(iv)*

Comment 18(c)(1)(iv)–2 clarifies disclosure requirements under the TILA that are affected by new aggregate accounting rules under the Real Estate Settlement Procedures Act (RESPA; 12 U.S.C. 2601). The comment provides that creditors may use the amount on line 1002 of the HUD–1 or HUD–1A, without adjustment, to calculate the prepaid finance charge under the TILA.

In October 1994, the Department of Housing and Urban Development (HUD), which implements Real Estate Settlement Procedures Act (RESPA; 12 U.S.C. 2601) through Regulation X (24 CFR Part 3500), amended its regulation to implement new procedures for calculating the amount consumers must pay into escrow accounts associated with RESPA-covered home mortgage loans (59 FR 53890, October 26, 1994, and 60 FR 8812, February 15, 1995). These procedures are being phased in over time for existing escrow accounts; all new escrow accounts established on or after April 24, 1995, must comply with the new procedures. Eventually, all lenders will be required to use an aggregate accounting method instead of a single-item method for RESPA transactions. The use of the aggregate method will affect disclosure requirements under Regulation Z.

Currently, in calculating the amounts required to be paid into escrow accounts at closing, most lenders use what is referred to as the single-item analysis. (Property taxes, insurance, and mortgage insurance premiums are common examples of escrow items.) Under single-item analysis, lenders account separately for each item to be collected at closing and held in escrow.

Under the aggregate accounting method, rather than accounting for each item separately, the amount for escrow is determined as a whole. This will make it difficult for a creditor to determine how much of the aggregate amount is actually allocated to each escrow item.

Regardless of how they collect the funds under RESPA, lenders will continue to disclose escrow items on the HUD settlement statement using the single-item analysis. If the amount actually collected at settlement is affected by the aggregate accounting method, the settlement statement will reflect the adjustment on a separate line in the 1000 series (§ 3500.8(c)(1), 60 FR 8816, February 15, 1995). Mortgage insurance premiums, one of the items typically paid at settlement and included in the escrow account, are listed on line 1002 of the HUD statement. This amount is also a prepaid finance charge under Regulation Z.

If a creditor is collecting the settlement charges using aggregate analysis the amount actually collected may be less than the amount listed on line 1002. Guidance had been requested on what amount lenders should use as the prepaid finance charge, since the amount disclosed is not precisely the amount collected. Various alternatives were considered to ensure as accurate and uniform a disclosure as possible. Comment 18(c)(1)(iv)–2 provides that creditors may use the amount on line 1002, without adjustment, to calculate the prepaid finance charge under the TILA. This approach will ease compliance and provide consumers with an easily identifiable amount for the mortgage insurance. While this method does slightly overstate the amount of the prepaid finance charge for mortgage insurance, nonetheless this method seems to provide the more accurate and equitable treatment possible given the problems associated with identifying the amount of any single item in an aggregate accounting analysis.

Commenters generally supported this approach. Several commenters requested further clarification on whether the approach is mandatory, whether the figure used is considered an estimate, and how the tolerance is applied in this situation. A sentence has been added to the comment to clarify that the Board is deeming the figure used on the HUD–1 or HUD–1A as accurate, for purposes of Regulation Z, as long as that amount is computed in accordance with RESPA. Accordingly, the figure is not considered an estimate, and the tolerance would apply as it does for all other figures disclosed under Regulation Z. As long as the figure disclosed is accurate for purposes of RESPA, the figure is accurate to determine the finance charge tolerance. The approach is mandatory for all loans closed using the aggregate accounting method required by RESPA.

*18(d) Finance Charge*

Comment 18(d)–2 has been adopted as proposed, with some minor revisions for clarity. The comment states that although there is no specific tolerance for the amount financed, an error in that figure—resulting from an error in the finance charge—does not violate the act or the regulation provided the finance charge disclosed under § 226.18(d) is within the permissible tolerance provided in footnote 41 of the regulation. This same interpretation applies to other disclosures for which the regulation provides no specific tolerance, such as the total of payments.

Most commenters were in favor of the proposal. Views were split among those commenters opposing the proposal. Some suggested that a maximum tolerance of $10 was insufficient to adequately protect lenders. Several others opposed any tolerance for errors in the amount financed or the other disclosures that was not currently addressed in the regulation.

Several commenters pointed out that the language suggested the error must result from an error in the finance charge ''that constitutes a part of the amount financed.'' This phrase has been deleted as unnecessary.

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

*19(b) Certain Variable-Rate Transactions*

*Paragraph 19(b)(2)(vii)*

Comment 19(b)(2)(vii)–2, with the exception of a few technical changes, is adopted as proposed. It states that loans with more than one way to trigger negative amortization are separate variable-rate loan programs requiring separate disclosures to the extent they vary from each other. For example, a loan which provides for monthly interest rate changes but only annual payment changes and an option for the borrower to cap the amount of monthly payments whenever the new payment would exceed the old payment by more than a certain margin, contains two separate variable-rate programs. Each program may trigger negative amortization requiring separate disclosures. (See comments 226.19(b)(2)–2 and –3 for a discussion on the definition of a variable-rate program and consolidation of disclosures for more than one program.)

For the program that gives the borrower an option to cap monthly payments, the creditor must fully disclose the rules relating to the payment cap option, including the effects of exercising it (such as negative amortization occurs and that the principal balance will increase), except that the disclosure in § 226.19(b)(2)(viii) need not be given for the option.

Section 226.22—Determination of the Annual Percentage Rate

*22(a) Accuracy of the Annual Percentage Rate*

*Paragraph 22(a)(1)*

Comment 22(a)(1)–5 corrects an erroneous footnote reference.

Section 226.23—Right of Rescission

*23(a) Consumer's Right To Rescind*

*Paragraph 23(a)(1)*

Comment 23(a)(1)–4, which contains an exception to the ''one principal dwelling'' rule in comment 23(a)(1)–3, is revised. Under the exception, a consumer may have, in effect, two principal dwellings for a time. Even if a consumer is acquiring or constructing a new principal dwelling, any loan subject to Regulation Z may be rescinded when the consumer's current principal dwelling secures the loan. A typical example is a bridge loan.

The proposed comment provided, by example, that a loan secured by the new home and the current home is a residential mortgage transaction. While many commenters agreed with the proposal, some viewed it as a change in the existing interpretation. Upon further analysis, the proposed example would negate the exception to the general rule. The existing language of comment 23(a)(1)–4 has been retained with language and examples added for clarification. Accordingly, even if a loan is a purchase-money loan secured by the new home (that is, a residential mortgage transaction) where that loan also is secured by the consumer's current home, the loan is rescindable.

*23(d) Effects of Rescission*

*Paragraph 23(d)(2)*

Comment 23(d)(2)–1 has been revised to clarify that if a consumer rescinds a credit transaction, the creditor must refund to the consumer any broker fee that is part of the credit transaction, even though the consumer paid the fee to the broker rather than to the creditor. Several commenters expressed concern that the literal language of the comment could be construed to encompass a fee paid to a broker who did not participate in the credit transaction. Some commenters wanted broker fees covered only to the extent that the lender required the use of a broker. Creditors must refund to the consumer any broker's fee paid as part of the credit transaction, whether or not the creditor required the use of a broker.

*(23)(f) Exempt Transactions*

*Paragraph (23)(f)(4)*

Comment 23(f)–4 clarifies that § 226.23(f)(2) exempts from the right of rescission refinancings by original creditors—to whom a written agreement was originally payable. Therefore, if a consumer refinances with any other creditor, the general rescission model form (model form H–8) is the appropriate form to provide to the consumer.

Several commenters opposed the proposal, which they believe would result in an anomaly. That is, if the original creditor assigns the mortgage to a third party and the consumer returns to the original creditor to refinance (with no new advances), the original creditor would be excused from providing the consumer with the right of rescission.

In certain circumstances the application of this rule may produce an anomalous result. Nevertheless, this interpretation is required by section 103(f) of the act and § 226.2(a)(17) of the regulation, which define ''creditor'' as ''* * * the person to whom the debt arising from the consumer credit transaction is initially payable.* * *''.

The comment also clarifies that in a merger, consolidation or acquisition, the acquiring creditor would be considered the original creditor for purposes of the exemption in § 226.23(f)(2). For example, if two lending institutions merge, the resulting institution is considered the original creditor for refinancing mortgages previously originated by either of the two institutions. Accordingly, the new institution may use model form H–9 if new money is advanced. (See comment 2(a)(25)–6.)

Appendix J—Annual Percentage Rate Computations for Closed-End Credit Transactions

As proposed, the Board has revised the *1981 changes* paragraph in the reference section to make a technical correction to the second sentence.

**List of Subjects in 12 CFR Part 226**

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR part 226 as follows:

## PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

**Authority:** 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Section 226.2—Definitions and Rules of Construction,* under *Paragraph 2(a)(17)(i).,* paragraph 8. is revised to read as follows:

**Supplement I—Official Staff Interpretations**

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**Subpart A—General**

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*Section 226.2—Definitions and Rules of Construction*

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Paragraph 2(a)(17)(i).

* * * * *

8. *Loans from employee savings plan.* Some employee savings plans permit participants to borrow money up to a certain percentage of their account balances, and use a trust to administer the receipt and disbursement of funds. Unless each participant's account is an individual plan and trust, the creditor should apply the numerical tests to the plan as a whole rather than to the individual account, even if the loan amount is determined by reference to the balance in the individual account and the repayments are credited to the individual account. The person to whom the obligation is originally made payable (whether the plan, the trust, or the trustee) is the creditor for purposes of the act and regulation.

* * * * *

3. In Supplement I to Part 226, under *Section 226.4—Finance Charge,* the following amendments are made:

a. Under *4(a) Definition.,* paragraphs 1., and 3. are revised, paragraphs 4., 5., and 6 are redesignated as paragraphs 5., 6., and 7., a new paragraph 4. is added, and newly designated paragraph 7. is revised;

b. Under *Paragraph 4(c)(7).,* paragraph 1. is revised and new paragraphs 2. and 3. are added; and

c. Under *(4)(e) Certain security interest charges.,* paragraph 1. is revised.

The revisions and additions read as follows:

* * * * *

*Section 226.4—Finance Charge*

*4(a) Definition.*

1. *Charges in comparable cash transactions.* Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a

finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service.

i. For example, the following items are not finance charges:

A. Taxes, license fees, or registration fees paid by both cash and credit customers.

B. Discounts that are available to cash and credit customers, such as quantity discounts.

C. Discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular financial institution. This is the case even if an individual must pay cash to obtain the discount, provided that credit customers who are members of the group and do not qualify for the discount pay no more than the nonmember cash customers.

D. Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to or required of both cash and credit customers for the same price.

ii. In contrast, the following items are finance charges:

A. Inspection and handling fees for the staged disbursement of construction loan proceeds.

B. Fees for preparing a Truth in Lending disclosure statement, if permitted by law (for example, the Real Estate Settlement Procedures Act prohibits such charges in certain transactions secured by real property).

C. Charges for a required maintenance or service contract imposed only in a credit transaction.

iii. If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge. For example:

A. If an escrow agent is used in both cash and credit sales of real estate and the agent's charge is $100 in a cash transaction and $150 in a credit transaction, only $50 is a finance charge.

2. Costs of doing business. * * *

3. *Charges by third parties.* Charges imposed on the consumer by someone other than the creditor are finance charges (unless otherwise excluded) if the creditor requires the use of a third party as a condition of or incident to the extension of credit, even if the consumer can choose the third party, or the creditor retains the charge. For example:

i. The cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

ii. A mortgage broker fee, to the extent that the broker shares the fee with the creditor.

4. *Charges by settlement agents.* Charges imposed on the consumer by a settlement agent (such as an attorney, escrow agent, or title company) are finance charges only if the creditor requires the particular services for which the settlement agent is charging the borrower and the charge for those services is not otherwise excluded from the finance charge. For example, a fee for courier service charged by a settlement agent to send a document to the title company or some other party is not a finance charge, provided that the creditor has not required the use of a courier or retained the charge.

5. *Forfeitures of interest.* * * *

6. *Treatment of fees for use of automated teller machines.* * * *

7. *Taxes.* i. Generally, a tax imposed by a state or other governmental body solely on a creditor is a finance charge if the creditor separately imposes the charge on the consumer.

ii. In contrast, a tax is not a finance charge (even if the tax is collected by the creditor) if applicable law imposes the tax:

A. Solely on the consumer;

B. On the creditor and the consumer jointly;

C. On the credit transaction, without indicating which party is liable for the tax; or

D. On the creditor, if applicable law directs or authorizes the creditor to pass the tax on to the consumer. (For purposes of this section, if applicable law is silent as to passing on the tax, the law is deemed not to authorize passing it on.)

iii. For example, a stamp tax, property tax, intangible tax, or any other state or local tax imposed on the consumer, or on the credit transaction, is not a finance charge even if the tax is collected by the creditor.

iv. In addition, a tax is not a finance charge if it is excluded from the finance charge by an other provision of the regulation or commentary (for example, if the tax is imposed uniformly in cash and credit transactions).

* * * * *

*Paragraph 4(c)(7).*

1. *Real estate or residential mortgage transaction charges.* The list of charges in § 226.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit report fees cover not only the cost of the report, but also the cost of verifying information in the report. In all cases, charges excluded under § 226.4(c)(7) must be bona fide and reasonable.

2. *Lump sum charges.* If a lump sum charged for several services includes a charge that is not excludable, a portion of the total should be allocated to that service and included in the finance charge. However, a lump sum charged for conducting or attending a closing (for example, by a lawyer or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in § 226.4(c)(7) (for example, reviewing or completing documents), even if other incidental services such as explaining various documents or disbursing funds for the parties are performed. The entire charge is excluded even if a fee for the incidental services would be a finance charge if it were imposed separately.

3. *Charges assessed during the loan term.* Real estate or residential mortgage transaction charges excluded under § 226.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically during the loan term, regardless of when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax lien status or flood insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

* * * * *

*(4)(e) Certain security interest charges.*

1. *Examples.*

i. *Excludable charges.* Sums must be actually paid to public officials to be excluded from the finance charge under § 226.4(e)(1). Examples are charges or other fees required for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents, and intangible property or other taxes imposed by the state solely on the creditor and payable by the consumer (if the tax must be paid to record a security agreement).

ii. *Charges not excludable.* If the obligation is between the creditor and a third party (an assignee, for example), charges or other fees for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents relating to that obligation are not excludable from the finance charge under this section.

* * * * *

4. In Supplement I to Part 226, under *Section 226.5—General Disclosure Requirements,* under *5(b)(1) Initial disclosures.*, in paragraph 1., the first and second sentences are revised, and a new paragraph 5. is added to read as follows:

* * * * *

**Subpart B—Open-End Credit**

*Section 226.5—General Disclosure Requirements*

* * * * *

*5(b)(1) Initial disclosures.*

1. *Disclosure before the first transaction.* The rule that the initial disclosure statement must be furnished ''before the first transaction'' requires delivery of the initial disclosure statement before the consumer becomes obligated on the plan. For example, the initial disclosures must be given before the consumer makes the first purchase (such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store), receives the first advance, or pays any fees or charges under the plan other than an application fee or refundable membership fee (see below).* * *

* * * * *

5. *Balance transfers.* A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must comply with § 226.6 before the balance transfer occurs. Card issuers that are subject to the requirements of § 226.5a may establish procedures that comply with both sections in a single disclosure statement.

* * * * *

5. In Supplement I to Part 226, under *Section 226.6—Initial Disclosure Statement*, under *6(b) Other charges.*, paragraph 1. is revised to read as follows:

* * * * *

*Section 226.6—Initial Disclosure Statement*

* * * * *

*6(b) Other charges.*

1. *General; examples of other charges.* Under § 226.6(b), significant charges related to the plan (that are not finance charges) must also be disclosed. For example:

i. Late payment and over-the-credit-limit charges.

ii. Fees for providing documentary evidence of transactions requested under § 226.13 (billing error resolution).

iii. Charges imposed in connection with real estate transactions such as title, appraisal, and credit report fees (see § 226.4(c)(7)).

iv. A tax imposed on the credit transaction by a state or other governmental body, such as a documentary stamp tax on cash advances (see the commentary to § 226.4(a)).

v. A membership or participation fee for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union is not an ''other charge,'' even if membership is required to apply for credit.

vi. Automated teller machine (ATM) charges described in comment 4(a)–5 that are not finance charges.

vii. Charges imposed for the termination of an open-end credit plan.

* * * * *

6. In Supplement I to Part 226, under *Section 226.12—Special Credit Card Provisions*, under *12(b) Liability of cardholder for unauthorized use.*, new paragraphs 2. and 3. are added to read as follows:

* * * * *

*Section 226.12—Special Credit Card Provisions*

* * * * *

12(b) Liability of cardholder for unauthorized use.

* * * * *

2. *Imposing liability.* A card issuer is not required to impose liability on a cardholder for the unauthorized use of a credit card; if the card issuer does not seek to impose liability, the issuer need not conduct any investigation of the cardholder's claim.

3. *Reasonable investigation.* If a card issuer seeks to impose liability when a claim of unauthorized use is made by a cardholder, the card issuer must conduct a reasonable investigation of the claim. In conducting its investigation, the card issuer may reasonably request the cardholder's cooperation. The card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request; however, if the card issuer otherwise has no knowledge of facts confirming the unauthorized use, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation. The procedures involved in investigating claims may differ, but actions such as the following represent steps that a card issuer may take, as appropriate, in conducting a reasonable investigation:

i. Reviewing the types or amounts of purchases made in relation to the cardholder's previous purchasing pattern.

ii. Reviewing where the purchases were delivered in relation to the cardholder's residence or place of business.

iii. Reviewing where the purchases were made in relation to where the cardholder resides or has normally shopped.

iv. Comparing any signature on credit slips for the purchases to the signature of the cardholder or an authorized user in the card issuer's records, including other credit slips.

v. Requesting documentation to assist in the verification of the claim.

vi. Requesting a written, signed statement from the cardholder or authorized user.

vii. Requesting a copy of a police report, if one was filed.

viii. Requesting information regarding the cardholder's knowledge of the person who allegedly used the card or of that person's authority to do so.

* * * * *

7. In Supplement I to Part 226, under Section 226.15 —Right of Rescission, the following amendments are made:

a. Under *Paragraph 15(a)(1).*, paragraph 5. is revised;

b. Under *Paragraph 15(a)(1).*, paragraph 6. is revised; and

c. Under *Paragraph 15(d)(2).*, in paragraph 1., the third sentence is revised.

The additions and revisions read as follows:

* * * * *

*Section 226.15—Right of Rescission*

* * * * *

*Paragraph 15(a)(1).*

* * * * *

5. *Principal dwelling.* A consumer can only have one principal dwelling at a time. (But see comment 15(a)(1)–6.) A vacation or other second home would not be a principal dwelling. A transaction secured by a second home (such as a vacation home) that is not currently being used as the consumer's principal dwelling is not rescindable, even if the consumer intends to reside there in the future. When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling if it secures the open-end credit line. In that case, the transaction secured by the new dwelling is a residential mortgage transaction and is not rescindable. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, an advance on an open-end line to finance B and secured by B is a residential mortgage transaction. Dwelling, as defined in § 226.2, includes structures that are classified as personalty under state law. For example, a transaction secured by a mobile home, trailer, or houseboat used as the consumer's principal dwelling may be rescindable.

6. *Special rule for principal dwelling.* Notwithstanding the general rule that consumers may have only one principal dwelling, when the consumer is acquiring or constructing a new principal dwelling, a credit plan or extension that is subject to Regulation Z and is secured by the equity in the consumer's current principal dwelling is subject to the right of rescission regardless of the purpose of that loan (for example, an advance to be used as a bridge loan). For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a loan to finance B and secured by A is subject to the right of rescission. Moreover, a loan secured by both A and B is, likewise, rescindable.

* * * * *

*Paragraph 15(d)(2).*

1. *Refunds to consumer.* * * * ''Any amount'' includes finance charges already accrued, as well as other charges such as broker fees, application and commitment fees, or fees for a title search or appraisal, whether paid to the creditor, paid by the consumer directly to a third party, or passed on from the creditor to the third party. * * *

* * * * *

8. In Supplement I to Part 226, under *Section 226.16—Advertising*, under *16(d) Additional Requirements for Home Equity Plans*, a new paragraph 7. is added to read as follows:

* * * * *

*Section 226.16—Advertising*

* * * * *

16(d) Additional Requirements for Home Equity Plans.

* * * * *

7. *Balloon payment.* In some programs, a balloon payment will occur if only the minimum payments under the plan are made. If an advertisement for such a program contains any statement about a minimum periodic payment, the advertisement must also state that a balloon payment will result (not merely that a balloon payment ''may'' result). (See comment 5b(d)(5)(ii)–3 for guidance on items not required to be stated in the advertisement, and on situations in which the balloon payment requirement does not apply.)

* * * * *

9. In Supplement I to Part 226, under *Section 226.17—General Disclosure*

*Requirements,* the following amendments are made:

a. Under *Paragraph 17(a)(1).,* paragraph 5. is revised;

b. Under *Paragraph 17(c)(4).,* a new paragraph 4. is added; and

c. Under *17(f) Early disclosures.,* paragraph 1. is revised.

The revisions and additions read as follows:

* * * * *

**Subpart C—Closed-End Credit**

*Section 226.17—General Disclosure Requirements*

* * * * *

*Paragraph 17(a)(1).*

* * * * *

5. *Directly related.* The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. The following is directly related information:

i. A description of a grace period after which a late payment charge will be imposed. For example, the disclosure given under § 226.18(l) may state that a late charge will apply to ''any payment received more than 15 days after the due date.''

ii. A statement that the transaction is not secured. For example, the creditor may add a category labelled ''unsecured'' or ''not secured'' to the security interest disclosures given under § 226.18(m).

iii. The basis for any estimates used in making disclosures. For example, if the maturity date of a loan depends solely on the occurrence of a future event, the creditor may indicate that the disclosures assume that event will occur at a certain time.

iv. The conditions under which a demand feature may be exercised. For example, in a loan subject to demand after five years, the disclosures may state that the loan will become payable on demand in five years.

v. An explanation of the use of pronouns or other references to the parties to the transaction. For example, the disclosures may state, '''You' refers to the customer and 'we' refers to the creditor.''

vi. Instructions to the creditor or its employees on the use of a multiple-purpose form. For example, the disclosures may state, ''Check box if applicable.''

vii. A statement that the borrower may pay a minimum finance charge upon prepayment in a simple-interest transaction. For example, when state law prohibits penalties, but would allow a minimum finance charge in the event of prepayment, the creditor may make the § 226.18(k)(1) disclosure by stating, ''You may be charged a minimum finance charge.''

viii. A brief reference to negative amortization in variable-rate transactions. For example, in the variable-rate disclosure, the creditor may include a short statement such as ''Unpaid interest will be added to principal.'' (See the commentary to § 226.18(f)(1)(iii).)

ix. A brief caption identifying the disclosures. For example, the disclosures may bear a general title such as ''Federal Truth in Lending Disclosures'' or a descriptive title such as ''Real Estate Loan Disclosures.''

x. A statement that a due-on-sale clause or other conditions on assumption are contained in the loan document. For example, the disclosure given under § 226.18(q) may state, ''Someone buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms.''

xi. If a state or Federal law prohibits prepayment penalties and excludes the charging of interest after prepayment from coverage as a penalty, a statement that the borrower may have to pay interest for some period after prepayment in full. The disclosure given under § 226.18(k) may state, for example, ''If you prepay your loan on other than the regular installment date, you may be assessed interest charges until the end of the month.''

xii. More than one hypothetical example under § 226.18(f)(1)(iv) in transactions with more than one variable-rate feature. For example, in a variable-rate transaction with an option permitting consumers to convert to a fixed-rate transaction, the disclosures may include an example illustrating the effects on the payment terms of an increase resulting from conversion in addition to the example illustrating an increase resulting from changes in the index.

xiii. The disclosures set forth under § 226.18(f)(1) for variable-rate transactions subject to § 226.18(f)(2).

xiv. A statement whether or not a subsequent purchaser of the property securing an obligation may be permitted to assume the remaining obligation on its original terms.

xv. A late-payment fee disclosure under § 226.18(l) on a single payment loan.

* * * * *

*Paragraph 17(c)(4).*

* * * * *

4. *Relation to prepaid finance charges.* Prepaid finance charges, including ''odd-days'' or ''per-diem'' interest, paid prior to or at closing may not be treated as the first payment on a loan. Thus, creditors may not disregard an irregularity in disclosing such finance charges.

* * * * *

*17(f) Early disclosures.*

1. *Change in rate or other terms.* Rediscloure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in § 226.22(a) (⅛ of 1 percentage point in regular transactions and ¼ of 1 percentage point in irregular transactions). Rediscloure is also required, even if the annual percentage rate is within the permitted tolerance, if the disclosures were not based on estimates in accordance with § 226.17(c)(2) and labelled as such. To illustrate:

i. If disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than ⅛ of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Rediscloure is required even if the disclosures made on July 1 are based on estimates and marked as such;

ii. If disclosures are made on July 1, the transaction is consummated on July 15, and the finance charge increased by $35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms that were not marked as estimates. (See § 226.18(d) and footnote 41 of this part); and

iii. If early disclosures are marked as estimates and the disclosed annual percentage rate is within tolerance at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

* * * * *

10. In Supplement I to Part 226, under *Section 226.18—Content of Disclosures,* the following amendments are made:

a. Under *Paragraph 18(c)(1)(iv).,* a new paragraph 2. is added; and

b. Under *18(d) Finance charge.,* paragraph 2. is revised.

The additions and revisions read as follows:

* * * * *

*Section 226.18—Content of Disclosures*

* * * * *

*Paragraph 18(c)(1)(iv).*

* * * * *

2. *Prepaid mortgage insurance premiums.* RESPA requires creditors to give consumers a settlement statement disclosing the costs associated with mortgage loan transactions. Included on the settlement statement are mortgage insurance premiums collected at settlement, which are prepaid finance charges. In calculating the total amount of prepaid finance charges, creditors should use the amount for mortgage insurance listed on the line for mortgage insurance on the settlement statement (line 1002 on HUD–1 or HUD 1–A), without adjustment, even if the actual amount collected at settlement may vary because of RESPA's escrow accounting rules. Figures for mortgage insurance disclosed in conformance with RESPA shall be deemed to be accurate for purposes of Regulation Z.

*18(d) Finance charge.*

* * * * *

2. *Tolerance.* A tolerance for the finance charge is provided in footnote 41 of this part. When a miscalculation of the amount financed, or of some other numerical disclosure for which the regulation provides no specific tolerance, results from an error in a finance charge, the miscalculated amount financed or other numerical disclosure does not violate the act or the regulation if the finance charge disclosed under § 226.18(d) is within the permissible tolerance under footnote 41 of this part.

* * * * *

11. In Supplement I to Part 226, under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions,* under paragraph

*19(b)(2)(vii).*, paragraph 2. is revised to read as follows:

*Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*

* * * * *

*Paragraph 19(b)(2)(vii).*

* * * * *

2. *Negative amortization and interest rate carryover.* A creditor must disclose, where applicable, the possibility of negative amortization. For example, the disclosure might state, ''If any of your payments is not sufficient to cover the interest due, the difference will be added to your loan amount.'' Loans that provide for more than one way to trigger negative amortization are separate variable-rate programs requiring separate disclosures. (See the commentary to § 226.19(b)(2) for a discussion on the definition of a variable-rate loan program and the format for disclosure.) If a consumer is given the option to cap monthly payments that may result in negative amortization, the creditor must fully disclose the rules relating to the option, including the effects of exercising the option (such as negative amortization will occur and the principal loan balance will increase); however, the disclosure in § 226.19(b)(2)(viii) need not be provided.

* * * * *

12. In Supplement I to Part 226, under *Section 226.22—Determination of the Annual Percentage Rate,* under *Paragraph 22(a)(1).*, in paragraph 5., the reference ''Footnote 45a'' is revised to read ''Footnote 45d''.

13. In Supplement I to Part 226, under *Section 226.23—Right of Rescission,* the following amendments are made:

a. Under *Paragraph 23(a)(1).*, paragraph 3.is revised;

b. Under *Paragraph 23(a)(1).*, paragraph 4. is revised;

c. Under *Paragraph 23(d)(2).*, in paragraph 1., the third sentence is revised; and

d. Under *23(f) Exempt transactions.*, in paragraph 4., two new sentences are added following the first sentence, and a new sentence is added at the end of the paragraph.

The additions and revisions read as follows:

* * * * *

*Section 226.23—Right of Rescission*

* * * * *

*Paragraph 23(a)(1).*

* * * * *

3. *Principal dwelling.* A consumer can only have one principal dwelling at a time. (But see comment 23(a)(1)–4.) A vacation or other second home would not be a principal dwelling. A transaction secured by a second home (such as a vacation home) that is not currently being used as the consumer's principal dwelling is not rescindable, even if the consumer intends to reside there in the future. When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling if it secures the acquisition or construction loan. In that case, the transaction secured by the new dwelling is a residential mortgage transaction and is not rescindable. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a construction loan to finance B and secured by B is a residential mortgage transaction. Dwelling, as defined in § 226.2, includes structures that are classified as personalty under state law. For example, a transaction secured by a mobile home, trailer, or houseboat used as the consumer's principal dwelling may be rescindable.

4. *Special rule for principal dwelling.* Notwithstanding the general rule that consumers may have only one principal dwelling, when the consumer is acquiring or constructing a new principal dwelling, any loan subject to Regulation Z and secured by the equity in the consumer's current principal dwelling (for example, a bridge loan) is subject to the right of rescission regardless of the purpose of that loan. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a construction loan to finance B and secured by A is subject to the right of rescission. A loan secured by both A and B is, likewise, rescindable.

* * * * *

*Paragraph 23(d)(2).*

1. *Refunds to consumer.* * * * ''Any amount'' includes finance charges already accrued, as well as other charges, such as broker fees, application and commitment fees, or fees for a title search or appraisal, whether paid to the creditor, paid directly to a third party, or passed on from the creditor to the third party. * * *

* * * * *

*23(f) Exempt transactions.*

* * * * *

4. *New advances.* * * * The original creditor is the creditor to whom the written agreement was initially made payable. In a merger, consolidation or acquisition, the successor institution is considered the original creditor for purposes of the exemption in § 226.23(f)(2). * * * The general rescission notice (model form H–8) is the appropriate form for use by creditors not considered original creditors in refinancing transactions.

* * * * *

14. In Supplement I to Part 226, under Appendix J, under the heading References, under *1981 changes:*, the last sentence is revised to read as follows:

* * * * *

Appendix J—Annual Percentage Rate Computations for Closed-End Credit Transactions

* * * * *

References

* * * * *

*1981 changes:* * * * Paragraph (b)(5)(vi) has been revised to permit creditors in single-advance, single-payment transactions in which the term is less than a year and is equal to a whole number of months, to use either the 12-month method or the 365-day method to compute the number of unit-periods per year.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, March 28, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–8071 Filed 3–31–95; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 94–ANE–17; Amendment 39–9182; AD 95–07–03]**

## Airworthiness Directives; AlliedSignal Aerospace GTCP85 Series Auxiliary Power Units

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Aerospace (formerly Garrett Auxiliary Power Division and Garrett Turbine Engine Co.) GTCP85 series auxiliary power units (APU), that requires modifying the APU to install an exhaust centerbody. This amendment is prompted by reports of two uncontained APU failures where turbine wheel fragments exited the APU exhaust axially and damaged the aircraft. The actions specified by this AD are intended to prevent an axially uncontained APU failure and damage to the aircraft.

**DATES:** Effective May 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 3, 1995.

**ADDRESSES:** The service information referenced in this AD may be obtained from AlliedSignal Aerospace Services, P.O. Box 52170, Phoenix, AZ 85072–2170, Attn: Dept. 65–71, Mailstop 1802–AA. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5245; fax (310) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal Aerospace (formerly Garrett Auxiliary Power Division and Garrett Turbine Engine Co.) GTCP85 series auxiliary power units (APU) was published in the **Federal Register** on July 28, 1994 (59 FR 38384). That action proposed to require modifying the APU to install an exhaust centerbody to contain turbine wheel fragments from exiting the APU axially. Due to the increased risk associated with airborne failures, flight operable APU's would be required to be modified within 24 months after the effective date of the AD, and within 36 months after the effective date of this AD for APU's that are ground operable only. These actions would be performed in accordance with AlliedSignal Aerospace Alert Service Bulletin (ASB) No. GTCP85–49–A6831, dated March 17, 1994, applicable to APU's installed on McDonnell Douglas DC–9/MD–80 series aircraft, and AlliedSignal Aerospace Service Bulletin (SB) No. GTCP85–49–6919, dated May 17, 1994, applicable to APU's installed on several other aircraft makes and models.

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

One commenter states that the APU's installed on Boeing 737 series aircraft should not be affected by this AD because APU turbine rotor axial uncontainment does not pose a hazard to Boeing 737 series aircraft. The FAA concurs and has revised the AD accordingly.

One commenter states that the APU's installed on British Aerospace BAC 1–11 series aircraft should also not be affected by this AD because APU turbine rotor axial uncontainment does not pose a hazard to British Aerospace BAC 1–11 series aircraft. The FAA concurs and has revised the AD accordingly.

One commenter states that the AD should be applicable only to APU's with the cast material MAR–M–247 turbine wheel, as only these turbine wheels have experienced uncontained failures. The FAA concurs and the applicability paragraph of this final rule has been revised accordingly.

Two commenters state that the AD should clearly specify the APU model numbers affected and agree with the model numbers listed in the applicable service bulletins. The FAA concurs and the applicability paragraph of this final rule has been revised accordingly.

One commenter states that the AD should not be applicable to APU's installed on Boeing 727 aircraft, as the APU is ground operable only. The FAA does not concur. An APU turbine wheel axial uncontainment may pose an unsafe condition even with the aircraft on the ground.

One commenter states that the AlliedSignal Aerospace ASB No. GTCP85–49–A6707, mandated by AD 93–07–13, provides adequate containment capability, and that requiring implementation of AlliedSignal Aerospace SB No. GTCP85–49–6919 is unnecessary. The FAA does not concur. Airworthiness directive 93–07–13 mandates compliance with Garrett SB No. GTCP85–49–A6706, not AlliedSignal Aerospace ASB No. GTCP85–49–A6707 (Garrett has recently undergone a name change to AlliedSignal Aerospace). Even reading the comment as referring to AlliedSignal Aerospace ASB No. GTCP85–49–A6707, that SB only addresses radial, not axial, uncontainment. AlliedSignal Aerospace SB No. GTCP85–49–6919 addresses axial uncontainment.

One commenter states that the final rule should allow use of subsequent revisions to the SB's in order to avoid unnecessary alternate method of compliance requests. The FAA does not concur. If the SB's incorporated by reference in this AD are further revised, those revisions can be reviewed by the FAA in advance of publication and authorized as constituting alternate methods of compliance, thereby alleviating the need for each individual operator to obtain a separate approval to use the revised SB. Until those future revisions exist, however, the FAA cannot incorporate them into this AD.

One commenter states that the AD should not be applicable to APU's with the standard two-piece turbine wheel. The two-piece turbine wheel has not experienced the failure mode addressed in the AD. The FAA concurs and has revised the applicability paragraph to limit the AD to APU's equipped with one-piece cast turbine wheels.

Two commenters concur with the rule as proposed.

Since issuance of the NPRM, the FAA has increased its labor estimate to $60 per work hour. The economic analysis of this AD has been revised accordingly.

In addition, AlliedSignal Aerospace has issued Revision 1 to SB No. GTCP85–49–6919, and ASB No. GTCP85–49–A6831, both dated January 15, 1995. This final rule now references these revised service documents.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 3,000 APU's of the affected design in the worldwide fleet. The FAA estimates that 1,500 APU's installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per APU to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $7,055 per APU if the exhaust duct is not reworkable, $3,254 per APU if the exhaust duct is reworkable, and the FAA estimates that 1,050 domestic APU's are reworkable. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,041,450.

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

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

**List of Subjects in 14 CFR Part 39**

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**95–07–03 AlliedSignal Aerospace:** Amendment 39–9182. Docket 94–ANE–17.

*Applicability:* AlliedSignal Aerospace (formerly Garrett Auxiliary Power Division and Garrett Turbine Engine Co.) GTCP85 series auxiliary power units (APU's) with model numbers listed in AlliedSignal Aerospace Service Bulletin (SB) No. GTCP85–49–6919, Revision 1, dated January 15, 1995, except those APU's installed on Boeing 737 and British Aerospace BAC 1–11 series aircraft; and Alert Service Bulletin (ASB) No. GTCP85–49–A6831, Revision 1, dated January 15, 1995, having a one-piece cast turbine rotor with part numbers (P/N) 3842072–1, -2, -3, and P/N 3604604–1, -2, -3, P/N 3606982–1, and P/N 96895–1 through -8. These APU's are installed on but not limited to Boeing 707 series and 727 series aircraft; Lockheed L382 series aircraft; and McDonnell Douglas DC–8–70 series and DC–9/MD–80 series aircraft.

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

To prevent an axially uncontained APU failure and damage to the aircraft, accomplish the following:

(a) For flight-operable APU's, within 24 months after the effective date of this airworthiness directive (AD), install an exhaust centerbody in accordance with AlliedSignal Aerospace ASB No. GTCP85–49–A6831, Revision 1, dated January 15, 1995, or ASB No. GTCP85–49–A6831, dated March 17, 1994; or SB No. GTCP85–49–6919, Revision 1, dated January 15, 1995, or SB No. GTCP85–49–6919, dated May 17, 1994, as applicable.

(b) For APU's that are ground-operable only, within 36 months after the effective date of this AD, install an exhaust centerbody in accordance with AlliedSignal Aerospace SB No. GTCP85–49–6919, Revision 1, dated January 15, 1995, or SB No. GTCP85–49–6919, dated May 17, 1994.

(c) No action is required if the APU is installed on a Boeing 737 or British Aerospace BAC 1–11 series aircraft until the APU is removed and installed on a different type aircraft.

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

(e) 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.

(f) The installation of the exhaust center body shall be done in accordance with the following service documents:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| ASB No. GTCP85–49–A6831 | | | |
| Revision Transmittal Sheet | 1 | 1 | January 15, 1995. |
| | 1 | 1 | January 15, 1995. |
| | 2–5 | Original | May 17, 1994. |
| | 6 | 1 | January 15, 1995. |
| | 7–8 | Original | May 17, 1994. |
| | 9–10 | 1 | January 15, 1995. |
| Total pages: 11. | | | |
| SB No. GTCP85–49–6919 | 1 | 1 | January 15, 1995. |
| | 2 | Original | May 17, 1994. |
| | 3 | 1 | January 15, 1995. |
| | 4 | Original | May 17, 1994. |
| | 5 | 1 | January 15, 1995. |
| | 6 | Original | May 17, 1994. |
| | 7–10 | 1 | January 15, 1995. |
| Total Pages: 10. | | | |

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 AlliedSignal Aerospace Services, P.O. Box 52170, Phoenix, AZ 85072–2170, Attn: Dept. 65–71, Mailstop 1802–AA. 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.

(g) This amendment becomes effective on May 3, 1995.

Issued in Burlington, Massachusetts, on March 23, 1995.

**James C. Jones,**

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

[FR Doc. 95–7682 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–13–P

## 14 CFR Part 39

**[Docket No. 94–ANE–46; Amendment 39–9178; AD 94–26–07]**

## Airworthiness Directives; AlliedSignal Inc. TPE331 Series Turboprop Engines

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

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

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 94–26–07 that was sent previously to all known U.S. owners and operators of AlliedSignal Inc. TPE331 series turboprop engines by individual letters. This AD requires an amendment to the Emergency Procedures section of the applicable FAA Approved Airplane Flight Manual (AFM) for each applicable engine installation in an aircraft, and initial and repetitive dimensional inspections of the fuel control drive shaft splines for wear, or replacing the affected fuel controls with

alternate fuel controls. This amendment is prompted by reports of excessive wear of the internal fuel control drive splines in fuel controls, which can result in loss of fuel control governor drive. The actions specified by this AD are intended to prevent an uncontained engine failure, damage to the aircraft, or loss of aircraft control.

**DATES:** Effective April 18, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 94–26–07, issued on December 13, 1994, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 18, 1995.

Comments for inclusion in the Rules Docket must be received on or before June 2, 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–46, 12 New England Executive Park, Burlington, MA 01803–5299.

The applicable service information may be obtained from AlliedSignal Inc., Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2548. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5246; fax (310) 627–5210.

**SUPPLEMENTARY INFORMATION:** On December 13, 1994, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 94–26–07, applicable to certain AlliedSignal Inc. TPE331 series turboprop engines, which requires an amendment to the Emergency Procedures section of the applicable FAA Approved Airplane Flight Manual (AFM) for each applicable engine installation in an aircraft, and initial and repetitive dimensional inspections of the fuel control drive shaft splines for wear, or replacing the affected fuel controls with alternate fuel controls. That action was prompted by reports of excessive wear of the internal fuel control drive splines in fuel controls, Part Numbers (P/N) 897770–1 through –8, and 897780–1 through –11. In two instances the spline wear resulted in loss of fuel control governor drive. If this occurs, the underspeed fuel governor increases fuel flow, while the overspeed governor is inoperative and cannot limit engine speed.

The FAA has determined that the most serious consequence of a loss of fuel control governor drive is during reverse thrust when the engine suddenly develops uncommanded forward thrust causing an asymmetric thrust condition on a twin-engine aircraft. Another serious consequence of a loss of fuel control governor drive is during engine start when rapid engine acceleration beyond normal idle speed could result in rotor speed sufficient to cause an uncontained turbine separation. During flight, when the propeller is in propeller-governing mode, the result will be uncommanded increased engine torque and turbine temperature. These conditions, if not corrected, could result in an uncontained engine failure, damage to the aircraft, or loss of aircraft control.

The FAA has reviewed and approved the technical contents of the following service bulletins (SB): AlliedSignal Inc. Alert SB No. TPE331–A73–0221, Revision 2, dated October 10, 1994, applicable to model TPE331–11U engines, that describes procedures for dimensionally inspecting fuel control drive shaft splines; AlliedSignal Inc. SB No. TPE331–73–0224, dated August 17, 1994, and Revision 1, dated September 8, 1994, applicable to model TPE331–11U engines, that describe procedures for replacing affected fuel controls with alternate fuel controls; AlliedSignal Inc. Alert SB No. TPE331–A73–0226, dated October 10, 1994, applicable to certain TPE331–3, -5, -6, -10, and -12 series engines, that describe procedures for dimensionally inspecting fuel control drive shaft splines; and AlliedSignal Inc. SB No. TPE331–73–0228, dated September 16, 1994, applicable to certain TPE331–3, -5, -6, -10, and -12 series engines TPE331 engines, that describe procedures for replacing affected fuel controls with alternate fuel controls.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 94–26–07 to prevent an uncontained engine failure, damage to the aircraft, or loss of aircraft control. The AD requires an amendment to the Emergency Procedures section of the applicable FAA AFM for each applicable engine installation in an aircraft. This amendment to the applicable AFM describes conditions inflight, during ground start, and during reverse thrust operation that might indicate loss of fuel control governor drive, and provides required procedures for engine shutdown. These AFM changes have been coordinated with the FAA Directorate responsible for the certification of the aircraft involved.

In addition, this AD requires either initial and repetitive dimensional inspections of the fuel control drive shaft splines for wear, or replacing the affected fuel controls with alternate fuel controls. Replacement with the alternate fuel controls constitutes terminating action to the repetitive inspections. The actions are required to be accomplished in accordance with the service bulletins described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 13, 1994, to all known U.S. owners and operators of AlliedSignal Inc. TPE331 series turboprop engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

**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–46.'' 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 adding the following new airworthiness directive:

**94–26–07 AlliedSignal Inc.:** Amendment 39–9178. Docket 94–ANE–46.

*Applicability:* AlliedSignal Inc. Models TPE331–3, –5, –6, –10, –11U, and –12 series turboprop engines with fuel control assembly Part Numbers (P/N) 897770–1 through 897770–8 and 897780–1 through 897780–11 installed in accordance with AlliedSignal Inc. Service Bulletin (SB) No. TPE331–73–0217, dated July 9, 1993. These engines are installed on but not limited to Mitsubishi MU–2B series (MU–2 series) Solitaire/Marquise, Construcciones Aeronauticas, S.A. C–212 series, British Aerospace (BAe) Jetstream 3101 and 3201 (31 and 32) series, Fairchild SA226 and SA227 series (Swearingen Merlin and Metro series), Twin Commander Models 680, 690, 695 (Jetprop Commander), Short Brothers and Harland, Ltd. SC7 (Skyvan), Dornier 228 series, Beech Model B–100 series aircraft, and Ayres S–2R series aircraft.

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

To prevent failure of the fuel control governor drive from excessive wear of the internal fuel control drive splines, which can result in loss of aircraft control, accomplish the following:

(a) Amend the applicable FAA Approved Airplane Flight Manual (AFM) to provide interim emergency procedures to flight crews, within 20 calendar days after the effective date of airworthiness directive (AD), by adding the following to the Emergency Procedures section. This may be accomplished by inserting a copy of this AD into the AFM:

''Inflight: in the event of an uncommanded engine torque and turbine temperature increase, or if engine power fails to respond when the power level is retarded, shut down the affected engine as soon as possible consistent with the safe operation of the aircraft.

Warning: be aware that the affected engine with a failed fuel control governor drive will typically exhibit an increase in power, and if the accepted ''dead foot—dead engine'' logic is employed, the wrong engine could be shut down because the malfunction will result in an increase in forward thrust from the affected engine. Use caution and monitor cockpit engine indications to aid in identifying the failure mode and the malfunctioning engine.

During Ground Start: if an engine exhibits rapidly increasing RPM above idle values, immediately terminate the start.

If an engine has been shutdown inflight as a result of exhibiting an uncontrolled increase in torque and turbine temperature, do not attempt a ground start until the fuel control is inspected in accordance with the applicable service bulletin.

During Reverse Operation: if an engine suddenly develops forward thrust, immediately terminate reverse thrust. If necessary, shutdown both engines in order to maintain directional control.''

(b) For AlliedSignal Model TPE331–11U engines:

(1) Conduct initial and repetitive dimensional inspections of the fuel control drive shaft splines for wear in accordance with the compliance times and procedures described in AlliedSignal Alert Service Bulletin (SB) No. TPE331–A73–0221, Revision 2, dated October 10, 1994. The initial inspection compliance times start upon the effective date of this priority letter AD.

(2) Prior to further flight replace with a serviceable part those fuel controls with drive shaft splines that do not meet the return to service criteria specified in AlliedSignal Alert SB No. TPE331–A73–0221, Revision 2, dated October 10, 1994.

(3) Replacement of fuel controls in accordance with the procedures described in AlliedSignal SB No. TPE331–73–0224, dated August 17, 1994, or Revision 1 of that SB, dated September 8, 1994, with alternate fuel controls constitutes terminating action to the AFM amendment specified in paragraph (a) of this AD, and the inspections specified in paragraph (b)(1) of this AD.

(c) For AlliedSignal TPE331–3, –5, –6, –10, and –12 series engines:

(1) Conduct initial and repetitive dimensional inspections of the fuel control drive shaft splines for wear in accordance with the compliance times and procedures described in AlliedSignal Inc. Alert SB No. TPE331–A73–0226, dated October 10, 1994. The initial inspection compliance times become effective upon the effective date of this AD.

(2) Prior to further flight replace with a serviceable part those fuel controls with drive shaft splines that do not meet the return to service criteria specified in AlliedSignal Inc. Alert SB No. TPE331–A73–0226, dated October 10, 1994.

(3) Replacement of fuel controls in accordance with the procedures described in AlliedSignal Inc. SB No. TPE331–73–0228, dated September 16, 1994, with alternate fuel controls constitutes terminating action to the AFM amendment specified in paragraph (a) of this AD, and the inspections specified in paragraph (c)(1) of this AD.

(d) For the purpose of this AD, specific driveshaft operating hours as referenced in AlliedSignal Alert SB No. TPE331–A73–0221, Revision 2, dated October 10, 1994, and AlliedSignal Inc. Alert SB No. TPE331–A73–0226, dated October 10, 1994, may be calculated using fuel control time tracking based on engine operating hours.

(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 Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles 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 Los Angeles Aircraft Certification Office.

(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 aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following SB's:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| AlliedSignal Inc. Alert SB No. TPE331–A73–0226 | 1–8 | Original | October 10, 1994. |
| Woodward SB No. WG64050 | 1–13 | Original | October 3, 1994. |
| Total pages: 21. | | | |
| AlliedSignal Inc. Alert SB No. TPE331–A73–0221 | 1–3 | 2 | October 10, 1994. |
| | 4 | Original | June 27, 1994. |
| Woodward SB No. WG64047 | 1–12 | 4 | October 3, 1994. |
| Total pages: 16. | | | |
| AlliedSignal Inc. SB No. TPE331–73–0224 | 1 | 1 | September 8, 1994. |
| | 2 | Original | August 17, 1994. |
| | 3–4 | 1 | September 8, 1994. |
| Total pages: 4. | | | |
| Woodward SB No. WG4044 | 1–3 | Original | June 28, 1993. |
| Total pages: 3. | | | |
| AlliedSignal Inc. SB No. TPE331–73–0228 | 1–10 | Original | September 16, 1994. |
| Total pages: 10. | | | |
| AlliedSignal Inc. SB No. TPE331–73–0217 | 1–10 | Original | July 9, 1993. |
| Total pages: 10. | | | |

**Note:** The Woodward SB's are attached to the AlliedSignal Alert SB's.

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 AlliedSignal Inc., Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2548. 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.

(h) This amendment becomes effective April 18, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 94–26–07, issued December 13, 1994, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on March 20, 1995.

**James C. Jones,**

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

[FR Doc. 95–7908 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–13–P

## UNITED STATES INFORMATION AGENCY

## 22 CFR Part 514

**[Rulemaking No. 115]**

## Waiver of Two-Year Home-Country Physical Presence Requirement, International Medical Graduates, Exchange Visitor Program

**AGENCY:** United States Information Agency.

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

**SUMMARY:** Section 220 of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103–416) amended Section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)) and added a new subsection (k) to Section 214 of that Act (8 U.S.C. 1184) regarding waiver of the two-year foreign residence requirement as it applies to international medical graduates. This rulemaking amends the Exchange Visitor Program regulations to reflect those legislative changes.

**DATES:** This interim final rule is effective April 3, 1995. Written comments will be accepted until May 3, 1995. All written communications received by the Agency on or before the closing date will be considered by the Agency before action on a final rule is undertaken.

**ADDRESSES:** Comments regarding this rule should be addressed as follows: United States Information Agency, Office of the General Counsel, Rulemaking 115, 301 Fourth Street, S.W., Room 700, Washington, DC 20547.

**FOR FURTHER INFORMATION CONTACT:** William G. Ohlhausen, Assistant General Counsel, United States Information Agency, 301 Fourth Street, S.W., Washington, DC 20547; telephone (202) 619–6972.

**SUPPLEMENTARY INFORMATION:** Section 220 of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103–416), adopted in the closing days of the 103rd Congress, amended provisions of the Immigration and Nationality Act which deal with the two-year foreign residence requirement affecting international medical graduates (also known as ''foreign medical graduates'' or ''FMGs'') who were admitted to the United States on the J visa, or who acquired such status after admission to the United States, and who are required to return to the country of their nationality or last residence upon the completion of their participation in an exchange visitor program.

The Immigration and Naturalization Service may grant a waiver of the two-year home country physical presence requirement upon the favorable recommendation of the Director of the United States Information Agency. Prior to the recent amendment to Sections 212 and 214 of the Immigration and Nationality Act, there were three bases upon which an alien who is a graduate of a medical school pursuing a program in graduate medical education or training could seek a waiver of the two-year foreign residence requirement. The first basis was the so-called ''interested Government Agency'' or ''IGA'' waiver. Under that basis, the Director of the United States Information Agency could recommend a waiver to INS pursuant to the request of an ''interested United States Government agency.'' [Immigration and Nationality Act, as amended, section 212(e) (8 U.S.C. 1182(e); 22 C.F.R. 514.44(a)(2) and (c).]

The other bases upon which a J visa foreign medical graduate could seek a waiver of the two-year foreign residence requirement were to apply to the Immigration and Naturalization Service for a waiver on the grounds that the departure of the alien physician from the United States would ''impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or lawfully resident alien), or that the alien

cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion.'' [Immigration and Nationality Act, as amended, section 212(e) (8 U.S.C. 1182(e).] Additionally, all three bases for seeking waiver required a finding by the Attorney General that the waiver was in the public interest.

The enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103–416) has now provided an additional basis upon which an international medical graduate may seek a waiver of the two-year home residence requirement. Section 220(a) of that Act added a provision that authorizes a State Department of Public Health or its equivalent to request the Director of USIA to recommend that INS grant the waiver. However, in addition, the new law requires that the government of the country to which the international medical graduate is required to return must furnish the Director of the United States Information Agency with a statement in writing that it has no objection to such waiver, and the medical graduate must demonstrate that he or she has a bona fide offer of full-employment and must agree that he or she will begin employment within 90 days of receiving a waiver, and must agree to continue to work, for a total of not less than three years, at a health care facility in an area designated by the Secretary of Health as having a shortage of health care professionals. [Immigration and Nationality Act, as amended, section 214(k)(1) (8 U.S.C. 1184(k)(1).)

Upon the favorable recommendation of the Director of USIA, the Attorney General may grant the waiver and change the medical graduate's nonimmigrant status from J–1 to H(i)(B). If the international medical graduate obtains a waiver under Public Law 103–416 and thereafter fails to fulfill the terms of his or her employment contract with the health care facility named in the waiver application, then he or she becomes ineligible to apply for an immigrant visa, permanent residence, or any other change of nonimmigrant status until the two-year foreign residence requirement has been met. [Immigration and Nationality Act, section 214(k)(2) (A) and (B). Each State is allotted no more than twenty such waivers each fiscal year. The federal fiscal year commences on October 1 and ends the following September 30. The term ''State'' includes the District of Columbia, Puerto Rico, Guam and the Virgin Islands of the United States.

The role of the United States Information Agency under the recent amendments to sections 212(e) and 214 of the Immigration and Nationality Act is limited. Under the amendment to section 212(e), the Commissioner of the Immigration and Naturalization Service will now look to the Director of USIA for a recommendation on international medical graduate waiver cases brought ''pursuant to the request of a State Department of Public Health, or its equivalent.'' Section 212(e) was also amended by adding language that makes it clear that waivers requested by a State Department of Public Health, or its equivalent, shall be subject to the requirements of the new Section 214(k).

Under new Section 214(k)(1)(A), the Attorney General will not grant the waiver unless the country to which the international medical graduate is contractually obligated to return furnishes the Director of USIA with a statement in writing that it has no objection to such waiver.

Reading amended Section 212(e) and new section 214(k) together, the Agency views its role in implementing the statute as including the following: (1) It is to be the recipient of State Department of Public Health applications for waivers for foreign medical graduates who will practice medicine in medically underserved areas; (2) it is to be the recipient of ''no objection'' letters from the country to which the applicant is contractually obligated to return; and (3) it is to review the applications and no objection letters, determine whether they meet the requirements of the two statutory sections, review the program, policy, and foreign relations aspects of the case, and make a recommendation to the Commissioner of the Immigration and Naturalization Service as to whether the waiver should be granted.

Current regulations regarding requests for waiver made by an interested United States Government agency require the requesting agency to determine that the granting of the waiver would be in the public interest. 22 C.F.R. 514.44(c). This Agency then reviews the program, policy, and foreign relations aspects of the case and forwards its recommendation to the Commissioner. 22 C.F.R. 514.44(c). The Agency intends to follow the same practices with respect to requests for waivers made under the recently amended section 212(e) and the new section 214(k) of the Immigration and Nationality Act.

With respect to the no-objection letters, the Agency notes that the new section 214(k)(1)(A) refers to ''an alien who is otherwise contractually obligated to return to a foreign country * * *.'' (emphasis added.) That phrase ''otherwise contractually obligated'' is not defined in the statute and there is no legislative history preceding the enactment of the statute which would indicate the specific intent of Congress in using that terminology. However, the Agency believes, based upon the intent of Congress as gleaned from the legislation as a whole, that the term ''otherwise contractually obligated'' was not meant to have any special meaning, but rather is to be given its ordinary meaning, viz., an obligation arising out of an agreement. Foreign medical graduates are required by statute (Pub. L. 97–116) and regulation (8 C.F.R. 214.2(j)(2); INS Form I–644) to certify annually that, upon the completion or termination of participation in their medical education or training program, they will return to their respective home countries. The Agency deems that certification to be an agreement or contract that obligates the foreign medical graduate to return to his or her home country. Moreover, in almost all cases involving foreign medical graduates, the foreign medical graduate has also given a written assurance to his or her home government that he or she will return to that country upon completion of training in the United States and will engage in the practice of medicine in the area of specialization for which training is being sought. In the view of the Agency, such assurances rise to the level of a contractual obligation or agreement.

The amendment to Section 212(e) refers to ''a State Department of Public Health, or its equivalent.'' Since enactment of the statute, the Agency has received numerous requests for information from a variety of agencies within a given State. In order to avoid confusion in the processing of waiver applications and because of the numerical limitations upon each State set forth in the new statute, this rulemaking provides that each State designate one agency as its ''Department of Public Health, or equivalent'' for purposes of applying for waivers under Public Law 103–416, and so notify USIA of the name, address, and telephone number of that agency, and the name of the person or persons who are authorized to sign the application for waiver.

**The No Objection Letter**

Current regulations set forth the procedure for obtaining ''no objection'' letters from the home country and the manner in which such letters are to be sent to the Agency. 22 C.F.R. 514.44(d). With one exception, this rulemaking provides for the same procedures to be followed with respect to applications for waivers under Public Law 103–416. In

order to avoid confusion with other applications for waivers based on no objection from the home country (hitherto unavailable to foreign medical graduates), the no objection letter submitted under Public Law 103–416 should note clearly that the request for the no objection letter was made pursuant to Public Law 103–416. The Agency does not require that a no objection letter be of or on a particular form. The following or similar language will suffice: ''Pursuant to Public Law 103–416, the Government of _____ has no objection if (name and address of foreign medical graduate) does not return to _____ to satisfy the two-year foreign residency requirement of Section 212(e) of the Immigration and Nationality Act.''

**The Application Package**

The application for waiver of the two-year home country residence requirement under the provisions of Public Law 103–416 is to originate in the designated State Department of Public Health. USIA is not planning to develop any new forms for such application. However the application is to include the following: (1) A letter from the Director of the designated State Department of Public Health which identifies the foreign medical graduate and states, if so determined, that it is in the public interest that a waiver of the two-year home residence requirement be granted; (2) an employment contract between the alien and the health care facility, which includes the name and address of the specific and a specific geographic area or areas in which the foreign medical graduate will practice medicine. The employment contract shall be valid for at least three years; (3) evidence that the areas of employment stipulated in the employment contract are in geographic areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals; (4) a statement by the foreign medical graduate agreeing to the contractual requirements set forth in Section 214(k)(1) (B) and (C) of the Immigration and Nationality Act; (5) copies of all forms IAP–66 issued to the foreign medical graduate seeking the waiver; (6) a completed data sheet, copies of which will be made available by the Agency to each State Department of Public Health; and (7) because of the numerical limitations on the approval of waivers under Public Law 103–416 each application from a State Department of Public Health shall be numbered sequentially. Should USIA not grant a favorable recommendation on a given application, the State Department of Public Health will be so notified and will be advised that the number may be used on another application.

If a State Department of Public Health files in excess of twenty applications at one time, the Agency will give priority to the first twenty sequentially numbered applications.

**Application Period Under Public Law 103–416**

Section 220(c) of Public Law 103–416 states that ''The amendments made by this section shall apply to aliens admitted to the United States under section 101(a)(15)(J) of the Immigration and Nationality Act, or acquiring such status after admission to the United States, before, on, or after the date of enactment of this Act and before June 1, 1996.'' The Agency believes that the date of June 1, 1996 applies to the status of the foreign medical graduate on that date and not to the new waiver program itself. In other words, if the foreign medical graduate was admitted to the United States on a J visa or acquired a J visa prior to June 1, 1996 in order to pursue graduate medical education or training, he or she would be eligible to apply for a waiver under the provisions of Public Law 103–416 at any time in the future.

Public Law 103–416 was enacted into law on October 25, 1994. Since that date, USIA's Exchange Visitor Program office has received in excess of 100 telephone calls and letters regarding the implementation of the new law. One State Department of Public Health advised at the time of its telephone call that it already had in hand some 400 applications for waiver sponsorship. Therefore, it is imperative that the Agency promulgate implementing regulations as soon as possible. This rulemaking is therefore being promulgated as an Interim Final Rule, effective on the date it is published in the **Federal Register**. Written comments on the Interim Final Rule will be accepted during the thirty-day period following publication of the Interim Final Rule. At the conclusion of the thirty-day comment period, the Agency will review all comments and thereafter promulgate a final rule incorporating such revisions as are appropriate.

**Regulatory Analysis and Notices**

The Agency invites comments regarding this interim final rule notwithstanding the fact that it is under no legal requirement to do so. The oversight and administration of the Exchange Visitor Program are deemed to be foreign affairs functions of the United States Government. The Administrative Procedure Act, 5 U.S.C. 553(a)(1), specifically exempts foreign affairs functions from the rulemaking requirements of the Act.

In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this rule have been presented to the Office of Management and Budget for clearance pursuant to the provisions of the Paperwork Reduction Act.

**List of Subjects in 22 CFR Part 514**

Cultural exchange programs, Reporting and recordkeeping requirements.

Dated: March 27, 1995.

**Les Jin,**

*General Counsel.*

Accordingly, 22 CFR Part 514 is amended as follows:

## PART 514—[AMENDED]

1. The authority citation for Part 514 is revised to read as follows:

**Authority:** 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978, 3 CFR, 1978 Comp. p. 168.

Section 514.44 is amended as follows:

**§ 514.44 [Amended]**

2. In paragraph (a)(2), by inserting ''(or in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, pursuant to the request of a State Department of Public Health, or its equivalent)'' after ''interested United States Government agency''; and

3. In paragraph (a)(2), by inserting after the words ''public interest'' the following: ''except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, the waiver shall be subject to the requirements of section 214(k) of the Immigration and Nationality Act (8 U.S.C. 1184)''; and

4. In paragraph (a)(3), by inserting the following at the end of said paragraph: ''Notwithstanding the foregoing, an alien who is a graduate of a medical school pursuing a program in medical education or training may obtain a waiver of such two-year foreign residence requirements if said alien meets the requirements of section 214(k) of the Immigration and Nationality Act

(8 U.S.C. 1184) and paragraphs (a) (2) and (e) of this section''; and

5. In paragraph (d)(3), by inserting the word ''solely'' after the word ''waiver'', and by inserting the following at the end of said paragraph: ''However, an alien who is a graduate of a medical school pursuing a program in medical education or training may obtain a waiver of such two-year foreign residence requirements if said alien meets the requirements of section 214(k) of the Immigration and Nationality Act (8 U.S.C. 1184) and paragraphs (a) (2) and (e) of this section''; and

6. By redesignating paragraphs (e), (f), and (g) as (f), (g), and (h), respectively; and

7. By inserting a new paragraph (e) as follows:

**§ 514.44 Two-year home-country physical presence requirement.**

* * * * *

(e) *Requests for waiver from a State Department of Public Health, or its equivalent, on the basis of Public Law 103–416.*

(1) Pursuant to Public Law 103–416, in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, a request for a waiver of the two-year home-country physical presence requirement may be made by a State Department of Public Health, or its equivalent. Such waiver shall be subject to the requirements of section 214(k) of the Immigration and Nationality Act (8 U.S.C. 1184) and this § 514.44.

(2) With respect to such waiver under Public Law 103–416, the Director of the United States Information Agency is to be furnished with a statement in writing that the country to which such alien is required to return has no objection to such waiver. The no objection statement shall be furnished to the Director in the manner and form set forth in paragraph (d) of this section and, additionally, shall bear a notation that it is being furnished pursuant to Public Law 103–416.

(3) The State Department of Public Health, or equivalent agency, shall include in the waiver application the following:

(A) A completed ''Data Sheet.'' Copies of blank data sheets may be obtained from the Agency's Exchange Visitor Program office.

(B) A letter from the Director of the designated State Department of Public Health, or its equivalent, which identifies the foreign medical graduate by name, country of nationality or last residence, and date of birth, and states that it is in the public interest that a waiver of the two-year home residence requirement be granted;

(C) An employment contract between the foreign medical graduate and the health care facility named in the waiver application, to include the name and address of the health care facility, and the specific geographical area or areas in which the foreign medical graduate will practice medicine. The employment contract shall include a statement by the foreign medical graduate that he or she agrees to meet the requirements set forth in Section 214(k) of the Immigration and Nationality Act. The employment contract shall be valid for at least three years and the geographical areas of employment shall only be in areas, within the respective state, designated by the Secretary of Health and Human Services as having a shortage of health care professionals;

(D) Evidence establishing that the geographic area or areas in the state in which the foreign medical graduate will practice medicine are areas which have been designated by the Secretary of Health and Human Services as having a shortage of health care professionals.

(E) Copies of all forms IAP–66 issued to the foreign medical graduate seeking the waiver;

(F) A copy of the foreign medical graduate's *curriculam vitae*;

(G) A copy of the statement of no objection from the foreign medical graduate's country of nationality or last residence; and,

(H) Because of the numerical limitations on the approval of waivers under Public Law 103–416, i.e., no more than twenty waivers for each State each fiscal year, each application from a State Department of Public Health, or its equivalent, shall be numbered sequentially, beginning on October 1 of each year.

(4) The Agency's Waiver Review Branch shall review the program, policy, and foreign relations aspects of the case and forward its recommendation to the Commissioner. Except as set forth in § 514.44(g)(4)(i), the recommendation of the Waiver Review Branch shall constitute the recommendation of the Agency.

* * * * *

8. In newly designated paragraph (g)(4)(i), by inserting ''(or, in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, pursuant to the request of a State Department of Public Health, or its equivalent)'' after ''interested United States Government agencies.''

[FR Doc. 95–7922 Filed 3–31–95; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 938

**[PA–111–FOR]**

## Pennsylvania Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving, with certain exceptions, a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to Pennsylvania's Small Operator Assistance Program (SOAP) rules. The amendment is intended to revise the Pennsylvania SOAP program to be consistent with section 507(c) of SMCRA (Energy Policy Act of 1992) and 30 CFR part 795. The proposed amendment would provide more comprehensive assistance to SOAP participants than currently allowed.

**EFFECTIVE DATE:** April 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone (717) 782–4036.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Pennsylvania Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

### I. Background on the Pennsylvania Program

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background information on the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15, and 938.16.

## II. Submission of the Amendment

The Energy Policy Act of 1992, Pub. L. 102–486, October 24, 1992, amended several sections of SMCRA. Section 507(c) was amended to expand the coverage of free services that could be provided to qualified applicants for permit application information under SOAP. Before enactment of the Energy Policy Act, services provided by section 507(c) covered the determination of probable hydrologic consequences required by subsection 507(b)(11) and the statement of the results of test boring or core sampling required by subchapter 507(b)(15). The section 507(c) revisions expanded the services under subsection 507(b)(11) to include the engineering analyses and designs necessary for their determination. The revisions also added additional allowable services. These additional services include: the development of cross-section maps and plans required by subsection (b)(14); the geologic drilling and statement of test boring and core sampling required by subsection (b)(15); the collection of archaeological information required by subsection (b)(13) and any other archaeological and historical information required by the regulatory authority; pre-blast surveys required by section 515(b)(15)(E); and the collection of site-specific resource information and the production of protection and enhancement plans for fish and wildlife habitats and other environmental value required by the regulatory authority.

The Energy Policy Act also added section 507(h) which makes the operator liable for reimbursement of SOAP expenses if they exceed the 12-month coal production limit.

OSM published final regulations to implement the above statutory provisions in the **Federal Register**, 59 FR 28136–28174, May 31, 1994.

The Pennsylvania Department of Environmental Resources (PADER) published proposed rules in the Pennsylvania Bulletin (24 Pa.B. 2120–2124, April 23, 1994), to revise the existing SOAP provisions to be consistent with the Federal SOAP revisions. On October 24, 1994, PADER submitted these rules as a program amendment (Administrative Record Number PA 833.00).

OSM announced receipt of the proposed amendment in the November 15, 1994, **Federal Register** (59 FR 58802), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 15, 1994.

## III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Pennsylvania program.

*A. Revisions to Pennsylvania's Regulations That Are Substantively Identical to the Corresponding Federal Regulations*

| State regulation 25 Pa. Code, chapter | Subject | Federal counterpart |
|---|---|---|
| 86.81(1)(i) ... | Probable hydrologic consequences. | 30 CFR 795.9(b)(1). |
| 86.81(1)(ii) .. | Drilling services. | 30 CFR 795.9(b)(2). |
| 86.81(1)(v) .. | Preblast surveys. | 30 CFR 795.9(b)(5). |
| 86.83(b)(2), (b)(3). | Attributed production. | 30 CFR 795.6(a)(2)(i) and (ii). |
| 86.85(a)(1) and (2). | Application approval. | 30 CFR 795.9(a). |
| 86.94(a)(4) and (5). | Applicant liability. | 30 CFR 796.12(a)(2) and (3). |

Because the above proposed provisions are identical in meaning to the corresponding Federal regulations, the Director finds that Pennsylvania's proposed rules are no less effective than the Federal regulations.

*B. Revisions to Pennsylvania's Regulations that are not Substantively Identical to the Corresponding Federal Regulations*

1. Section 86.81, Program Services

At section 86.81(1), Pennsylvania proposes to delete the word ''laboratory'' and to replace that term with ''consultant.'' With this change, the regulation provides that the PADER will select and pay a qualified consultant for providing approved SOAP program services.

The counterpart Federal language at 30 CFR 795.9(a) uses the term ''laboratory.'' In its submittal of this change, PADER explained that laboratories in Pennsylvania generally provide only the chemical analyses of water and overburden samples and work as subcontractors to professional engineering and geological consultants who actually collect and evaluate data under contract with the PADER. The Director concurs that use of the term ''consultant'' more closely reflects the circumstances by which SOAP program services are obtained in Pennsylvania. The Director finds that use of the term ''consultant'' is consistent with the intent of the Federal regulations to pay for SOAP program services, and does not render the Pennsylvania program less effective than the counterpart Federal regulations at 30 CFR Part 795.

2. Subsections 86.81(1)(iii) and (iv), Program Services

At subsections 86.81(1) (iii) and (iv), Pennsylvania lists some of the permit application requirements that PADER will fund through the SOAP program services. Subsection 86.81(1)(iii) is the counterpart to 30 CFR 795.9(b) (4) and (6) and would provide funding for services that would provide a description of the existing resources within and adjacent to the proposed permit area.

Subsection 86.81(1)(iv) is the counterpart of 30 CFR 795.9(b)(3) and would provide funding for services that would provide a detailed description, to include maps, plans and cross sections, of the proposed coal mining activities showing the manner in which the proposed permit area will be mined and reclaimed.

In both of these provisions, 86.81(1)(iii) and (iv), Pennsylvania provides several references to regulations that address the data requirements for specific types of mining activities that will be funded under the expanded SOAP services. In general, the services which Pennsylvania is proposing to fund are authorized in the counterpart Federal regulations at 30 CFR 795.9(b) (3), (4), and (6). However, the references cited by Pennsylvania are general references and may include, in addition to fundable services, permit application requirements which, if funded, would extend SOAP coverage beyond the limits established by SMCRA and the Federal regulations at 30 CFR 795.9(b).

Section 507(c)(1) of SMCRA establishes the SOAP to pay for various permit application requirements, including (a) the determination of probable hydrologic consequences; (b) the development of cross-sections, maps, and plans; (c) the geologic drilling and statement of results of test borings and core samplings; (d) the collection of archaeological information and the preparation of plans necessitated thereby; (e) preblast surveys; and (f) the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values. The Federal rules at 30 CFR 795.9(b) further clarify which permit application requirements may be funded through SOAP.

30 CFR 795.9(b)(3) provides for the funding of the development of cross-section maps and plans required by 30 CFR 779.25 for surface mining and section 783.25 for underground mining permit applications.

30 CFR 795.9(b)(4) provides for the funding of the collection of archeological and historic information and related plans required by 30 CFR 779.12(b) and 783.12(b) and 30 CFR 780.31 and 784.17 and any other archeological and historic information required by the regulatory authority.

30 CFR 795.9(b)(6) provides for the funding of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 30 CFR 780.16 and 784.21, and information and plans for any other environmental values required by the regulatory authority under SMCRA.

OSM's review of the references cited by Pennsylvania at subsections 86.81(1) (iii) and (iv) has determined that funding has not been explicitly authorized by the Federal regulations at 30 CFR 795.9(b) for the permitting requirements contained in the following Pennsylvania citations:

25 Pa. Code
87.41–42
87.48–49
87.52–53
87.68
87.70–76
87.78–83
88.21–22(1)
88.28–29
88.30
88.32
88.41–44
88.46
88.48
88.50–55
88.57–61
89.31–32
89.37
89.71–73
89.102
89.121–122
89.141(d)

Also, the permitting requirements at 25 Pa. Code 87.77, 88.56, and 89.38 are not authorized for SOAP funding to the extent that they apply to public parks.

Both the Energy Policy Act and 30 CFR 795.9(b)(1) authorize reimbursement for engineering analyses and designs necessary for the determination of probable hydrologic consequences, with the rule specifying that this provision applies to ''engineering analyses and designs necessary for the determination in accordance with sections 780.21(f), 784.14(e), and any other applicable provisions of this chapter.'' Accordingly, preparation of engineering analyses and designs essential to development of an adequate probable hydrologic consequences determination is an authorized SOAP service, whereas preparation of analyses and designs needed solely to satisfy other program requirements is not. For example, preparation of diversion and impoundment plans and designs would be an authorized SOAP service only if the laboratory or other qualified entity cannot satisfactorily prepare the probable hydrologic consequences determination in the absence of these plans and designs.

The Energy Policy Act further authorizes funding for the development of cross sections, maps and plans required by section 507(b)(14) of SMCRA. These requirements are reflected primarily in 30 CFR 779.25 and 783.25, which are cross-referenced in 30 CFR 795.9(b)(3). However, section 507(b)(14) of the Act also provides the basis for those portions of 30 CFR 780.18(b)(3) and 784.13(b)(3) that require cross sections showing the anticipated final surface configuration of the proposed permit area. Therefore, the regulatory authority may fund preparation of these cross sections even though 30 CFR 795.9(b)(3) does not cross-reference the underlying rules.

Because the requirements for operation and reclamation plans and maps, air pollution control plans, and subsidence control plans are not derived from section 507(b)(14) of SMCRA, SOAP funds may not be used for development of these types of maps and plans unless other provisions of section 507(c) of the Act or 30 CFR 795.9(b) specifically authorize such expenditures. The State may be able to demonstrate that funding for some aspects of these maps and plans is appropriate under 30 CFR 795.9(b)(6), which authorizes information collection and preparation of plans ''for any other environmental values required by the regulatory authority under the Act.''

To be consistent with SMCRA and the counterpart Federal regulations, Pennsylvania must ensure that when implementing its SOAP provisions, it does not authorize expenditures outside of those allowed by SMCRA and the Federal regulations as discussed above. Although the Energy Policy Act and the revisions to 30 CFR 795.9(b) have greatly expanded the scope of services available under SOAP, funding remains limited. Therefore, the program administrator may need to ration funding under the provisions of 30 CFR 795.11(b).

The Director is approving subsections 86.81(1) (iii) and (iv) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c) and the implementing Federal regulations at 30 CFR 795.9(b) as discussed above. The Director is not approving proposed subsections 86.81(1) (iii) and (iv) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

3. Section 86.82, Responsibilities

Subsection 86.82(a)(1) is being amended to provide that the PADER will develop and maintain a list of qualified consultants and qualified laboratories, and select and pay consultants for services rendered. Prior to this amendment, the provision included qualified laboratories but not consultants. As discussed above in Finding B–1, the addition of ''consultants'' more closely reflects the circumstances by which SOAP program services are obtained in Pennsylvania. The Director finds that the use of the term ''consultant'' is consistent with the intent of the Federal regulations to pay for SOAP program services, and does not render the Pennsylvania program less effective than the Federal regulations.

4. Subsection 86.83(a)(2), Eligibility for Assistance

Subsection 86.83(a)(2) is being amended to provide that an applicant is eligible for assistance if the applicant establishes that the probable total and attributed production from the applicant's operations during the 12-month period immediately following the date on which the applicant is issued the mining activities permit will not exceed 300,000 tons.

30 CFR 795.6(a)(2) provides that to be eligible for assistance, the applicant must establish that the probable total attributed annual production from all locations will not exceed 300,000 tons. In the preamble to the approval of the Federal regulation at 30 CFR 795.6(a)(2) (59 FR 28139, May 31, 1994), OSM stated that in order to reduce the potential for fraud and abuse, past production will be used as the standard for evaluating whether an operator's annual production is reasonably expected to be within the 300,000 ton limit for eligibility under the SOAP. Therefore, to be eligible for SOAP assistance, past production records should provide sound evidence that following SOAP approval, production is reasonably likely to remain under 300,000 tons annually.

Therefore, the Director is approving the proposed amendment to subsection 86.83(a)(2) except to the extent that the provision only requires the applicant to establish that annual production following permit issuance is reasonably likely to remain under 300,000 tons for just the first year. In addition, the Director is requiring that Pennsylvania further amend subsection 86.83(a)(2) to provide that the applicant must establish that the operator's probable total attributed annual production following permit issuance will remain under 300,000 tons for all years, not just the first year.

5. Subsection 86.86(b)(6), Right of Entry

This provision is being amended to provide that the application for SOAP assistance shall contain copies of documents which show that the legal right of entry necessary to meet the provisions of section 86.64 (relating to right of entry) have been obtained by the applicant.

The existing subparagraphs 86.84(b)(6) (i) and (ii) are being deleted. Subsection (i) required the applicant to provide documents that show the applicant has a legal right to enter and commence mining within the permit area. Subsection (ii) required documents showing a legal right of entry has been obtained for the office, department and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

The Director finds that the proposed amendment with the requirement to comply with the approved right of entry provisions at section 86.64 is no less effective than the Federal regulations at 30 CFR 795.7(f).

6. Subsection 86.86(a), Notice

This provision is being amended to delete ''laboratories'' and add in its place ''consultants.'' As discussed above in Finding B–1, the use of ''consultant'' does not render the Pennsylvania program less effective than the corresponding Federal regulations.

7. Subsection 86.87(a), Determination of Data Requirements

This provision is being amended to provide that if specifically authorized by the PADER in an approved work order, the development of information on environmental resources, operations plans and reclamation plans may proceed concurrently with data collection and analyses required for the determination of the probable hydrologic consequences of the proposed mining activities. While there is no direct counterpart in the Federal regulations, the provision is consistent with the SOAP provision at 30 CFR part 795.9(c) and can be approved.

8. Section 86.88, Data for Probable Hydrologic Consequences (PHC)

This provision is being deleted in its entirety. The requirement to provide a PHC determination for the applicant is located at subsection 86.81(1)(i). The Director finds that the proposed deletion does not render the Pennsylvania program less effective and can be approved.

9. Section 86.89, Data for Test Borings and Core Samplings

This provision is being deleted in its entirety. The requirement to provide data for the results of test borings and core samplings is located at subsection 86.81(1)(ii). The Director finds that the proposed deletion does not render the Pennsylvania program less effective and can be approved.

10. Section 86.91, Definitions and Responsibilities

In subsection 86.91(a), Pennsylvania is amending the term ''qualified laboratory'' to read ''qualified consultant and qualified laboratory.'' Nonsubstantive wording changes are also being made.

The term ''qualified consultant'' is being added to subsections 86.91(b) and (c).

As discussed in Finding B–1, the use of the term ''qualified consultant'' more closely reflects the circumstances by which the SOAP services are obtained in Pennsylvania. The Director finds that the use of the term ''qualified consultant'' is consistent with the intent of the Federal SOAP regulations and does not render the Pennsylvania program less effective than the Federal regulations.

11. Section 86.92, Basic Qualifications

Pennsylvania is proposing to add ''qualified consultant'' or ''consultant'' to subsections 86.92 (a) and (b). As discussed above in Finding B–1, the use of consultants to provide SOAP program services does not render the Pennsylvania program less effective and can be approved.

The State is adding ''overburden laboratory'' at subsection 86.92(a)(1). As amended, 86.92(a)(1) requires that to be designated as a qualified consultant or laboratory, the consultant or laboratory must be staffed with experienced, professional personnel in the fields of hydrology, mining engineering, aquatic biology, geology or chemistry applicable to the work to be performed as a water laboratory, ''overburden laboratory'' or consulting firm. The Director finds that this amendment is consistent with 30 CFR 795.10(a)(1).

The State is adding a new subsection 86.92(a)(6)(iv) to require a demonstration by the laboratory or consultant that it has the analytical, monitoring, and measuring equipment capable of meeting the applicable standards and methods contained in ''[t]he Department's Overburden Sampling and Testing Manual.''

The Director finds this requirement is consistent with and no less effective than the counterpart Federal regulations at 30 CFR 795.10(a)(4) concerning qualified laboratories.

At subsection 86.92(b) the State is deleting language and adding replacement language to make it clear that a qualified laboratory or consultant must be capable of performing the program services in newly revised section 86.81. The Director finds this change to be consistent with and no less effective than the Federal regulations at 30 CFR 795.10(a)(6).

12. Section 86.93, Assistance Funding

The State is deleting the phrase ''or the costs of test borings or core sampling'' from subsection 86.93(a). As amended, the provision prohibits SOAP funds from OSM to be used to cover administrative costs of the PADER. The Director finds that the deletion of the prohibition that SOAP funds may not be used to cover the costs of test borings or core sampling is consistent with 30 CFR 795.9(b)(2) which authorizes such payments.

13. Section 86.94, Applicant Liability

a. The State is adding the term ''consultant'' at subsections 86.94 (a), (a)(2), and (d)(1). The State is deleting the term ''laboratory'' at subsections (a)(2) and (d)(1). As discussed above in Finding B–1, the use of the term ''consultant'' more accurately reflects the circumstances by which SOAP program services are obtained in Pennsylvania. The Director finds that use of the term ''consultant'' is consistent with the intent of the Federal regulations to pay for SOAP program services, and does not render the Pennsylvania program less effective than the Federal regulations at 30 CFR Part 795.

b. The State is adding the phrase ''beyond the applicant's control'' to the end of the sentence in subsection 86.94(a)(2). With this change, the applicant would not be liable for the costs of program services rendered if the consultant's report indicates that the application is not approvable for

technical reasons beyond the applicant's control. The Director finds the addition is consistent with the Federal regulation at 30 CFR 795.12(b) which allows the SOAP administrator to waive the reimbursement obligation if the administrator finds that the applicant at all times acted in good faith.

14. Section 86.95, Measurement

This provision is being amended to delete references to the specific name and number of the OSM form on which an operator reports coal production for purposes of complying with the Abandoned Mine Land Reclamation Program requirements. The Director finds that this change improves the accuracy of the provision and does not render the Pennsylvania program less effective than the Federal regulations.

## IV. Summary and Disposition of Comments

*Federal Agency Comments*

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The Mine Safety and Health Administration (MSHA) of the U.S. Department of Labor responded that the amendment will not impact on any existing MSHA regulations (Administrative Record No. PA 833.06). The Soil Conservation Service of the U.S. Department of Agriculture responded that there is no indication that the approval of this amendment would result in any environmental degradation or cause accelerated erosion and sedimentation problems (Administrative Record No. PA 833.05).

*Public Comments*

A public comment period and opportunity to request a public hearing was announced in the November 15, 1994, **Federal Register** (59 FR 58802). The comment period closed on December 15, 1994. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. The Pennsylvania Coal Association commented in support of the amendment.

*Environmental Protection Agency (EPA)*

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. PA 833.01). EPA responded on December 6, 1994 (Administrative Record No. PA 833.08), and concurred with the proposed amendments.

## V. Director's Decision

Based on the findings above, the Director is approving, except as noted below, Pennsylvania's SOAP amendment as submitted by Pennsylvania on October 24, 1994.

As noted in Finding B–2 above, the Director is approving chapter 86.81(1) (iii) and (iv), concerning fundable program services, only to the extent that Pennsylvania will implement these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1) and the implementing Federal regulations at 30 CFR 795.9(b). The Director is not approving proposed subsections 86.81(1) (iii) and (iv) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above in Finding B–2 for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

As discussed in Finding B–4 above, the Director is approving chapter 86.83(a)(2) except to the extent that the provision limits an operator's obligation to establish that annual production following permit approval is reasonably likely to remain under 300,000 tons for all years, not just the first year. In addition, the Director is requiring that Pennsylvania further amend chapter 86.83(a)(2) to provide that the applicant must establish that the operator's probable total attributed annual production following permit issuance is reasonably likely to remain under 300,000 tons for all years, not just the first year.

The Federal regulations at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

*Effect of Director's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

## VI. Procedural Determinations

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the

Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 24, 1995.

**Ronald C. Recker,**

*Acting Assistant Director, Eastern Support Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

## PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. In Section 938.15, paragraph (cc) is added to read as follows:

**§ 938.15 Approval of regulatory program amendments.**

* * * * *

(cc) The SOAP amendment to the Pennsylvania program concerning the Small Operator Assistance Program as submitted to OSM on October 24, 1994, is approved, except as noted herein, effective April 3, 1995:

25 Section 86.81—Program services. Subsection 86.81(1)(iii) and (iv) are approved to the extent that the State will implement those services consistent with the SOAP funding provisions of SMCRA section 507(c)(1) and the implementing Federal regulations at 30 CFR 795.9(b). The Director is not approving proposed subsections 86.81(1)(iii) and (iv) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed in the preamble at Finding B–2 for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

25 Section 86.82—Responsibilities.

25 Section 86.83—Eligibility for assistance. Subchapter 86.83(a)(2) is approved except to the extent that the provision only requires the operator to establish that annual production following permit approval is reasonably likely to remain under 300,000 tons for just the first year.

25 Section 86.84—Applications for assistance.

25 Section 86.85—Application approval.

25 Section 86.86—Notice.

25 Section 86.87—Determination of data requirements.

25 Section 86.88—Deletion of this subchapter.

25 Section 86.89—Deletion of this subchapter.

25 Section 86.91—Definitions and responsibilities.

25 Section 86.92—Basic qualifications.

25 Section 86.93—Assistance funding.

25 Section 86.94—Applicant liability.

25 Section 86.95—Measurement.

3. In § 938.16, paragraph (ooo) is added to read as follows:

**§ 938.16 Required regulatory program amendments.**

* * * * *

(ooo) By September 1, 1995, Pennsylvania shall amend 25 chapter 86.83(a)(2) to be no less effective than 30 CFR 795.6(a)(2) to provide that the applicant must establish that the operator's probable total attributed annual production following permit issuance will remain under 300,000 tons for all years, not just the first year.

[FR Doc. 95–7817 Filed 3–31–95; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Parts 162 and 165

**[CGD11–94–007]**

**RIN 2115–AE84**

## Regulated Navigation Area; San Francisco Bay Region, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing regulated navigation areas (RNAs) within the San Francisco Bay Region in the waters of the Golden Gate, Central Bay, Lower Bay, San Pablo Bay and Carquinez Strait. This action is necessary due to vessel congestion in areas where maneuvering room is limited. These RNAs will increase navigation safety in the San Francisco Bay Region by organizing traffic flow patterns; reducing meeting, crossing, and overtaking situations between large vessels in constricted channels; and limiting vessel speed. This rulemaking will also remove existing regulatory language relating to the Pinole Shoal Channel which with be incorporated into the RNA.

**EFFECTIVE DATE:** This rule is effective on May 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Commander Dennis Sobeck, Commanding Officer, Vessel Traffic Service San Francisco, San Francisco; telephone (415) 556–2950.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The principal persons involved in drafting this document are Commander Dennis Sobeck, Project Manager, Vessel Traffic Service San Francisco, and Lieutenant Commander C. M. Juckniess, Project Counsel, Eleventh Coast Guard District Legal Office.

**Regulatory History**

On December 12, 1994, the Coast Guard published a notice of proposed rulemaking for these regulations in the **Federal Register** (59 FR 63947). The comment period ended February 10, 1995. The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and no hearing was held.

**Background and Purpose**

In 1972, the Coast Guard, with input from various members of the San Francisco Bay maritime community, established voluntary vessel traffic routing measures for the San Francisco Bay region that consisted of traffic lanes in the Golden Gate and the Central Bay extending to Pinole Shoal Channel; separation zones; a precautionary area east of Alcatraz Island; and an Oakland Harbor Limited Traffic Area. Compliance with these routing measures was voluntary and intended for use by vessels 300 gross tons or greater.

In 1991, the precautionary area east of Alcatraz Island was expanded to include the water area between the San Francisco waterfront and Treasure Island, replacing the traffic lanes in that area. A deep water route was established north of Harding Rock.

In 1993, the Coast Guard, with input from the Harbor Safety Committee of the San Francisco Bay Region, modified the voluntary traffic routing measures to better conform to International Maritime Organization (IMO) traffic routing standards. The 1993 modification added

a Golden Gate precautionary area, a deep water traffic lane separation zone north of Harding Rock and an expanded Central Bay precautionary area. It eliminated the traffic lanes in the North Ship Channel and San Pablo Strait.

The presence of numerous recreational boats, windsurfers, and commercial fishing boats that transit the proposed RNAs poses a navigational hazard for vessels of 1600 or more gross tons which are constrained by their draft and maneuvering capabilities. By limiting or requiring the use of established traffic lanes, this rule will relieve congestion and promote safer transiting of the RNAs by vessels with restricted maneuverability. The rule makes the present voluntary traffic measures mandatory and requires vessels 1600 gross tons or more, or tugs with a two of 1600 gross tons or more, to follow traffic measures similar to those currently used on a voluntary basis. The regulation also defines precautionary areas and establishes overtaking, meeting, crossing and speed restrictions for certain vessels transiting specific channels within the RNAs.

The RNAs, which lie within the San Francisco VTS area (33 CFR 161.50), are as follows: San Francisco Bay RNA, North Ship Channel RNA, San Pablo Strait Channel RNA, Pinole Shoal Channel RNA, Southern Pacific Railroad Bridge RNA, Southampton Shoal/ Richmond Harbor RNA, and Oakland Harbor RNA.

*General requirements for all RNAs.* The depth of the water and geography of the San Francisco Bay Region, and the density of vessel traffic, which includes numerous ferries and recreational boats, severely constrain the ability of a vessel to maneuver in the event of an emergency. This regulation limits the maximum speed within the RNAs to 15 knots through the water for vessels 1600 gross tons or greater, or a tug with a tow of 1600 gross tons or greater, and requires those vessels to operate their engine(s) in a control mode and on fuel that will allow for an immediate response to any engine order, ahead or astern, including stopping its engine(s) for an extended period of time. Limiting vessel speeds to 15 knots or less through the water within the prescribed RNAs will reduce the risk of serious maritime accidents.

There may be situations where vessels would be unable to safely comply with the requirements of this regulation. In such cases, the Captain of the Port, or the Commanding Officer, VTS San Francisco, acting as a representative of the Captain of the Port, may allow a vessel to deviate from this regulation.

The RNAs defined in this rule are each considered to constitute a narrow channel or fairway. Therefore, Rule 9 of the Inland Navigation Rules (INRs) (33 U.S.C. 2009), in conjunction with the provisions of the associated INRs, is specifically made applicable within the defined RNAs and will be enforced.

*Specific requirements for individual proposed RNAs.* The geographic descriptions and proposed requirements specific to each RNA are as follows:

*San Francisco Bay RNA.* The San Francisco Bay RNA consists of the water area in the Golden Gate east of the COLREGS Demarcation Line (33 CFR 80.1142), the Central Bay including Raccoon Strait, and the existing charted precautionary area east of Alcatraz Island.

Because of the large number of vessels entering and departing San Francisco Bay, traffic lanes are established in the Golden Gate and the Central Bay to separate opposing traffic and reduce vessel congestion. The lanes are located where voluntary traffic lanes previously existed. Use of these lanes and adherence to the indicated direction of travel is required for vessels of 1600 or more gross tons, or tugs with a tow of 1600 or more gross tons, and recommended for all other vessels.

Due to the presence of shoals and rocks in the Central Bay, the Central Bay Two-way Deep Water Traffic Lane (DWTL), located north of Harding Rock, provides the best water depth safety margin for inbound vessels with a draft of 45 feet or greater, and for outbound vessels with a draft of 28 feet or greater. These deep draft vessels are required to use the DWTL. It is recommended that all other vessels use the Central Bay Traffic Lanes so that vessel traffic in the DWTL is kept to a minimum.

The DWTL is sufficiently narrow that meeting, crossing, and overtaking restrictions are necessary to reduce the likelihood of collision. The regulation provides that a power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, shall not enter the DWTL when another power-driven vessel of 1600 or more gross tons, or tug with a tow of 1600 or more gross tons, is navigating therein when either vessel is carrying certain dangerous cargo (as defined in 33 CFR 160.203), or bulk petroleum products, or is a tank vessel in ballast, if such entry could result in meeting, crossing, or overtaking the other vessel.

Since vessels are converging or crossing in such a manner that one-way traffic flow patterns, although desired, cannot be established, two precautionary areas are established in this RNA. They are: (1) the Golden Gate Precautionary Area, which encompasses the waters around the Golden Gate Bridge between the Golden Gate and the Central Traffic Lanes; and (2) the Central Bay Precautionary Area, which encompasses the large portion of the Central Bay and part of the Lower Bay. It is recommended that all vessels navigating in these precautionary areas be aware of the joining traffic lanes and DWTL so as to anticipate the movements of other vessels.

*North Ship Channel RNA and San Pablo Strait Channel RNA.* The North Ship Channel and San Pablo Strait Channel consist of the existing charted channels and delineate the only areas where the depths of water are sufficient to allow the safe transit of vessels of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons. The existence of strong tidal currents in these channels severely restrict the ability of vessels of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, to safely maneuver to avoid smaller vessels. These conditions create the need to apply the general regulations to these areas. Implementation of special regulations in these RNAs would have only a minimal impact on safety and is not justified at this time.

*Pinole Shoal Channel RNA.* The Pinole Shoal Channel RNA is a constricted waterway the use of which is currently restricted to vessels with a draft greater than 20 feet, or towboats with tows drawing more than 20 feet, as set forth in 33 CFR 162.205(a). Because of the narrow width of the channel and the draft of vessels using the channel, further meeting, crossing, and overtaking restrictions are necessary to reduce the likelihood of collision. This regulation provides that a power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, shall not enter the Pinole Shoal Channel RNA, which extends from approximately Light 7 to Light 13 of the Pinole Shoal Channel, when another power-driven vessel of 1600 or more gross tons, or tug with a tow of 1600 or more gross tons, is navigating therein and when either vessel is carrying certain dangerous cargo (as defined in 33 CFR 160.203) or bulk petroleum products, or is a tank vessel in ballast, if such entry would result in meeting, crossing, or overtaking the other vessel.

*Southern Pacific Railroad Bridge RNA.* The Southern Pacific Railroad Bridge RNA consists of a small circular area, 200 yards in radius, centered on the middle of the channel under the Southern Pacific Railroad Bridge. The limited horizontal clearance results in a greater chance of vessel allisions with

the bridge. This risk of allision is significantly increased when poor visibility conditions exist. The regulation precludes a power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, from transiting the Southern Pacific Railroad Bridge RNA when visibility is less than 1000 yards.

*Southhampton Shoal/Richmond Harbor RNA.* Southampton Shoal/ Richmond Harbor RNA encompasses Southampton Shoal Channel, the Richmond Long Wharf Maneuvering Area, the Richmond Harbor Entrance Channel and Point Potrero Reach. These are dredged channels and areas within which maneuvering room is severely limited. Close-quarters situations between deep-draft vessels in these channels need to be eliminated to reduce the risk of groundings and collisions.

In addition, the Southampton Shoal Channel is transited by a high number of laden tank vessels and vessels carrying certain dangerous cargo (as defined in 33 CFR 160.203), or bulk petroleum. Because of the potential for loss of life or serious environmental consequences in a collision involving one or more of these vessels, control of traffic flow is necessary. The Richmond Long Wharf Maneuvering Area between the Richmond Harbor Entrance Channel and Southampton Shoal Channel, often has vessels operating at low speeds where maneuverability is restricted. The regulation precludes vessels of 1600 or more gross tons, or tugs with a tow of 1600 or more gross tons, from entering the RNA if meeting, crossing, or overtaking another vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, could result.

*Oakland Harbor RNA.* The Oakland Harbor RNA encompasses the Oakland Bar Channel, Oakland Outer Harbor Entrance, Middle Harbor and Inner Harbor Entrance Channels. The charted Limited Traffic Area (LTA), which recommends that vessels of 300 or more gross tons transit one at a time to avoid crossing or meeting situations, is replaced by the Oakland Harbor RNA. The northern boundary of the Oakland Harbor RNA differs slightly from the LTA in that it follows the northern boundary of the Oakland Bar and Outer Harbor Entrance channels and extends to the ''E'' tower of the San Francisco-Oakland Bay Bridge. This regulation restricts vessels of 1600 or more gross tons, or tugs with a tow of 1600 or more gross tons, from entering the RNA if meeting, crossing, or overtaking another vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, could result.

Paragraph (e)(2) of this rulemaking substantially duplicates those regulations currently enumerated in 33 CFR 162.205(a). Paragraph (a) of 33 CFR 162.205 is removed, the section heading revised, and the remaining paragraphs of 33 CFR 162.205 redesignated as paragraphs (a) through (c).

**Discussion of Comments and Changes**

Four respondents to the NPRM provided comments on the proposed regulations. This section discusses the comments received as well as the Coast Guard's responses and changes to the rule.

One respondent encouraged the Coast Guard to adopt a maximum speed throughout the RNAs lower than the proposed 15 knots through the water. The commenter felt a 10 knot maximum, or an upper limit in that range, would better achieve the safety improvements being sought through this rulemaking. Specifically, the commenter proposed that at 15 knots, certain vessels may find it impossible to operate their engines such that an immediate response to any engine order could be effected without delay; whereas, at a speed in the range of 10 knots there should be no problem in meeting this additional rule requirement. The Coast Guard encourages vessels to travel at a speed which maximizes safety, as long as vessels do not exceed 15 knots through the water. The concerns of the respondent are adequately addressed by subparagraph (d)(2) of this section in that if it were not possible to ensure an immediate response to any engine order at 15 knots, then the vessel would be required to reduce speed until immediate response is possible. The Coast Guard feels that a maximum limit of less than 15 knots, imposed regardless of conditions and other circumstances, would be unnecessarily restrictive.

Two respondents provided comments regarding vessel movements through the Central Bay traffic lanes. Three issues were raised: (1) A respondent sought confirmation that the Deep Water Traffic Lane (DWTL) is available for the use of inbound vessels at the option of the master, pilot, or person directing the movement of vessel if there is not opposing traffic. This understanding is correct. Due to the presence of shoals and rocks in the Central Bay, the DWTL provides the best water depth safety margin for inbound vessels with a draft of 45 feet or greater, and for outbound vessels with a draft of 28 feet or greater. These deep draft vessels are required to use the DWTL. Inbound vessels with drafts less than 45 feet and outbound vessels with drafts less that 28 feet are not precluded from using the DWTL; however, it is recommended that these vessels with lesser drafts use the appropriate Central Bay Traffic Lane and proceed in the general direction of traffic flow for that lane so that vessel traffic in the DWTL is kept to a minimum. (2) A respondent recommended that vessels of a draft of twenty-four feet or greater be allowed to use the Deep Water Traffic Lane (DWTL) when outbound. The respondent stated that negative tides of over one and a half feet reduce the underkeel clearance to an unsafe level for vessels of a draft of more than twenty-four feet navigating over Shag and Arch Rocks. Selection of the appropriate Central Bay traffic lane is dependent upon the height of the tide, among other factors. Although the RNA is written with the intent of requiring use of the DWTL by inbound vessels of greater than 45 feet draft and outbound vessels or greater than 28 feet draft, vessels of lesser draft are not precluded from using the DWTL. The Coast Guard has considered the depth clearances available in the Central Bay traffic lanes and has determined that the 28-foot draft threshold for mandatory use of the DWTL while westbound provides an adequate margin of safety. (3) A respondent sought confirmation that under special circumstances, *i.e.*, safety-related reasons, inbound vessels could transit the outbound traffic lane north of Alcatraz Island with proper meeting arrangements and notification to Vessel Traffic Service San Francisco. This understanding is correct in that deviations from both this section and the National Vessel Traffic Services Regulation (59 FR 36316, July 15, 1994) may be authorized provided the requested deviation is based on vessel handling characteristics, traffic density, radar contacts, environmental conditions, or other relevant conditions, and that such a deviation provides a level of safety equivalent to that provided by the required measure or is a maneuver considered necessary for safe navigation under the circumstances.

A respondent expressed concern at being unable to safely comply with the Southern Pacific Railroad Bridge RNA's restriction against low-visibility transit when transiting from east to west, due to lack of suitable anchorages immediately to the east of the RNA. A vessel transiting from west to east can comply with the regulation as proposed because a vessel is capable of anchoring immediately west of the bridge if visibility is less than 1000 yards. However, when transiting east to west, the nearest suitable anchorage site is

located approximately 14 miles from the bridge. Based on this distance and the limitations on maneuverability experienced in the westbound approach to the RNA, the Coast Guard has modified the regulation to reflect procedures to be followed when transiting from east to west. Under this modified procedure, the decision to not proceed will be made in time to permit anchoring until visibility improves.

A respondent suggested meeting, crossing, and overtaking should be allowed in the Richmond Long Wharf Maneuvering Area within the Southampton Shoal/Richmond Harbor RNA by vessels of 1600 or more gross tons or tugs with a tow of 1600 or more gross tons. Vessels currently meet, cross, and overtake in the Richmond Long Wharf Maneuvering Area to avoid doing so in Southampton Shoal Channel, Richmond Harbor Entrance Channel, and Point Potrero Reach; the commenter contends that safety would be reduced if meeting, crossing, and overtaking was restricted in the RNA, due to the consequent increase in vessel conflicts in other areas of the San Francisco Bay. By including the Richmond Long Wharf Maneuvering area as part of the no meeting, crossing, and overtaking zone within this RNA, the Coast Guard feels the potential for an oil spill or other marine casualty is significantly reduced in this area within which maneuvering room is severely limited. The Coast Guard does not feel that any degradation in vessel safety would result from requiring vessel meeting, crossing, and overtaking situations to take place outside this RNA, because impacted vessels bound for the Richmond Long Wharf or Richmond Inner Harbor currently coordinate their movements and if necessary slow their transit speed to avoid meeting in Southampton Shoal Channel, Richmond Entrance Channel, and Point Potrero Reach without any impact on vessel safety. The disadvantage connected with any delays that may be experienced by vessels transiting this RNA would be far outweighed by the advantage of gains in maritime safety.

A final commenter requested exemption from the requirements of the RNAs to cover the operations of a specified vessel. Other than registering a general endorsement of the rulemaking, that comment did not discuss or make recommendations regarding the NPRM; therefore, the request will be answered via separate correspondence.

**Regulatory Evaluation**

This regulation is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the Department of Transportation regulatory policies and procedures is unnecessary. At this time, covered vessels voluntarily comply with the majority of the procedures and restrictions contained in these regulations, and rarely if ever experience delays due to the high degree of coordination provided by the VTS. Formally mandating that mariners follow these previously voluntary requirements will not have more than a minimal impact on any party.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking would have significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard expects the economic impact of the regulation to be minimal on all entities since it makes mandatory the existing voluntary practices. Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism**

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

**Environmental Assessment.**

The Coast Guard considered the environmental impact of this rulemaking and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

A Consistency Determination under the Coastal Zone Management Act (14 U.S.C. 1451, *et seq.*), has been prepared and placed in the rulemaking docket.

**List of Subjects**

*33 CFR Part 162*

Navigation (water), Waterways.

*33 CFR Part 165*

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

**Regulations**

In consideration of the foregoing, the Coast Guard is amending parts 162 and 165 of title 33, Code of Federal Regulations, as follows:

## PART 162—[AMENDED]

1. The authority citation for part 162 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 162.205 is amended by removing paragraph (a), by redesignating paragraphs (b) through (d) as paragraphs (a) though (c), and by revising the section heading to read as follows: ''Suisun Bay, San Joaquin River, Sacramento River, and connecting waters, CA.''

## PART 165—[AMENDED]

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

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

4. A new § 165.1114 is added to read as follows:

**§ 165.1114 San Francisco Bay Region, California—regulated navigation area.**

(a) *Applicability.* This section applies to all ressels unless otherwise specified.

(b) *Deviations.* The Captain of the Port, San Francisco Bay, or the Commanding Officer, Vessel Traffic Service San Francisco, as a representative of the Captain of the Port, may authorize a deviation from the requirements of this regulation when it is deemed necessary in the interests of safety.

(c) *Regulated Navigation Areas,—(1) San Francisco Bay RNA.* (i) The following is a regulated navigation area—The waters bounded by a line connecting the following coordinates, beginning at:

27°47′18″N, 122°30′22″W; thence to
37°48′55″N, 122°31′41″W; thence along the shoreline to
37°50′38″N, 122°28′37″W; thence to
37°50′59″N, 122°28′00″W; thence to
37°51′45″N, 122°27′28″W; thence to
37°52′58″N, 122°26′06″W; thence to
37°51′53″N, 122°24′58″W; thence to
37°51′53″N, 122°24′00″W; thence to
37°51′40″N, 122°23′48″W; thence to
27°49′22″N, 122°23′48″W; thence to
37°48′20″N, 122°22′12″W; thence to
37°47′02″N, 122°21′33″W; thence to
37°47′02″N, 122°23′04″W; thence along the shoreline to the point of beginning.

Datum: NAD 83

(ii) The San Francisco Bay RNA consists of the following defined sub-areas:

(A) *Golden Gate Traffic Lanes.*—(*1*) *Westbound traffic lane:* Bounded by the Golden Gate precautionary area and the COLREGS Demarcation Line (33 CFR 80.1142), between the separation zone and a line connecting the following coordinates:

37°48′30″N, 122°31′22″W; thence to
37°49′03″N, 122°29′52″W.

Datum: NAD 83

(*2*) *Eastbound traffic lane.* Bounded by the COLREGS Demarcation Line (33 CFR 80.1142) and the Golden Gate precautionary area, between the separation zone and a line connecting the following coordinates:

37°47′50″ N, 122°30′48″ W; thence to
37°48′30″ N, 122°29′29″ W.

Datum: NAD 83

(*3*) *Golden Gate Separation Zone:* The area 75 yards each side of a line connecting the following coordinates:

37°48′08″ N, 122°31′05″ W; thence to
37°48′46″ N, 122°29′40″ W.

Datum: NAD 83

(B) *Golden Gate Precautionary Area:* An area bounded by a line connecting the following coordinates beginning at:

37°48′30″ N, 122°29′29″ W; thence to
37°48′52″ N, 122°28′41″ W; thence to
37°48′52″ N, 122°27′49″ W; thence to
37°49′36″ N, 122°27′46″ W; thence to
37°49′55″ N, 122°28′09″ W; thence to
37°49′28″ N, 122°28′45″ W; thence to
37°49′03″ N, 122°29′52″ W; thence returning to the point of beginning.

Datum: NAD 83

(C) *Central Bay Traffic Lanes.*—(*1*) Westbound traffic lane: Bounded by the Central Bay precautionary area and the Golden Gate precautionary area, between the Central Bay and the Deep Water Traffic Lane separation zones.

(2) *Eastbound traffic lane:* Bounded by the Golden Gate precautionary area and the Central Bay precautionary area, between the Central Bay Separation Zone and a line connecting the following coordinates, beginning at:

37°48′41″ N, 122°25′17″ W; thence to
37°48′50″ N, 122°26′14″ W; thence to
37°48′52″ N, 122°27′49″ W.

Datum: NAD 83

(*3*) *Deep Water (two-way) Traffic Lane:* Bounded by the Central Bay precautionary area and the Golden Gate precautionary area, between the Deep Water Traffic Lane and a line connecting the following coordinates, beginning at:

37°49′55″ N, 122°28′09″ W; thence to
37°50′36″ N, 122°27′12″ W; thence to
37°50′47″ N, 122°26′26″ W.

Datum: NAD 83

(D) *Central Bay Separation Zone:* The area 75 yards each side of a line connecting the following coordinates, beginning at:

37°49′17″ N, 122°27′47″ W; thence to
37°49′35″ N, 122°25′25″ W.

Datum: NAD 83

(E) *Deep Water Traffic Lane Separation Zone:* The area 75 yards each side of a line connecting the following coordinates, beginning at:

37°49′36″ N, 122°27′46″ W; thence to
37°50′22″ N, 122°26′49″ W; thence to
37°50′25″ N, 122°26′22″ W.

Datum: NAD 83

(F) *Central Bay Precautionary Area*: An area bounded by a line connecting the following coordinates, beginning at:

37°48′41″ N, 122°25′17″ W; thence to
37°49′32″ N, 122°25′13″ W; thence to
37°50′25″ N, 122°26′22″ W; thence to
37°50′47″ N, 122°26′26″ W; thence to
37°51′04″ N, 122°24′58″ W; thence to
37°51′53″ N, 122°24′58″ W; thence to
37°51′53″ N, 122°24′00″ W; thence to
37°51′40″ N, 122°23′48″ W; thence to
37°49′22″ N, 122°23′48″ W; thence to
37°48′20″ N, 122°22′12″ W; thence to
37°47′02″ N, 122°21′33″ W; thence to
37°47′02″ N, 122°23′04″W; thence to
37°47′02″ N, 122°23′04″ W; thence returning along the shoreline to the point of beginning.

Datum: NAD 83

(2) *North Ship Channel RNA*. The following is a regulated navigation area—The waters bounded by a line connecting the following coordinates, beginning at:

37°51′53″ N, 122°24′58″ W; thence to
37°54′15″ N, 122°27′27″ W; thence to
37°56′06″ N, 122°26′49″ W; thence to
37°56′06″ N, 122°26′34″ W; thence to
37°54′48″ N, 122°26′42″ W; thence to
37°54′02″ N, 122°26′10″ W; thence to
37°51′53″ N, 122°24′00″ W; thence to returning to the point of beginning.

Datum: NAD 83

(3) *San Pablo Strait Channel RNA*. The following is a regulated navigation area—The waters bounded by a line connecting the following coordinates, beginning at:

37°56′06″ N, 122°26′49″ W; thence to
37°57′26″ N, 122°27′21″ W; thence to
38°00′48″ N, 122°24′45″ W; thence to
38°01′54″ N, 122°22′24″ W; thence to
38°01′44″ N, 122°22′18″ W; thence to
37°57′37″ N, 122°26′23″ W; thence to
37°56′06″ N, 122°26′34″ W; thence returning to the point of beginning.

Datum: NAD 83

(4) *Pinole Shoal Channel RNA*. The following is a regulated navigation area—The waters bounded by a line connecting the following coordinates, beginning at:

38°01′54″ N, 122°22′25″ W; thence to
38°03′13″ N, 122°19′50″ W; thence to
38°03′23″ N, 122°18′31″ W; thence to
38°03′23″ N, 122°18′29″ W; thence to
38°03′05″ N, 122°19′28″ W; thence to
38°01′44″ N, 122°22′18″ W; thence returning to the point of beginning.

Datum: NAD 83

(5) *Southern Pacific Railroad Bridge RNA*. The following is a regulated navigation area—The water area contained within a circle with a radius of 200 yards, centered on 38°02′18″ N, 122°07′17″ W.

Datum: NAD 83

(6) *Southampton Shoal Channel/ Richmond Harbor RNA:* The following, consisting of two distinct areas, is a regulated navigation area—

(i) The waters bounded by a line connecting the following coordinates, beginning at:

37°54′17″ N, 122°22′00″ W; thence to
37°54′08″ N, 122°22′00″ W; thence to
37°54′15″ N, 122°23′12″ W; thence to
37°54′30″ N, 122°23′09″ W; thence along the shoreline to the point of beginning.

Datum: NAD 83

(ii) The waters bounded by a line connecting the following coordinates, beginning at:

37°54′28″ N, 122°23′36″ W; thence to
37°54′20″ N, 122°23′38″ W; thence to
37°54′23″ N, 122°24′02″ W; thence to
37°54′57″ N, 122°24′51″ W; thence to
37°55′05″ N, 122°25′02″ W; thence to
37°54′57″ N, 122°25′22″ W; thence to

37°54′00″ N, 122°25′13″ W; thence to
37°53′59″ N, 122°25′22″ W; thence to
37°55′30″ N, 122°25′35″ W; thence to
37°55′40″ N, 122°25′10″ W; thence to
37°54′54″ N, 122°24′30″ W; thence to
37°54′30″ N, 122°24′00″ W; thence returning to the point of beginning.

Datum: NAD 83

(7) *Oakland Harbor RNA.* The following is a regulated navigation area—The waters bounded by a line connecting the following coordinates, beginning at:

37°48′40″ N, 122°19′58″ W; thence to
37°48′50″ N, 122°20′02″ W; thence to
37°48′20″ N, 122°21′00″ W; thence to
37°48′15″ N, 122°21′30″ W; thence to
37°48′20″ N, 122°21′12″ W; thence to
37°48′26″ N, 122°21′45″ W; thence to
37°47′55″ N, 122°21′26″ W; thence to
37°48′03″ N, 122°21′00″ W; thence to
37°47′48″ N, 122°19′46″ W; thence to
37°47′55″ N, 122°19′43″ W; thence returning along the shoreline to the point of the beginning.

Datum: NAD 83

(d) *General Regulations.* (1) A power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, navigating within the RNAs defined in paragraph (c) of this section, shall not exceed a speed of 15 knots through the water.

(2) A power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, navigating within the RNAs defined in paragraph (c) of this section, shall have its engine(s) ready for immediate maneuver and shall operate its engine(s) in a control mode and on fuel that will allow for an immediate response to any engine order, ahead or astern, including stopping its engine(s) for an extended period of time.

(3) The master, pilot or person directing the movement of a vessel within the RNAs defined in paragraph (c) of this regulation shall comply with Rule 9 of the Inland Navigation Rules (INRs) (33 U.S.C. 2009) in conjunction with the provisions of the associated INRs.

(e) *Specific Regulations.*—(1) *San Francisco Bay RNA:* (i) A vessel shall navigate with particular caution in a precautionary area, or in areas near the terminations of traffic lanes or channels, as described in this regulation.

(ii) A power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, shall:

(A) use the appropriate traffic lane and proceed in the general direction of traffic flow for that lane;

(B) use the Central Bay Deep Water Traffic Lane if eastbound with a draft of 45 feet or greater or westbound with a draft of 28 feet or greater;

(C) not enter the Central Bay Deep Water Traffic Lane when another power-driven vessel of 1600 or more gross tons or tug with a tow of 1600 or more gross tons is navigating therein when either vessel is:

(*1*) carrying certain dangerous cargoes (as denoted in section 160.203 of this subchapter);

(*2*) carrying bulk petroleum products; or

(*3*) a tank vessel in ballast if such entry would result in meeting, crossing, or overtaking the other vessel.

(D) normally join or leave a traffic lane at the termination of the lane, but when joining or leaving from either side, shall do so at as small an angle to the general direction of traffic flow as practicable;

(E) so far as practicable keep clear of the Central Bay Separation Zone and the Deep Water Lane Separation Zone;

(F) not cross a traffic lane separation zone unless crossing, joining, or leaving a traffic lane.

(2) *Pinole Shoal Channel RNA:* (i) The use of Pinole Shoal Channel RNA is reserved for navigation of vessels with a draft greater than 20 feet or tugs with tows drawing more than 20 feet. Vessels drawing less than 20 feet are not permitted within this RNA and are prohibited from crossing it at any point.

(ii) A power-driven vessel of 1600 or more gross tons or a tug with a tow of 1600 or more gross tons shall not enter Pinole Shoal Channel RNA when another power-driven vessel of 1600 or more gross tons or tug with a tow of 1600 or more gross tons is navigating therein when either vessel is:

(A) carrying certain dangerous cargoes (as denoted in section 160.203 of this subchapter);

(B) carrying bulk petroleum products; or

(C) a tank vessel in ballast if such entry would result in meeting, crossing, or overtaking the other vessel.

(iii) Vessels permitted to use this channel shall proceed at a reasonable speed so as not to endanger other vessels or interfere with any work which may become necessary in maintaining, surveying, or buoying the channel, and they shall not anchor in the channel except in case of a deviation authorized under paragraph (b) of this section.

(iv) This paragraph shall not be construed as prohibiting any necessary use of the channel by any public vessels while engaged in official duties, or in emergencies by pilot boats.

(3) *Southern Pacific Railroad Bridge (RNA):* (i) When visibility is less than 1000 yards within the Southern Pacific Railroad Bridge RNA, a power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons:

(A) When eastbound, shall not transit through the RNA.

(B) When westbound:

(*1*) During periods of reduced visibility and immediately prior to passing New York Point, the master, pilot, or person directing the movement of a vessel shall obtain a report of visibility conditions within the RNA.

(*2*) If visibility within the RNA is less than 1000 yards, the vessel shall not transmit the RNA. Vessels prevented from transiting due to low visibility shall not proceed past Mallard Island until visibility improves to greater than 1000 yards within the RNA.

(*3*) If a transit between New York Point and the Southern Pacific Railroad Bridge has commenced, and the visibility subsequently should become less than 1000 yards, the master, pilot, or person directing the movement of a vessel shall comply with paragraph (b) of this section and may proceed, taking all further appropriate actions in the interest of safety.

(ii) Visibility is considered to be 1000 yards or greater when both the following geographical points can be seen from the Southern Pacific Railroad Bridge:

(A) The Port of Benecia Pier, and

(B) The Shell Martinez Pier.

(4) *Southampton Shoal/Richmond Harbor RNA:* A power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, shall not enter Southampton Shoal/Richmond Harbor RNA when another power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, is navigating therein, if such entry would result in meeting, crossing, or overtaking the other vessel.

(5) *Oakland Harbor RNA:* A power-driven vessel of 1600 or more gross tons or a tug with a tow of 1600 or more gross tons shall not enter the Oakland Harbor RNA when another power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, is navigating therein, if such entry would result in meeting, crossing, or overtaking the other vessel.

**R.A. Appelbaum,**

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

[FR Doc. 95–8124 Filed 3–31–95; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 83–5–6889a; FRL–5165–5]**

### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from organic liquid bulk plants and terminals, surface coating of miscellaneous metal parts and products, aerospace assembly and component coating operations, flexible and rigid disc manufacturing, gasoline bulk terminals, gasoline bulk plants, and gasoline delivery vehicles. One of the rules concerns the submittal of VOC and $NO_X$ emissions data to the district. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** This action is effective on June 2, 1995 unless adverse or critical comments are received by May 3, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

**FOR FURTHER INFORMATION CONTACT:** Helen Liu, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1199.

**SUPPLEMENTARY INFORMATION:**

#### Applicability

The rules being approved into the California SIP include the following BAAQMD rules: Rule 8.6, Organic Liquid Bulk Terminals and Bulk Plants, Rule 8.19, Surface Coating of Miscellaneous Metal Parts and Products, Rule 8.29, Aerospace Assembly and Component Coatings Operations, Rule 8.33, Gasoline Bulk Terminals and Gasoline Delivery Vehicles, Rule 8.38, Flexible and Rigid Disc Manufacturing, Rule 8.39, Gasoline Bulk Plants and Gasoline Delivery Vehicles, and Rule 2.1, Section 429, Emissions Statement. These rules were submitted by the California Air Resources Board (CARB) to EPA on September 28, 1994, except for Rule 8.6, which was submitted on May 24, 1994, and Rule 2.1, Section 429, which was submitted October 19, 1994.

#### Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Francisco-Bay Area. 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172 (a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Bay Area is classified as moderate[2]; therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 24, 1994, September 28, 1994, and October 19, 1994, including the rules being acted on in this notice. This document addresses EPA's direct-final action for the BAAQMD rules cited above. BAAQMD adopted Rule 8.6 on February 2, 1994, Rule 8.19, Rule 8.38, and Rule 2.1, Section 429 on June 15, 1994, and Rule 8.29, Rule 8.33, and Rule 8.39 on June 1, 1994. These submitted rules were found to be complete on July 14, 1994 (Rule 8.6), on November 22, 1994 (Rules 8.19, 8.29, 8.33, 8.38, 8.39), and on December 1, 1994 (Rule 2.1, Section 429). These rules were found complete pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[3] and are being finalized for approval into the SIP.

Rule 8.6 controls volatile organic compounds (VOC) emissions from transfer operations at non-gasoline organic liquid bulk plants and terminals. Rule 8.19 limits the VOC emissions from the coating of miscellaneous metal parts and products. Rule 8.29 limits the emission of VOCs from the surface preparation and coating of aerospace components and cleanup of aerospace coating equipment. Rule 8.33

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Bay Area has retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

controls VOC emissions from transfer operations at gasoline bulk terminals. Rule 8.38 limits the emission of VOCs from the manufacture of flexible and rigid magnetic data storage discs. Rule 8.39 controls VOC emissions from transfer operations at gasoline bulk plants. Rule 2.1, Section 429 requires certain VOC and $NO_X$ facility owners to report VOC and oxides of nitrogen ($NO_X$) emissions data annually to the district. VOC and $NO_X$ emissions contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the Bay Area's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

**EPA Evaluation and Action**

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 8.19 is entitled ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products'' [EPA–450/2–78–015]. The CTG entitled ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals'' [EPA–450/2–77–026] applies to Rule 8.6 and Rule 8.33. The CTG entitled ''Control of Volatile Organic Emissions from Bulk Gasoline Plants'' [EPA–450/2–77–035] applies to Rule 8.6 and Rule 8.39. The CTG entitled ''Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems'' [EPA–450/2–78–051] applies to Rule 8.33 and Rule 8.39. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1, and in ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology,'' Office of Air Quality Planning Standards, June 1992. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

BAAQMD's submitted Rule 8.6, Organic Liquid Bulk Terminals and Bulk Plants includes the following significant changes from the current SIP:

- The mass emission limit for bulk terminals was lowered from 0.65 lb/1000 gallons to 0.17 lb/1000 gallons,
- Mass emission limits were added for bulk plants (0.35 lb/1000 gallons) and for deliveries to storage tanks (0.17 lb/1000 gallons),
- The rule now covers liquids with vapor pressures greater than 0.5 psia.

BAAQMD's submitted Rule 8.19, Surface Coating of Miscellaneous Metal Parts and Products includes the following significant changes from the current SIP:

- Exemptions include compliant powder coatings and low usage coatings,
- Certain coatings with limits that exceed the VOC content limits in the CTG are allowed,[4]
- Petition requirements for low usage and specialty coatings are introduced,
- Emission reduction credits must be adjusted to reflect federal RACT.

BAAQMD's submitted Rule 8.29, Aerospace Assembly and Component Coating Operations includes the following significant changes from the current SIP:

- The low usage coating exemption is 200 gallons per facility per calendar year,
- Operations that use less than 20 gallons of coating in any calendar year are exempt from certain recordkeeping requirements,
- The abatement efficiency for control of emissions from non-compliant coatings must be at least 85%,
- Petition requirements for low usage coatings are introduced.

BAAQMD's submitted Rule 8.33, Gasoline Bulk Terminals and Gasoline Delivery Vehicles includes the following significant changes from the current SIP:

- The emission limit for vapor recovery systems was lowered from 0.55 lb/1000 gallons to 0.08 lb/1000 gallons,
- Test methods were updated.

BAAQMD's submitted Rule 8.38, Flexible and Rigid Disc Manufacturing includes the following major elements:

- Total control efficiency must be at least 85% for disc coating and polishing lines,
- Coating mixing operation requirements specify dimensions and materials for the vats.

BAAQMD's submitted Rule 8.39, Gasoline Bulk Plants and Gasoline Delivery Vehicles includes the following significant changes from the current SIP:

- The emissions limit for vapor recovery systems was lowered from 0.55 lb/1000 gallons to 0.50 lb/1000 gallons,
- Test procedures were either added or updated.

BAAQMD's submitted Rule 2.1, Section 429, Emissions Statement includes the following major issue:

- Certain VOC and $NO_X$ facility owners are required to report emissions data annually to the district.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD's Rule 8.6, Organic Liquid Bulk Terminals and Bulk Plants, Rule 8.19, Surface Coating of Miscellaneous Metal Parts and Products, Rule 8.29, Aerospace Assembly and Component Coatings Operations, Rule 8.33, Gasoline Bulk Terminals and Gasoline Delivery Vehicles, Rule 8.38, Flexible and Rigid Disc Manufacturing, Rule 8.39, Gasoline Bulk Plants and Gasoline Delivery Vehicles, and Rule 2.1, Section 429, Emissions Statement are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future 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.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register**

[4] EPA has determined that emissions resulting from the higher limits do not represent a significant difference from the allowable emissions under the applicable CTG standards and that they fall within the ''5% Rule'' in the Blue Book. The ''5% Rule'' allows states to depart from a CTG standard upon a demonstration that the departure results in ''no significant difference'' in emissions (i.e. less than 5% from the CTG allowable).

publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 2, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 2, 1995.

**Regulatory Process**

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 population of less than 50,000. SIP approvals under sections 110 and 301(a) 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. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

The OMB has exempted this action from review under Executive Order 12866.

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

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

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

Dated: February 15, 1995.

**Felicia Marcus,**

*Regional Administrator.*

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

2. Section 52.220 is amended by adding paragraphs (c) (197)(i)(B), (199)(i)(A)(*5*), (202) introductory text, and (202)(i) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(197) * * *

(i) * * *

(B) Bay Area Air Quality Management District.

(*1*) Rule 8–6, adopted on February 2, 1994.

* * * * *

(199) * * *

(i) * * *

(A) * * *

(*5*) Rules 8–29, 8–33, and 8–39, adopted on June 1, 1994, and Rules 8–19 and 8–38, adopted on June 15, 1994.

* * * * *

(202) New and amended regulations for the following APCDs were submitted on October 19, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Rule 2–1, adopted on June 15, 1994.

* * * * *

[FR Doc. 95–8042 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 52

**[IL104–1–6697a; FRL–5158–7]**

## Approval and Promulgation of Implementation Plans; Illinois

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** On November 28, 1994, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the United States Environmental Protection Agency (USEPA) for Marine Vessel Loading as part of the State's 15 percent (%) Rate of Progress (ROP) Plan control measures for Volatile Organic Matter (VOM) emissions. A final approval action is being taken because the submittal meets all pertinent Federal requirements. The control measures require marine terminals, from May 1 through September 15, to operate a vapor collection and control system which achieves a 95% control efficiency. This type of control is not required as Reasonably Available Control Technology (RACT) under the Clean Air Act, and is therefore not subject to the same RACT stringency. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this action, USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

**DATES:** This final rule is effective June 2, 1995, unless an adverse comment is received by May 3, 1995. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the revision request and USEPA's analysis (Technical Support Document) are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Rosanne M. Lindsay at (312) 353–1151 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Rosanne M. Lindsay at (312) 353–1151.

**SUPPLEMENTARY INFORMATION:**

**I. Summary of State Submittal**

On November 28, 1994, the Illinois Environmental Protection Agency (IEPA) submitted a SIP revision request which amends 35 Ill. Adm. Code Parts 218 and 219, to include control measures for the loading of marine vessels and, in addition, eliminates the

exemption for barge loading from the ''non-control technique guideline'' Subparts, for the Chicago and Metro-East ''severe'' and ''moderate'' ozone nonattainment areas. In doing so, IEPA believes that these control measures, in part, will reduce VOM emissions enough to meet the 15% ROP requirements. As required by section 182(b) of the Clean Air Act (the Act), affected States must submit a Plan to reduce 1990 VOM emissions by 15% by 1996.

Illinois estimates that the 15% reductions required for Chicago and the Metro-East are equivalent to 250 tons per day (TPD) and 27 TPD, respectively, of which controls from marine vessel loading will contribute 1.3 TPD (1%) and 11.82 TPD (44%), respectively.

## II. Analysis of State Submittal

The requirements of the rule apply to sources (marine terminals) that load or are permitted to load gasoline or crude oil to marine vessels during the Illinois ozone season (May 1 through September 15). The rule does not apply to the fueling of marine vessels or the transfer of liquids from one marine vessel to another marine vessel.

The rule control requirements specify that, unless an owner or operator chooses an alternative control option (i.e., Section 218/219.762, subsection (c)), the owner/operator shall equip each terminal with a vapor collection and a control system that results in overall VOM reductions of at least 95 percent by weight during loading, is maintained to prevent leaks, odors, and fumes, and has been certified by the Coast Guard.

Further, subsection (b) requires that from May 1 through September 15, gasoline or crude oil cannot be loaded unless they are equipped with vapor collection equipment certified by the Coast Guard, are capable of being connected to the terminal's vapor collection system, and are vapor-tight. Vapor-tightness requires that the owner or operator of a marine vessel either present documentation, prior to loading to show that a leak test (Method 21, 40 CFR part 60, appendix A) was passed in the preceding 12 months, or be subject to a leak test during the last 20% of loading with documented results. Failing the test prohibits subsequent loading of the marine vessel until such time that the repair has been made and the documentation provided. Where loading of a marine vessel takes place with a vacuum-assisted vapor collection system (See 218/219.762, subsection (b)(3)A)), the marine vessel is not required to provide evidence of a leak test or be subject to one during loading.

In subsection (c), the rule lists three alternatives to the requirements under subsections (a) and (b): (1) Operation of the control system can be performed in accordance with Federal regulations pursuant to sections 112(d) or 183 (f) of the Clean Air Act; (2) reductions equivalent to those listed in appendix E of the rule, through a federally enforceable emission reduction plan; or (3) an alternative control plan approved by USEPA in a federally enforceable permit or as a SIP revision. Compliance with this rule is required by May 1, 1996.

**Note:** A federally enforceable emission reduction plan may include reductions from: (a) The shut down emission units and withdrawal of permits; (b) over-control of other emission units; or (c) prohibition of loading activity of gasoline or crude oil during the control period. Such provisions will be incorporated into a permit as federally enforceable conditions where applicable. Compliance with this rule is required by May 1, 1996.

All marine terminals, except those complying with alternative control requirements, are required to certify compliance upon initial start-up or upon a change in the compliance method. Testing and monitoring, recordkeeping and reporting procedures are also required and apply during the regulatory control period. Those sources with alternative control requirements must maintain daily throughput records. All records will be maintained for a period of 3 years.

The control requirements, compliance certifications, testing and monitoring, recordkeeping and reporting requirements specified in the rule, are appropriate as they apply to all sources that load gasoline or crude oil into marine vessels (i.e., there is no minimum threshold of applicability).

The Illinois rules in no way infringe upon the U.S. Coast Guards jurisdiction and regulations, and similarly, the U.S. Coast Guard requirements do not, in any way, relieve a marine terminal from obtaining the appropriate permits from IEPA, or restrict IEPA's authority to inspect or enforce. Further, the reductions required by these rules do not interfere with required reductions which result from compliance with any other Federal controls or measures included in the Illinois SIP.

## III. Final Rulemaking Action

The USEPA has undertaken its analysis of the marine vessel loading revision request based on a review of the materials presented by IEPA and has determined that this SIP revision request is approvable. Because USEPA considers this action noncontroversial and routine, we are approving it today without prior proposal.

These rules, applicable to the Chicago and Metro-East St. Louis, amend 35 Ill. Adm. Code Part 211 Subpart B, amend Sections 218/219.101 and 218/219.106, add Subpart GG to Parts 218 and 219, including Appendix E, and amend Sections 218/219.920, 218/219.940, 218/219.960, and 218/219.980.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the requested SIP revision should adverse or critical comments be filed. This action will be effective on June 2, 1995, unless adverse or critical comments are received by May 3, 1995.

If the USEPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rule that withdraws this final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 2, 1995.

This action has been classified as a Table 2 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. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP 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.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government

entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act 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 the State action. The Clean Air Act forbids USEPA 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).

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 June 2, 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 in 40 CFR Part 52**

Air pollution control, Environmental protection, Incorporation by reference.

Dated: February 9, 1995.

**David A. Ullrich,**

*Acting Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(106) to read as follows:

**§ 52.720 Identification of plan.**

* * * * *

(c) * * *

(106) On November 23, 1994, the State submitted amended marine vessel loading rules which consisted of revised definitions, and revisions to the Ozone Control Plan for the Chicago and Metro-East St. Louis areas.

(i) *Incorporation by reference.*

Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources.

(A) Part 211: Definitions and General Provisions, Subpart B: Definitions, Sections 211.3480 Loading Event and 211.3660 Marine Vessel added at 18 Ill. Reg. 166769, effective October 25, 1994; Sections 211.3650 Marine Terminal, and 211.6970 Vapor Collection System, and Section 211.6990 Vapor Control System amended at 18 Ill. Reg. 16769, effective October 25, 1994.

(B) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart A; General Provisions, Sections 218.101 Savings Clause and 218.106 Compliance Dates amended at 18 Ill. Reg. 16392, effective October 25, 1994; Subpart GG: Marine Terminals, Sections 218.760 Applicability, 218.762 Control Requirements, 218.764 Compliance Certification, 218.766 Leaks, 218.768 Testing and Monitoring, and 218.770 Recordkeeping and Reporting added at 18 Ill. Reg. 16392, effective October 25, 1994; Appendix E: List of Affected Marine Terminals amended at 18 Ill. Reg. 16392, effective October 25, 1994.

(C) Part 219: Organic Material Emissions Standards and Limitations for the Metro-East Area, Subpart A; General Provisions, Sections 219.101 Savings Clause and 219.106 Compliance Dates amended at 18 Ill. Reg. 16415, effective October 25, 1994; Subpart GG: Marine Terminals, Sections 219.760 Applicability, 219.762 Control Requirements, 219.764 Compliance Certification, 219.766 Leaks, 219.768 Testing and Monitoring, and 219.770 Recordkeeping and Reporting added at 18 Ill. Reg. 16415, effective October 25, 1994.

[FR Doc. 95–8044 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 52

**[IL91–1–6279a; FRL–5169–4]**

## Approval and Promulgation of Implementation Plans; Illinois

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Direct final rule.

**SUMMARY:** The USEPA approves the site-specific State Implementation Plan (SIP) revision request submitted by the State of Illinois on January 25, 1994, for Quantum Chemical Corporation's (Quantum) facility located in Morris, Illinois. This site-specific SIP revision alters certain Reasonably Available Control Technology (RACT) regulations contained within 35 Illinois Administrative Code (IAC) Part 218 as they apply to specific units or plants within this facility. This approval is based upon sufficient demonstration that factors relating to this facility are substantially and significantly different from those relied upon in adopting 35 IAC Part 218, and that these factors warrant a corresponding adjustment of this facility's RACT requirements. The submittal was reviewed for completeness, and was found to be complete on March 21, 1994. The rationale for this approval is set forth in this final rule; additional information is available at the address indicated below. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this direct final rule, USEPA will withdraw this direct final rule and address the comments received in a subsequent final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. No additional opportunity for public comment will be provided. Unless this direct final rule is withdrawn no further rulemaking will occur on this requested SIP revision.

**DATES:** This final rule is effective June 2, 1995 unless notice is received by May 3, 1995 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the USEPA's technical analysis are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this SIP revision is also available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room 1500, U.S. Environmental

Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mark J. Palermo (312) 886–6036.

**SUPPLEMENTARY INFORMATION:**

## I. Background/Summary of Submittal

On January 25, 1994, the Illinois Environmental Protection Agency (IEPA) submitted a site-specific SIP revision request for Quantum's Morris, Illinois facility. This site-specific SIP revision would relax the Volatile Organic Material (VOM) emission reduction requirements for the polymer manufacturing units and cooling water towers at this facility.

The Quantum facility is located in Aux Sable Township, Grundy County. Aux Sable Township was added to the Chicago ozone nonattainment area, with an effective date of January 6, 1992. The Chicago ozone nonattainment area is covered by the RACT requirements contained within 35 IAC Part 218. The site-specific SIP revision submitted on January 25, 1994, seeks relaxation of these requirements as they apply to specific units or plants within the Quantum facility.

The Quantum facility in Morris, Illinois is an integrated petroleum manufacturing complex that includes manufacturing operations classified as organic chemical manufacturing (Standard Industrial Code [SIC] 2869) and polymer manufacturing (SIC 2821). The site-specific SIP revision is confined to VOM (VOM, as defined by the State of Illinois is identical to ''volatile organic compounds'' [VOC], as defined by the USEPA) emission sources associated with polymer manufacturing and water cooling. In the polymer manufacturing processes, plastic resins are synthesized in closed, high pressure reactor units from feed stocks of ethane, propane, and butane. During the synthesis process, some of the VOM are entrained within the polymer resins. These entrained gases are emitted to the atmosphere with the conveying air at numerous exhaust points.

The site-specific SIP revision seeks an adjusted standard for three plants at the Quantum facility: the Low Density Polyethylene (LDPE) Plant; the Linear Low Density Polyethylene (LLDPE) Plant; and the Polypropylene Plant. The site-specific SIP revision also seeks an adjusted standard for six water cooling towers at the facility.

The site-specific SIP revision would alter application of regulations found within two sections of the Chicago area RACT rules. These are sections 218.966 and 218.986 of the 35 IAC. The rules in section 218.966 address miscellaneous organic chemical manufacturing processes (35 IAC: Subpart RR), and the rules in section 218.986 address ''other'' VOM emission sources (35 IAC: Subpart TT). The request for an adjusted standard from section 218.966 deals solely with the requirements found in subsections (a) and (b), which require a reduction of VOM emissions of at least 81 percent or an alternative control plan which has been approved by the IEPA and the USEPA. The request for an adjusted standard from section 218.986 deals with the requirements found in subsections (a), (b), and (c), which require an 81 percent reduction in uncontrolled VOM emissions, an independent requirement for coating lines (not applicable in this case), or an alternative control plan which has been approved by the IEPA and the USEPA.

The adjusted standard would pertain to VOM emission sources from Quantum's polymer plants' finishing and storage units with the affected units defined as follows:

(1) LDPE Plant:
(a) Spin Driers—total of 4 spin driers, one for each line;
(b) Blenders—total of 18 blenders, BL–1 through BL–18, and associated bagfilters;
(c) Storage and Car Loading—total of 17 silos, car loading facilities, and associated bagfilters;
(2) LLDPE Plant:
(a) Pellet Driers—total of 2 spin dryers, one for each line;
(b) Blenders—total of 12 blenders, 4 for line #5 (BL–13 through BL–16) and 8 for line #6 (BL–30 through BL–37), and associated bagfilters;
(c) Multipass Separators—total of 4 multipass separators, 2 at the booster blower and 2 at car loading facilities, and associated bagfilters;
(d) Scalperators and Hopper Cars—total of 4 scalperators and 2 bagfilters at car loading facilities;
(3) Polypropylene Plant:
(a) Pellet Driers—total of 4 spin dryers, one for each line;
(b) Blenders—total of 7 blenders and associated bagfilters; and
(c) Storage and Car Loading—total of 24 silos, car loading facilities, and associated bagfilters.

In addition, the adjusted standard would pertain to the following:
(1) Non-contact cooling water towers at the Ethylene Plant, LDPE Plant, Polypropylene Plant, Utilities Area, and Process Research Area; and
(2) Process cooling water tower at the Ethylene Oxide/Ethylene Glycol Plant.

The SIP revision defines the current operations at the sources listed above to be RACT with no additional VOM emission reduction needed to meet the requirements of 35 IAC sections 218.966 and 219.986.

In addition to the above, the SIP revision requires Quantum to comply with the following at the LDPE Plant:

(1) VOM concentrations from the LDPE finishing operations, measured at the discharge of the fabric filters (during normal operation in which two production lines are running through one bagfilter), may not exceed 250 parts per million by weight;

(2) VOM concentrations from LDPE spin dryers may not exceed 500 parts per million by weight;

(3) Quantum shall conduct testing in accordance with 35 IAC section 218.105 to determine VOM concentrations from the LDPE finishing operation and spin dryers upon written request by the IEPA or upon a significant change in LDPE product or operation that may increase VOM emissions; and

(4) Quantum shall maintain operation records, as specified in an operating permit, that identify any significant changes in LDPE product or operation that may increase VOM emissions.

The adjusted standards described above were adopted by the Illinois Pollution Control Board on October 7, 1993, and effective on October 7, 1993.

In support of the SIP revision and adjusted standard, Quantum and IEPA note that the particular type of polymer manufacturing employed at the Morris, Illinois facility was not considered during the promulgation of Part 218 of 35 IAC and was not reviewed by the USEPA in the preparation of the Control Technology Guideline (CTG) upon which RACT for the polymer manufacturing industry was based. It is noted, however, that the USEPA did review this type of polymer manufacturing during the development of the New Source Performance Standard (NSPS) for this source category. The NSPS for this source category exempts (40 CFR Part 60.560(g)) vent streams from controls where VOM concentrations are less than 0.1 percent by weight. The emission sources for which Quantum has requested an adjusted standard have vent stream VOM concentrations below 0.1 percent by weight.

Quantum commissioned a study to review possible emission control strategies and costs for the low-VOM concentration emission sources associated with the polymer manufacturing units. This study considered nine possible control technologies, including carbon adsorption, absorption, condensation, thermal incineration, catalytic

incineration, regenerative thermal incineration, flaring, and use of a low pressure product separator or degassing extruder. The carbon adsorption, absorption, and condensation technologies were found to be technically infeasible. The remaining control technologies, although considered to be technically feasible, were found to be economically unacceptable, with costs ranging from $7,270 per VOM ton reduction for regenerative thermal incineration to $183,110 per VOM ton reduction for flaring. An additional drawback to the incineration technologies is the increased emission of oxides of nitrogen, which Quantum and the IEPA believe may add to the formation of downwind ozone.

Quantum and the IEPA agree that, under normal operating procedures, little or no VOM should be emitted from the non-contact cooling towers. In the case of the single contact cooling tower, which cools process water, the VOM emissions are contended to be negligible due to the high solubility and low vapor pressure (less than 1 millimeter Hg at ambient temperatures) of ethylene glycol, which is the primary VOM to be included in the cooled water. Water sampling has also shown a small concentration of ethylene oxide, with an expected emission rate of 3.4 tons per year under normal operating conditions. Therefore, total VOM emissions from the contact cooling tower are expected to be minimal.

## II. USEPA Analysis of Submittal

Review of the emissions data provided in Attachment A and Exhibit E (''Economic Analysis and Technology Review For Control of VOM Emissions From Polyolefin Finishing and Storage Units'') of the SIP revision submittal shows that the majority of the VOM emissions occur at the LDPE Plant. This plant accounts for 94.1 percent of the annual VOM emissions from the polymer manufacturing operations at this facility. At the LDPE Plant, nearly all VOM emissions are associated with vent emissions from spin dryer and blending operations, with the emissions from the blending operations dominating.

The IEPA and Quantum have correctly interpreted the implications of the emission limits specified for vent streams in the NSPS standard. Review of process flow and emissions data contained in Attachment A, Exhibit E, and Exhibit C (''LDPE Synthesis Simplified Process Flow Diagram'') of the submittal show that most of the VOM emissions from the LDPE Plant occur at vent streams. Given the low density of VOM in the vent streams, less than 0.1 percent by weight, these emissions would be exempted if the NSPS is assumed to equivalent to RACT for this facility. It is the opinion of the USEPA that this is the case given the current nature of the NSPS for this source type and the lack of other VOM control analyses specificly representing RACT. It should be noted that the VOM emission limits adopted by the State for this source would limit emissions to levels below the NSPS cutoffs specified for vent streams.

The remaining emissions from storage and loading operations and from water cooling towers can not be exempted under the NSPS exemption specified by Quantum and the State. It is noted, however, that these emissions are expected to total to less than 10 tons VOM per year. Given the small total of these emissions and the high cost of control, in excess of $7,500 per ton of VOM controlled, the USEPA agrees that the current operations at this facility may be assumed to be RACT.

Based on the State's submittal, the USEPA approves this site-specific revision to the Illinois SIP.

## Procedural Background

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial action and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on June 2, 1995, unless USEPA receives adverse or critical comments by May 3, 1995.

If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent **Federal Register** document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking notice. Please be aware that USEPA will institute another comment period on this action only if warranted by significant revision to the rulemaking based on any comments received in response to today's action.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on June 2, 1995.

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. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP 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., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic 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.

The SIP approvals under section 110 and subchapter I, part D, of the Act 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 small entities. 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 USEPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: February 23, 1995.

**Robert Springer,**

*Acting Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(108) to read as follows:

**§ 52.720 Identification of plan.**

(c)* * *

(108) On January 25, 1994, the State submitted a revision to its ozone State Implementation Plan (SIP) for Quantum Chemical Corporation's facility located in Morris, Aux Sable Township, Grundy County, Illinois. It grants an adjusted standard from Parts 35 Illinois Administration Code (IAC) 218.966 and 218.986 as they apply to specific units or plants within this facility.

(i) Incorporation by reference.

(A) Illinois Pollution Control Board Final Opinion and Order, AS 92–14, adopted on October 7, 1993, and effective on October 7, 1993.

[FR Doc. 95–8038 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[MO–9–1 6878; FRL–5180–7]**

## Approval and Promulgation of Implementation Plans; State of Missouri

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects the submission date for material submitted by the State of Missouri in the final rule published on August 24, 1994 which approved revisions to the Missouri State Implementation Plan. Missouri submitted administrative amendments to rule 10 CSR 10–6.030 which renumber and reorganize sections within that rule.

**EFFECTIVE DATE:** April 3, 1995.

**ADDRESSES:** Copies of the documents relative to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Josh Tapp at (913) 551–7606.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 94–20737 in the **Federal Register** of August 24, 1994 (59 FR 43480), the submission date in § 52.1320(c)(79) of ''September 20, 1991,'' should have been ''November 20, 1991.''

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

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

Dated: March 3, 1995.

**William Rice,**

*Acting Regional Administrator.*

**Correction of Publication**

Accordingly, the regulations published at 59 FR 43480 on August 24, 1994, are corrected as follows:

**§ 52.1320 [Corrected]**

On page 43481, in the second column, in § 52.1320, in paragraph (c)(79) introductory text, in the last line, the date ''September 20'' is corrected to read ''November 20''.

[FR Doc. 95–7748 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[TX–10–1–5223a; FRL–5171–1]**

## Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Visible Emissions

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

**ACTION:** Direct final rule.

**SUMMARY:** This action approves a revision to the Texas SIP addressing visible emissions. The purpose of approving this revision is to enable the visible emissions provisions of Texas Regulation I to become federally enforceable.

**DATES:** This final rule will become effective on June 2, 1995, unless adverse or critical comments are received by May 3, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Sather or Mr. Bill Deese, Planning Section (6T–AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

**SUPPLEMENTARY INFORMATION:**

**Analysis of State Submissions**

*A. Procedural Background*

The Clean Air Act (CAA) requires states to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing. Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a state under the CAA must be adopted by such state after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) of the CAA and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 Code of Federal Regulations (CFR) part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

The State of Texas held public hearings on February 1–2, 1989, May 17, 1990, May 21–22, 1992, and on March 17, 1993, to entertain public comment

on the proposed revisions to the visible emissions provisions in Texas Regulation I. Following the public hearings and consideration of hearing comments, the revisions were adopted by the State and submitted by the Governor to the EPA by cover letters dated August 21, 1989, January 29, 1991, October 15, 1992, and August 4, 1993. Each package has been deemed complete in accordance with 40 CFR part 51, appendix V.

*B. Visible Emissions Requirements in Texas Regulation I*

This action approves the visible emissions requirements of Texas Regulation I into the Texas SIP. The provisions of Regulation I being approved in this action regarding visible emissions set opacity limitations for grandfathered and new stationary vents, gas flares, motor vehicles, railroad locomotives, ships, structures and all other unspecified sources. Compliance test methods (e.g. test method 9 from 40 CFR part 60, appendix A) and recordkeeping requirements are also specified in the visible emissions provisions, including requirements for continuous emissions monitoring systems. In addition, this action approves certain requirements that must be met for the approval of alternate opacity limitations. For details regarding the visible emissions requirements being approved in this action, please refer to the Technical Support Document.

**Final Action**

This final action approves revisions to Texas Regulation I addressing visible emissions. These revisions update the Texas SIP and strengthen the provisions of Texas Regulation I. The revisions were submitted by the Governor to the EPA by letters dated August 21, 1989, January 29, 1991, October 15, 1992 and August 4, 1993.

The EPA has reviewed these revisions to the Texas SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this action will be effective June 2, 1995, unless adverse or critical comments are received by May 3, 1995.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 2, 1995.

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

**Miscellaneous**

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 CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA 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 (1976); 42 U.S.C. section 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 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)).

**Executive Order**

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: March 3, 1995.

**Jane N. Saginaw,**

*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 SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(94) to read as follows:

**§ 52.2270 Identification of plan.**

* * * * *

(c) * * *

(94) Revisions to the Texas SIP addressing visible emissions requirements were submitted by the Governor of Texas by letters dated August 21, 1989, January 29, 1991, October 15, 1992 and August 4, 1993.

(i) Incorporation by reference.

(A) Revisions to Texas Air Control Board (TACB), Regulation I, Section 111.111, ''Requirements for Specified Sources;'' Subsection 111.111(a)(first paragraph) under ''Visible Emissions;'' Subsections 111.111(a)(1)(first paragraph), 111.111(a)(1)(A), 111.111(a)(1)(B) and 111.111(a)(1)(E) under ''Stationary Vents;'' Subsection 111.111(b)(first paragraph) under ''Compliance Determination Exclusions;'' and Subsections 111.113(first paragraph), 111.113(1), 111.113(2), and 111.113(3) under ''Alternate Opacity Limitations,'' as adopted by the TACB on June 16, 1989.

(B) TACB Board Order No. 89–03, as adopted by the TACB on June 16, 1989.

(C) Revisions to Texas Air Control Board (TACB), Regulation I, Section 111.111, ''Requirements for Specified Sources;'' Subsections 111.111(a)(4)(A) and 111.111(a)(4)(B)(i) under ''Railroad

Locomotives or Ships;'' Subsections 111.111(a)(5)(A) and 111.111(a)(5)(B)(i) under ''Structures;'' and Subsections 111.111(a)(6)(A) and 111.111(a)(6)(B)(i) under ''Other Sources,'' as adopted by the TACB on October 12, 1990.

(D) TACB Board Order No. 90–12, as adopted by the TACB on October 12, 1990.

(E) Revisions to Texas Air Control Board (TACB), Regulation I, Section 111.111, ''Requirements for Specified Sources;'' Subsections 111.111(a)(1)(C), 111.111(a)(1)(D), 111.111(a)(1)(F)(first paragraph), 111.111(a)(1)(F)(i), 111.111(a)(1)(F)(ii), 111.111(a)(1)(F)(iii), 111.111(a)(1)(F)(iv), and 111.111(a)(1)(G) under ''Stationary Vents;'' Subsections 111.111(a)(2)(first paragraph), 111.111(a)(2)(A), 111.111(a)(2)(B), and 111.111(a)(2)(C) under ''Sources Requiring Continuous Emissions Monitoring;'' Subsection 111.111(a)(3)(first paragraph) under ''Exemptions from Continuous Emissions Monitoring Requirements;'' Subsection 111.111(a)(4), ''Gas Flares,'' title only; Subsection 111.111(a)(5)(first paragraph) under ''Motor Vehicles;'' Subsections 111.111(a)(6)(A), 111.111(a)(6)(B)(first paragraph), 111.111(a)(6)(B)(i) and 111.111(a)(6)(B)(ii) under ''Railroad Locomotives or Ships'' (Important note, the language for 111.111(a)(6)(A) and 111.111(a)(6)(B)(i) was formerly adopted as 111.111(a)(4)(A) and 111.111(a)(4)(B)(i) on October 12, 1990); Subsections 111.111(a)(7)(A), 111.111(a)(7)(B)(first paragraph), 111.111(a)(7)(B)(i) and 111.111(a)(7)(B)(ii) under ''Structures'' (Important note, the language for 111.111(a)(7)(A) and 111.111(a)(7)(B)(i) was formerly adopted as 111.111(a)(5)(A) and 111.111(a)(5)(B)(i) on October 12, 1990); and Subsections 111.111(a)(8)(A), 111.111(a)(8)(B)(first paragraph), 111.111(a)(8)(B)(i) and 111.111(a)(8)(B)(ii) under ''Other Sources'' (Important note, the language for 111.111(a)(8)(A) and 111.111(a)(8)(B)(i) was formerly adopted as 111.111(a)(6)(A) and 111.111(a)(6)(B)(i) on October 12, 1990), as adopted by the TACB on September 18, 1992.

(F) TACB Board Order No. 92–19, as adopted by the TACB on September 18, 1992.

(G) Revisions to Texas Air Control Board (TACB), Regulation I, Section 111.111, ''Requirements for Specified Sources;'' Subsections 111.111(a)(4)(A)(first paragraph), 111.111(a)(4)(A)(i), 111.111(a)(4)(A)(ii), and 111.111(a)(4)(B) under ''Gas Flares,'' as adopted by the TACB on June 18, 1993.

(H) TACB Board Order No. 93–06, as adopted by the TACB on June 18, 1993.

(ii) Additional material.

(A) TACB certification letter dated July 27, 1989, and signed by Allen Eli Bell, Executive Director, TACB.

(B) TACB certification letter dated January 9, 1991, and signed by Steve Spaw, Executive Director, TACB.

(C) TACB certification letter dated October 1, 1992, and signed by William Campbell, Executive Director, TACB.

(D) TACB certification letter dated July 13, 1993, and signed by William Campbell, Executive Director, TACB.

[FR Doc. 95–8040 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 300

**[FRL–5181–6]**

## National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of deletion of a site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) announces the deletion of the Independent Nail Superfund site in Beaufort, South Carolina from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of South Carolina have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of South Carolina have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

**EFFECTIVE DATE:** April 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Terry L. Tanner, Remedial Project Manager, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347–7791.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is:

Independent Nail Superfund Site, Beaufort, South Carolina

A Notice of Intent to Delete for this site was published January 13, 1995 (60 FR 3189). The closing date for comments on the Notice of Intent to Delete was February 13, 1995. EPA received no comments during this period.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover cost associated with response efforts.

### List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: March 24, 1995.

**John H. Hankinson,**

*Regional Administrator.*

40 CFR Part 300 is amended as follows:

### PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

**Authority:** Section 105, Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92–500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

### Appendix B [Amended]

2. Appendix B Part 300 is amended by removing the entry for Independent Nail Superfund Site, Beaufort, South Carolina.

[FR Doc. 95–8026 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–M

## INTERSTATE COMMERCE COMMISSION

## 49 CFR Parts 1043 and 1084

**[Ex Parte No. MC–223]**

## Electronic Filing of Surety Bonds, Trust Fund Agreements, Insurance Certificates, and Cancellations

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission modifies its regulations to permit the electronic

filing of surety bonds, trust fund agreements, certificates of insurance and cancellations. The availability of electronic filing constitutes an additional option; insurers desiring to continue to file the prescribed printed forms may do so. The electronic filing option should assist insurers that make large numbers of filings and permit the Commission to process these filings more efficiently.

**EFFECTIVE DATE:** This rule is effective May 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Burke, (202) 927–5520, or James W. Greene (202) 927–5612. [TDD for the hearing impaired: (202) 927–5721].

**SUPPLEMENTARY INFORMATION:** By notice of proposed rulemaking (NPR) served December 6, 1994, and published at 59 FR 62705 (1994), we proposed rules to provide for the electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations. Comments were received from 10 interested parties,[1] all of which generally favored the proposal.

While our proposal contemplated electronic filing as an additional option, we requested comments regarding whether electronic filing should be made mandatory. All of the commenters that addressed this issue stated that electronic filing should not be mandatory. They indicated that the cost to set up electronic filing procedures might be too high for low-volume filers, and that, if electronic filing were mandated, such filers might stop offering the affected coverages, which would reduce competition in the field. A voluntary system, on the other hand, would encourage competition and help hold down costs ultimately paid by the public, which commenters contend is consistent with legislative intent and sound public policy. Upon review of the comments, we have decided to make electronic filing optional, as envisioned in the proposed rule.

Minnesota and AIA suggest that the Commission consider a more sophisticated system. Minnesota would like to see a system using electronic data interchange (EDI) in which insurance providers would post insurance messages to a network where they could be pulled up by any interested party, including the Commission and state regulatory bodies. AIA suggests that a more interactive system, which could notify filers immediately when there is a problem with a filing, would allow problems to be corrected more quickly and would benefit the public, the Commission, motor carriers and insurers. We agree that additional functionality would be desirable; however, as pointed out in the NPR, our insurance data base is part of a much larger system, and our limited financial resources do not permit a larger development effort at this time. The system we propose will produce a number of immediate benefits and could facilitate the subsequent development of a more comprehensive system.

Certain of the enhancements for which these commenters indicate a need will be achieved, at least in part, with the system we propose. CLBI states that a report showing the number and type of transactions transmitted and received by the Commission is desirable at the time of transmission, and that the value of such information is significantly reduced if it is not available until the monthly billing cycle. The system we propose will give filers the option to request and receive a report showing all transactions received in each transmission.[2] While the report will not identify those transactions which have deficiencies that might result in their subsequent rejection, the process of identifying deficient transactions to the filers will be speeded up by eliminating the requirement to manually process the printed forms and enter the information on the data base.[3]

Surety requests that the surety company's bond number be included in the Commission's data base. The proposed rule contained a field for an insurance policy number, and we are modifying it to allow a bond number to be included in that field for surety bond filings. AIA expresses concern that we are mandating the disclosure of insurance policy numbers in the electronic filing system. The prescribed printed certificates currently contain a field for the insurance policy number, and we accept printed filings only if this field is completed. We will follow the same procedure for electronic filings.

Fireman's Fund requests that we allow filings on computer tapes or diskettes where telephone connections may not be feasible. We will not provide for such filings at this time. The dial-up connection contemplated in our proposed rule does not impose extensive equipment requirements, and we do not anticipate that it will impose a significant burden on insurers desiring to file electronically. Should experience indicate otherwise, we will consider additional options at a later date.[4]

We indicated in the NPR that we were considering the option of allowing insurers to establish prepaid accounts from which filing fees would automatically be deducted, as a way to reduce costs to both insurers and the Commission. Only two commenters addressed this issue: Fireman's Fund stated that if such accounts are established they should be voluntary, and that it was uncertain whether it would use them; and Northland stated that it would not favor such an arrangement because it raised serious concerns relating to the reconciliation of accounts. We will not take any action to establish such accounts at this time.[5]

We also indicated in the NPR that electronic filing would be done through the transmission of American Standard Code Information Interchange (ASCII) delimited files. After further analysis, however, we have determined that fixed field records will be preferable. We have determined that we will be able to accept transmissions up to 14400 baud, rather than the 2400 baud rate indicated in the NPR, and, given the relatively small volume of data to be transmitted in each session, we do not believe fixed field records will add appreciably to transmission time. We have added start field and end field columns to the description table contained in subsection 1043.12(c) to further explain the format.

AIA raises several questions regarding how the system will operate. We anticipate that electronic filings received before the close of a business day will be processed overnight.[6] During processing, error-free transactions will be accepted, transactions containing certain

[1] American Insurance Association (AIA); Cargo Liability Bureau, Inc. (CLBI); Central Analysis Bureau, Inc. (Central); Continental Insurance (Continental); Fireman's Fund Insurance Company (Fireman's Fund); Great West Casualty Company (Great West); International Brotherhood of Teamsters (IBT); Minnesota Department of Transportation (Minnesota); Northland Insurance Companies (Northland); and The Surety Association of America (Surety).

[2] Northland indicates that it interprets our proposed rule as allowing insurers to file a ''batch'' of filings (i.e., multiple transactions in a single transmission) in one transmission. Northland is correct.

[3] AIA and Central indicate a need for more rapid notification of accepted filings. Electronic filing will be helpful in this regard by reducing the manual effort required to prepare statements.

[4] Fireman's Fund also suggests a transition period of not less than two years; however, since electronic filing will be voluntary, we see no need to impose a lengthy transition period.

[5] We would point out, however, that any insurer desiring to establish a prepaid account can do so, in any event, simply by prepaying its account. Where a credit balance exists, our billing system will apply the credit (or portion thereof) against current charges.

[6] Dial-up access to the system will allow filings to be made 24 hours a day, 7 days a week (except for scheduled maintenance).

designated errors will be rejected, and questionable transactions will be queued for review by staff the next business day. During the review process, the questionable transactions will either be reviewed and accepted, modified and accepted, or rejected. Where a rejection is generated by the system, we anticipate that a rejection letter will be computer-generated the business day after the filing is received. Where a rejection is generated as a result of the staff review, we anticipate that it will generally be mailed to the filer by the third business day after the filing is received.[7] A listing of accepted filings will be transmitted to the filer with the monthly statement. Where changes are made to the filings, including cancellation notices, to make them acceptable, those changes will be indicated on the listing.

AIA indicates that at least one insurer desires billing to its branch offices when filings originate from those offices. This can be accomplished by establishing a separate account for each branch. In other instances, insurers apparently wish to be billed at their home offices regardless of which branch makes the filing. The system will support this procedure also, by providing for a two-position branch suffix in connection with the insurer's account number.

AIA and Central also are concerned that the relationship of the electronic filing program to the Single State Registration System (SSRS) is not clear. Central comments that its reading of the Commission's SSRS regulations finds no provision for the electronic receipt of insurance filings, in lieu of hard-copy filings, by the registration states, and that, therefore, it would appear that insurers would have to prepare a hard copy of the ICC filing or cancellation form, a process that would nullify many of the advantages to the insurance industry of the electronic filing system. Under 49 CFR 1023.4, a motor carrier is required to file or cause to be filed a copy of its proof of public liability security ''submitted to and accepted by the Commission under 49 CFR part 1043 * * *'' At the time the regulation was adopted, the Commission accepted only paper filings. While there may prove to be a need specifically to modify the SSRS regulations in the future, we believe that carriers can comply with the SSRS requirements by having their insurance company file either electronically with the registration state or file a ''hard copy'' of the electronic transaction, rather than completing a prescribed paper form. We remind insurance companies that, in any event, they must have the capability of producing duplicate originals of any filing made electronically.

While we are making the electronic filing regulations effective in 30 days, we do not anticipate being able to accept the first electronic filings until approximately August 1, 1995. Our staff is currently developing the system, and we expect to have the necessary instructions and materials available to potential users of the system by July 1, 1995. During July, we will work with filers to test the system prior to actual usage.

Persons desiring to utilize the Commission's electronic insurance filing capability should contact: Ms. Patricia A. Burke, Chief—Insurance, Section of Operations, Insurance and Tariffs, Office of Compliance and Enforcement, Interstate Commerce Commission, Washington, DC 20423.

[7] Filings reinstating insurance coverage will be handled in the same manner as new filings.

**Regulatory Flexibility**

This action merely provides filers with an optional way to satisfy existing regulatory requirements. It will not have a significant impact on a substantial number of small entities.

**Environmental Statement**

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**List of Subjects**

*49 CFR Part 1043*

Insurance, Motor carriers, Surety bonds.

*49 CFR Part 1084*

Freight forwarders, Insurance, Surety bonds.

Decided: March 20, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, Commissioners Simmons and Owen.

**Vernon A. Williams,**

*Secretary.*

For the reasons set forth in the preamble, title 49, chapter X, parts 1043 and 1084 of the Code of Federal Regulations are amended as follows:

## PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for part 1043 continues to read as follows:

**Authority:** 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

2. A new § 1043.12 is added to read as follows:

**§ 1043.12 Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.**

(a) Insurers may, at their option and in accordance with the requirements and procedures set forth in paragraphs (a) through (d) of this section, file forms BMC 34, BMC 35, BMC 36, BMC 82, BMC 83, BMC 84, BMC 85, BMC 91, and BMC 91X electronically, in lieu of using the prescribed printed forms.

(b) Each insurer must obtain authorization to file electronically by registering with the Commission. An individual account number and password for computer access will be issued to each registered insurer.

(c) All files to be transmitted must be in an ASCII fixed format, i.e., all records must have the same number of fields and same length. The record layouts for electronic filing transactions are as described in the following table:

ELECTRONIC INSURANCE FILING TRANSACTIONS

| Field name | Number of positions | Description | Required F=filing C=cancel B=both | Start field | End field |
|---|---|---|---|---|---|
| Record type | 1 Numeric | 1=Filing<br>2=Cancellation | B | 1 | 1 |
| Insurer number | 8 Text | ICC Assigned Insurer Number (Home Office) With Suffix (Issuing Office), If Different, e.g. 12345–01. | B | 2 | 9 |
| Filing type | 1 Numeric | 1 = BI&PD<br>2 = Cargo<br>3 = Bond<br>4 = Trust Fund | B | 10 | 10 |
| ICC docket number | 8 Text | ICC Assigned MC or FF Number, e.g., MC000045. | B | 11 | 18 |
| Insured legal name | 120 Text | Legal Name | B | 19 | 138 |
| Insured d/b/a name | 60 Text | Doing Business As Name If Different From Legal Name. | B | 139 | 198 |
| Insured address | 35 Text | Either street or mailing address | B | 199 | 233 |
| Insured city | 30 Text | | B | 234 | 263 |
| Insured state | 2 Text | | B | 264 | 265 |
| Insured zip code | 9 Numeric | (Do not include dash if using 9 digit code) | B | 266 | 274 |
| Insured country | 2 Text | (Will default to US) | B | 275 | 276 |
| Form code | 10 Text | BMC–91, BMC–91X, BMC–34, BMC–35, etc | B | 277 | 286 |
| Full, primary or excess coverage. | 1 Text | If BMC–91X, P or E = indicator of primary or excess policy; 1 = Full under § 1043.2(b)(1); 2 = Full under § 1043.2(b)(2). | F | 287 | 287 |
| Limit of liability | 5 Numeric | $ in Thousands | F | 288 | 292 |
| Underlying limit of liability | 5 Numeric | $ in Thousands (will default to $000 if Primary). | F | 293 | 297 |
| Effective date | 8 Text | MM/DD/YY Format for both Filing or Cancellation. | B | 298 | 305 |
| Policy number | 25 Text | Surety companies may enter bond number . | B | 306 | 330 |

(d) All registered insurers agree to furnish upon request to the Commission a duplicate original of any policy (or policies) and all endorsements, surety bond, trust fund agreement, or other filing.

## PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

3. The authority citation for part 1084 continues to read as follows:

**Authority:** 49 U.S.C. 10102, 10321 and 10927; 5 U.S.C. 553.

4. A new § 1084.10 is added to read as follows:

### § 1084.10 Electronic filing of surety bonds, certificates of insurance and cancellations.

Insurers may, at their option and in accordance with the requirements and procedures set forth at 49 CFR 1043.12, file certificates of insurance, surety bonds, and other securities and agreements electronically.

[FR Doc. 95–8093 Filed 3–31–95; 8:45 am]

BILLING CODE 7035–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 663

**[Docket No. 941265–4365; I.D. 032295B]**

### Pacific Coast Groundfish Fishery; Thornyhead Trip Limits

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

**ACTION:** Fishing restrictions; request for comments.

**SUMMARY:** NMFS announces reductions in the cumulative vessel trip limits for longspine and shortspine thornyheads in the groundfish fishery off Washington, Oregon, and California. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The trip limits are intended to keep landings from exceeding the 1995 harvest guidelines for longspine thornyheads and the overfishing level for shortspine thornyheads, while extending the fishery as long as possible during the year.

**DATES:** Effective from 0001 hours (local time) April 1, 1995, until the effective date of the 1996 annual specifications and management measures, which will be published in the **Federal Register**. Comments will be accepted through April 18, 1995.

**ADDRESSES:** Submit comments to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN-C15700, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200,

Long Beach, CA 90802–4213.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4030.

**SUPPLEMENTARY INFORMATION:** Dover sole, thornyheads, and trawl-caught sablefish (DTS) are managed collectively as the DTS complex because they are often caught together in the trawl fishery. Thornyheads include two species, shortspine and longspine, which also often are caught together. In 1995, the 1,500 metric ton (mt) harvest guideline for shortspine thornyheads was set higher than the 1,000–mt acceptable biological catch (ABC),

largely because of uncertainty in the new stock assessment. The harvest guideline for shortspine thornyheads is near the level that would produce the maximum sustainable yield (MSY) and the overfishing level is about 1,800 mt. Longspine thornyheads are being fished down to the level that would produce MSY. However, in 1995, longspine thornyheads have a 6,000–mt harvest guideline, which is below its ABC of 7,000 mt, primarily to protect the fully exploited shortspine thornyheads.

On January 4, 1995, (60 FR 2331, January 9, 1995), the cumulative trip limit for both longspine and shortspine thornyheads combined was set at 20,000 lb (9,072 kg) per vessel per month, of which no more than 4,000 lb (1,814 kg) may be shortspine thornyheads. The catch of thornyheads is counted toward the cumulative trip limit for the DTS complex, which is 35,000 lb (15,876 kg) per vessel per month north of Cape Mendocino (40°30′00″ N. lat.) and 50,000 lb (22,680 kg) per vessel per month south of Cape Mendocino. A cumulative trip limit is the maximum amount that may be taken and retained, possessed or landed per vessel in a specified period of time, without a limit on the number of landings or trips.

During the March 1995 meeting of the Pacific Fishery Management Council (Council), the Council was advised that at the current rate of harvest, the harvest guidelines for both longspine and shortspine thornyheads would be achieved well before the end of the year and the overfishing level for shortspine thornyheads would be exceeded. The Council, therefore, asked NMFS to convene an emergency teleconference with key members of the Council, its Groundfish Management Team (GMT) and Groundfish Advisory Subpanel, state fishery representatives, and the interested public to consider the issue and take action to reduce the harvest of thornyheads before the April 1995 Council meeting.

The best available information presented at the March 14, 1995, teleconference indicated that the catch of shortspine thornyheads through March 4, 1995, was 350 mt. The GMT projected that if the February rate continued to the end of the year, the total catch of shortspine thornyheads would be 2,251 mt, the harvest guideline would be exceeded by 50 percent, and the overfishing level would be exceeded by about 25 percent. The landings of longspine thornyheads through March 4, 1995, was 993 mt or 17 percent of the harvest guideline, and if the February rate continued, the total catch for the year would be 7,248 mt, and the harvest guideline would be exceeded by 21 percent. At the March 14, 1995, teleconference, the GMT recommended a 25 percent reduction to current trip limits for thornyheads to avoid exceeding the overfishing level for shortspine thornyheads and the harvest guideline for longspine thornyheads. The participating Council and state representatives all concurred. The reductions would bring the catch of shortspine thornyheads down to about 1,800 mt by the end of the year, near its overfishing level, and the catch of longspine thornyheads to just below its 6,000–mt harvest guideline. This provides flexibility to take later actions in June 1995, if necessary. Larger reductions of the trip limits were not recommended at this time because: (1) Discards may increase, (2) there is adequate time to adjust the trip limits later in the year, and (3) diversion to other fisheries in the spring may reduce the effort on thornyheads.

NMFS concurs with the GMT recommendation and is imposing an immediate 25 percent reduction in the cumulative trip limit for thornyheads. Beginning April 1, 1995, no more than 15,000 lb (6,804 kg) cumulative per month may be longspine and shortspine thornyheads combined (reduced from 20,000 lb (9,072 kg)), of which no more than 3,000 lb (1,361 kg) may be shortspine thornyheads (reduced from 4,000 lb (1,814 kg)). The north and south cumulative trip limits for DTS complex and the cumulative per trip limits for sablefish remain unchanged.

## NMFS Action

NMFS hereby announces the following changes to the management measures for the DTS complex announced at paragraphs IV.E(b)(ii)(A) and (B) at 60 FR 2342, January 9, 1995:

(A) *North of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained north of Cape Mendocino is 35,000 lb (15,876 kg) per vessel per month. Within this cumulative trip limit, no more than 6,000 lb (2,722 kg) may be sablefish, and no more than 15,000 lb (6,804 kg) may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

(B) *South of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained south of Cape Mendocino is 50,000 lb (22,680 kg) per vessel per month. Within this cumulative trip limit, no more than 6,000 lb (2,722 kg) may be sablefish, and no more than 15,000 lb (6,804 kg) may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

## Classification

The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region, (see **ADDRESSES**) during business hours.

Because any delay in the implementation of this action could result in exceeding the overfishing level for shortspine thornyheads, NMFS finds good cause to waive the 30-day delayed effectiveness requirement of the Administrative Procedure Act.

This action is taken under the authority of 50 CFR 663.23(c)(1)(i)(G), and is exempt from review under E.O. 12866.

Dated: March 28, 1995.

**David S. Crestin,**

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

[FR Doc. 95–8058 Filed 3–29–95; 12:14 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 60, No. 63
Monday, April 3, 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. 95–NM–34–AD]**

## Airworthiness Directives; Airbus Model A300–B2 and –B4 Series Airplanes Equipped With General Electric CF6–50 Series Engines or Pratt & Whitney JT9D–59A Engines

**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 Airbus Model A300–B2 and –B4 series airplanes. This proposal would require an inspection to detect discrepancies of a certain thrust reverser control lever spring, an operational test to verify the integrity of the flight inhibition circuit of the thrust reverser system, and either correction of discrepancies or deactivation of the associated thrust reverser. This proposal is prompted by a report indicating that, due to broken and deformed thrust reverser control lever springs, an uncommanded movement of the thrust reverser lever to the unlock position and a ''reverser unlock'' amber warning occurred on one airplane. The actions specified by the proposed AD are intended to detect such broken or deformed control lever springs before they can lead to uncommanded deployment of a thrust reverser subsequent reduced controllability of the airplane.

**DATES:** Comments must be received by April 28, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

**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 95–NM–34–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. 95–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300–B2 and –B4 series airplanes equipped with General Electric CF6–50 series engines or Pratt & Whitney JT9D–59A engines. The DGAC advises that it has received a report indicating that, during a simulated engine failure, an uncommanded movement of the thrust reverser lever to the unlock position and a ''reverser unlock'' amber warning occurred. Investigation revealed that these failures were caused by broken and deformed (not in original shape) thrust reverser lever springs. This condition, if not corrected, could result in uncommanded deployment of a thrust reverser and subsequent reduced controllability of the airplane.

Airbus has issued All Operators Telex (AOT) 78–03, Revision 1, dated July 20, 1994, which describes procedures for:

1. Performing a mechanical integrity inspection to detect discrepancies of the thrust reverser control lever spring having part number (P/N) A2791294520000;
2. Performing an operational test to verify the integrity of the flight inhibition circuit of the thrust reverser system;
3. Replacing the thrust reverser control lever spring with a new spring or deactivating the associated thrust reverser, if the control lever spring is found broken or out of tolerance; and
4. Determining the origin of the malfunction, if the flight inhibition circuit of the thrust reverser system fails the operational test; and correcting discrepancies or deactivating the associated thrust reverser.

The DGAC classified this All Operators Telex as mandatory and issued French airworthiness directive 94–205–166(B), dated September 14, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29)

and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a mechanical integrity inspection to detect discrepancies of the thrust reverser control lever spring having part number (P/N) A2791294520000, and an operational test to verify the integrity of the flight inhibition circuit of the thrust reverser system. It also requires the correction of discrepancies or deactivation of the associated thrust reverser. The actions are required to be accomplished in accordance with the All Operators Telex described previously.

The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $55 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,715, or $415 per airplane.

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

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

**Airbus Industrie:** Amendment 39– . Docket 95–NM–34–AD.

*Applicability:* Model A300–B2 and –B4 series airplanes, equipped with General Electric CF6–50 series engines or Pratt & Whitney JT9D–59A engines; 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 (b) 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 ensure the detection of broken or deformed thrust reverser control lever springs that could lead to uncommanded deployment of a thrust reverser and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, perform a mechanical integrity inspection to detect discrepancies of the thrust reverser control lever spring having part number (P/N) A2791294520000, and an operational test to verify the integrity of the flight inhibition circuit of the thrust reverser system, in accordance with Airbus All Operators Telex AOT 78–03, Revision 1, dated July 20, 1994.

(1) If no discrepancies are detected, no further action is required by this AD.

(2) If the control lever spring is found broken or out of tolerance, prior to further flight, replace it with a new control lever spring or deactivate the associated thrust reverser in accordance with the AOT.

(3) If the flight inhibition circuit of the thrust reverser system fails the operational test, prior to further flight, determine the origin of the malfunction, in accordance with the AOT.

(i) If the origin of the malfunction is identified, prior to further flight, repair the flight inhibition circuit in accordance with the AOT.

(ii) If the origin of the malfunction is not identified, prior to further flight, replace the relay having P/N 125GB or 124GB, and repeat the operational test, in accordance with the AOT. If the malfunction is still present, prior to further flight, inspect and repair the wiring in accordance with the AOT. If the malfunction is still present following the inspection and repair, prior to further flight, deactivate the associated thrust reverser in accordance with the AOT.

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

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 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 March 27, 1995.

**Darrell M. Pederson,**

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

[FR Doc. 95–8078 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–13–U

**14 CFR Part 39**

**[Docket No. 95–NM–07–AD]**

## Airworthiness Directives; Boeing Model 757 Series Airplanes

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

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

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires various modifications and terminating actions for the passenger door, and repair, if necessary. This action would require additional inspections, and replacement of certain parts, if necessary. This proposal is prompted by reports of excessive gaps between lockout cams and crank stops, which resulted in broken power assist triggers. The actions specified by this proposed AD are intended to prevent broken power assist triggers, which could result in an inoperative door opening system during an emergency evacuation.

**DATES:** Comments must be received by May 31, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Roy Boffo, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2780; fax (206) 227–1181.

**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 95–NM–07–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. 95–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On March 13, 1991, the FAA issued AD 91–07–09, amendment 39–6951 (56 FR 12111, March 22, 1991), applicable to certain Boeing Model 757 series airplanes, which requires various modifications and terminating actions for the passenger door, and repair, if necessary. That action was prompted by reports of fractured emergency power assist triggers. The requirements of that AD are intended to prevent an inoperative emergency power assist door opening system during an emergency evacuation.

Since the issuance of that AD, the FAA has received additional reports of broken power assist triggers. One broken power assist trigger was found on a door before the airplane was delivered to the operator. The FAA also has received reports of excessive gaps between lockout cams and crank stops. Investigation has revealed that when the crank stop is in the arm/engage position, excessive fore and aft clearance between the lockout cam and the crank stop can result in broken power assist triggers. This condition, if not detected and corrected, could result in an inoperative power assist system of the passenger door during an emergency evacuation.

Based on these findings, the FAA has determined that the distance between the lockout cam and the crank stop must be measured to ensure that gaps are not excessive. In addition, the FAA finds that inspections must be performed to detect damaged or cracked power assist triggers that may prevent the door opening systems from operating.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993, which describes procedures for repetitive inspections to detect worn, damaged, or cracked power assist triggers, repair of worn fittings, and replacement of any discrepant trigger. The alert service bulletin also describes procedures for repetitive measurement of the clearance between the lockout cam and the crank stop, and replacement of the lockout cam, if necessary.

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 supersede AD 91–07–09 to continue to require various inspections and modifications of certain mechanisms of the passenger doors, and replacement of certain parts, if necessary. This AD would require repetitive inspections to detect worn, damaged, or cracked power assist triggers, repair of worn triggers, and replacement, if necessary. This AD will also require repetitive measurements of the clearance between the lockout cam and the crank stop; and replacement of the lockout cams, if necessary. These actions would be required to be accomplished in accordance with the alert service bulletin described previously.

There are approximately 578 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 323 airplanes (6 passenger doors per airplane) of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours (2 work hours per door) 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 $232,560, or $720 per airplane ($120 per door), per inspection cycle.

Should an operator be required to accomplish the necessary replacement of power assist triggers, it would take approximately 18 work hours per

airplane (3 work hours per passenger door) to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,800 per airplane ($300 per passenger door). Based on these figures, the total cost impact of any necessary replacement action is estimated to be $2,880 per airplane ($480 per passenger door).

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 removing amendment 39–6951 (56 FR 12111, March 22, 1991), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing**: Docket 95–NM–07–AD. Supersedes AD 91–07–09, Amendment 39–6951.

*Applicability*: Model 757 series airplanes, as listed in any of the following service bulletins: Boeing Service Bulletin 757–52–0042 dated March 30, 1989, Boeing Service Bulletin 757–52–0042, Revision 1, dated April 26, 1990; and Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993; 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 (f) 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 ensure proper operation of the door opening system during an emergency evacuation, accomplish the following:

(a) For airplanes identified as Group 1 in Boeing Service Bulletin 757–52–0042, dated March 30, 1989, and Revision 1, dated April 26, 1990: Within 350 flight hours after January 6, 1990 (the effective date of AD 89–25–09, amendment 39–6407), accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with either service bulletin. Any interference or improper clearance detected during any inspections required by this paragraph must be repaired prior to further flight, in accordance with either service bulletin.

(1) Modify the forward right-hand passenger door.

(2) Inspect all passenger doors for evidence of interference between the trigger support housing and the upper hinge arm.

(3) Inspect all passenger doors for proper clearance between the power assist trigger and the door and fuselage skin.

(b) For all airplanes identified in Boeing Service Bulletin 757–52–0042, dated March 30, 1989, and Revision 1, dated April 26, 1990: Within 350 flight hours after January 6, 1990 (the effective date of AD 89–25–09, amendment 39–6407), and thereafter at intervals not to exceed 6 months, accomplish paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD, in accordance with either service bulletin. Any damage, improper adjustment, or improper operation detected during any of the inspections required by this paragraph must be repaired prior to further flight, in accordance with either service bulletin.

(1) Inspect the forward doors for proper adjustment of the lockout mechanism of the door emergency power assist system.

(2) Inspect all passenger door emergency power assist triggers for wear marks, damage, or fracture.

(3) Inspect trigger spring cylinders for proper operation.

(4) Inspect roller arms for damage.

(c) For all airplanes identified in Boeing Service Bulletin 757–52–0042, Revision 1, dated April 26, 1990: Within 18 months after April 29, 1991 (the effective date of AD 91–07–09, amendment 39–6951), accomplish paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, in accordance with Section III, Part III, of the service bulletin. Any damage, defect, improper adjustment, or improper operation detected during any inspection required by this paragraph must be repaired, prior to further flight, in accordance with the service bulletin. Accomplishment of the actions required by this paragraph constitutes terminating action for the periodic inspections required by paragraph (b) of this AD.

(1) On forward doors, install the lockout link and inspect the lockout mechanism for proper adjustment.

(2) On all passenger doors, install the new trigger guard. and inspect the emergency power assist triggers for wear marks, damage, or fracture.

(3) On all passenger doors, modify the trigger spring cylinder end cap and inspect the spring cylinder for proper operation.

(4) On all passenger doors, inspect roller arms for damage.

(d) For all airplanes identified in Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993: Within 6 months after the effective date of this AD, perform an inspection to detect wear marks, damage, or cracking on the upper surface of the emergency power assist triggers at all passenger doors, in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 6 months.

(1) If any wear mark is detected, prior to further flight, repair in accordance with the alert service bulletin.

(2) If any damage or cracking is detected, prior to further flight, replace the power assist triggers, in accordance with the alert service bulletin.

(e) For all airplanes identified in Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993: Within 6 months after the effective date of this AD, measure the clearance between the lockout cam and the crank stop, in accordance with the alert service bulletin.

(1) If the clearance between the lockout cam and the crank stop is within the limits specified in the alert service bulletin, thereafter, repeat the measurement at intervals not to exceed 6 months.

(2) If the clearance between the lockout cam and the crank stop is beyond the limits specified in the alert service bulletin, prior to further flight, accomplish either paragraph (e)(2)(i) or (e)(2)(ii) of this AD. Thereafter,

repeat the measurement at intervals not to exceed 6 months.

(i) Adjust the lockout cam until the correct clearance is obtained, in accordance with the alert service bulletin, Or

(ii) If correct clearance cannot be obtained by adjusting the lockout cam, replace the lockout cam, in accordance with the alert service bulletin.

(f) 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

(g) Special flight permits may be issued in accordance with §§ 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 March 27, 1995.

**Darrell M. Pederson,**

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

[FR Doc. 95–8079 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–13–U

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## 14 CFR Part 39

**[Docket No. 95–NM–08–AD]**

## Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Over-Wing Escape Slides

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

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

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with over-wing escape slides, that currently requires modification of the trailing edge panels and the aft flaps. That AD was prompted by the results of functional tests of over-wing escape slides, which revealed that some slides were damaged when they were deployed across sharp corners on the trailing edge of the wing and the large gaps between the trailing edge panels of the wing. This action would expand the applicability of the existing AD to include additional airplanes. The actions specified by the proposed AD are intended to prevent damage to the over-wing escape slide, which could hinder inflation of the slide to a usable configuration during an emergency evacuation.

**DATES:** Comments must be received by May 15, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–08–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Lundy, Aerospace Engineer, ANM–120S, Airframe Branch, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2769; fax (206) 227–1181.

**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 95–NM–08–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. 95–NM–08–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On December 13, 1993, the FAA issued AD 93–25–06, amendment 39–8772 (58 FR 69221, December 30, 1993), applicable to certain Boeing Model 767 series airplanes equipped with over-wing escape slides, to require modification of the trailing edge panels and the aft flaps. That action was prompted by the results of functional tests of over-wing escape slides, which revealed that some slides were damaged when they were deployed across sharp corners on the trailing edge of the wing and the large gaps between the trailing edge panels of the wing. The actions required by that AD are intended to prevent damage to the over-wing escape slide, which could hinder inflation of the slide to a usable configuration during an emergency evacuation.

Since the issuance of that AD, the FAA has received a report indicating that modification of the trailing edge panels and the aft flaps has not been accomplished in production on Model 767 series airplanes, equipped with over-wing escape slides, line positions 477 through 542 inclusive. In light of this, these additional airplanes are subject to the same unsafe condition addressed by AD 93–25–06.

The FAA has reviewed and approved Boeing Service Bulletin 767–57–0043, Revision 3, dated February 2, 1995. The modification procedures described in this revision are identical to those described in Revision 2 of the service bulletin (which was referenced in AD 93–25–06). This revision only expands the effectivity listing to include additional airplanes.

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 continue to require modification of the trailing edge panels and the aft flaps. The applicability of the proposed rule would be revised to include additional airplanes. The proposed actions would be required to be accomplished in accordance with the service bulletin described previously.

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 long-standing requirement.

There are approximately 542 Model 767 series airplanes equipped with over-wing escape slides of the affected design in the worldwide fleet. The FAA estimates that 178 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $427,200, or $2,400 per airplane.

However, approximately 166 U.S.-registered airplanes previously were required by AD 93–25–06 to accomplish the subject modification. This proposal would affect only 12 additional U.S.-registered airplanes. Therefore, the cost to modify these 12 newly added airplanes is estimated to be $28,800, or $2,400 per airplane.

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 removing amendment 39–8772 (58 FR 69221, December 30, 1993), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing**: Docket 95–NM–08–AD. Supersedes AD 93–25–06, Amendment 39–8772.

*Applicability*: Model 767 series airplanes, having line positions 1 through 542 inclusive, and equipped with over-wing escape slides; 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 (c) 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 damage to the over-wing escape slide, which could hinder inflation of the slide to a usable configuration during an emergency evacuation, accomplish the following:

(a) For airplanes having serial number 1 through 476 inclusive: Within 15 months after January 31, 1994 (the effective date of AD 93–25–06, amendment 39–8772), modify the trailing edge panels and the aft flaps, in accordance with Boeing Service Bulletin 767–57–0043, Revision 1, dated May 6, 1993; Revision 2, dated September 16, 1993; or Revision 3, dated February 2, 1995.

(b) For airplanes having serial numbers 477 through 542 inclusive: Within 15 months after the effective date of this AD, modify the trailing edge panels and the aft flaps, in accordance with Boeing Service Bulletin 767–57–0043, Revision 3, dated February 2, 1995.

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

**Note 2**: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) 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 March 27, 1995.

**Darrell M. Pederson,**

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

[FR Doc. 95–8077 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–13–U

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## Coast Guard

## 33 CFR Part 165

**[CGD01–95–025]**

**RIN 2115–AA97**

## Safety Zone: Annual ''Fireworks on the Navesink'' Fireworks Display, Navesink River, Red Bank, NJ

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent safety zone for the annual Independence Day ''Fireworks on the Navesink'' fireworks display located on the Navesink River, Red Bank, New Jersey. The safety zone would be in effect annually on the third day of July, from 8 p.m. until 11 p.m., with a raid date on the fourth of July, at the same times, unless extended or terminated sooner by the Captain of the Port, New York. The proposed safety zone would close all waters between the north and south shores of the Navesink River, including Red Bank Reach,

extending approximately 300 yards east and 300 yards west of the fireworks platform anchored off of Red Bank, New Jersey.

**DATES:** Comments must be received on or before May 18, 1995.

**ADDRESSES:** Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Maritime Planning Staff, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York, (212) 668–7934.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A 45 day comment period is deemed to be sufficiently reasonable notice to all interested persons. Since this proposed rulemaking is neither complex nor technical, a longer comment period is deemed to be unnecessary and contrary to the public interest. Any delay in publishing a final rule would effectively cancel this event. Cancellation of this event would be contrary to public interest.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–025) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Maritime Planning Staff at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

**Drafting Information**

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

**Background and Purpose**

For the last several years, the Town of Red Bank, New Jersey, has submitted an Application for Approval of Marine Event for a fireworks program in the waters of the Navesink River. This regulation would establish an annual safety zone in the waters between the north and south shores of the Navesink River, including Red Bank Reach, extending approximately 300 yards east and 300 yards west of the fireworks platform anchored off of Red Bank, New Jersey, at or near 40°21′20″ N latitude, 074°04′10″ W longitude. The safety zone is bounded by the following points: 40°21′15″ N latitude, 074°03′57″ W longitude; to 40°21′43″ N latitude, 074°03′57″ W longitude; and 40°21′20″ N latitude, 074°04′25″ W longitude; to 40°21′30″ N latitude, 074°04′25″ W longitude. The safety zone would be effective on the third of July, from 8 p.m. until 11 p.m., with a raid date on the fourth of July, at the same times, unless extended or terminated sooner by the Captain of the Port New York. This safety zone would preclude all vessels from transiting a portion of the Navesink River, from shore to shore, and is needed to protect mariners from the hazards associated with fireworks exploding in the area.

This permanent regulation would provide notice to mariners that this event occurs annually at the same location, on the same day and time, allowing them to plan transits accordingly. This regulation will be announced annually via Safety Marine Information Broadcasts and by locally issued notices.

**Regulatory Evaluation**

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

This safety zone would close a portion of the Navesink River, from shore to shore, to all vessel traffic annually on the third of July, from 8 p.m. until 11 p.m., with a rain date on the fourth of July, at the same times, unless extended or terminated sooner by the Captain of the Port New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons. Due to the limited duration of the event; the late hour of the event; the extensive, advance advisories that will be made; that the amount of traffic in this area is minimal; and that this event has been held annually for the past several years without incident or complaint, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

**Small Entities**

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

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism**

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

**Environment**

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is scheduled in the docket.

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

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

**Proposed Regulations**

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

## PART 165—[AMENDED]

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

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 56.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.161 is added to read as follows:

**§ 165.161 Safety Zone; Annual ''Fireworks on the Navesink'' Fireworks Display, Navesink River, Red Bank, New Jersey.**

(a) *Location.* All waters between the north and south shores of the Navesink River, including Red Bank Reach, extending approximately 300 yards east and 300 yards west of the fireworks platform anchored off of Red Bank, New Jersey, at or near 42°21′20″ N latitude, 074°04′10″ W. The safety zone is bound by the following points: 40°21′15″ N latitude, 074°03′57″ W longitude; to 40°21′43″ N latitude, 074°03′57″ W longitude; and 40°21′20″ N latitude, 074°04′25″ W longitude; to 40°21′30″ N latitude, 074°04′25″ W longitude.

(b) *Effective period.* This safety zone is in effect annually on the third of July, from 8 p.m. until 11 p.m., unless extended or terminated sooner by the Captain of the Port New York. If the fireworks display is cancelled because of bad weather, this section is in effect on the fourth of July, at the same times, unless extended or terminated sooner by the Captain of the Port New York. The effective period will be announced annually via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 17, 1995.

**J. Rutkovsky,**

*Commander, U.S. Coast Guard, Captain of the Port, New York, Acting.*

[FR Doc. 95–8127 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–14–M

## 33 CFR Part 165

**[CGD01–95–010]**

**RIN 2115–AA97**

## Safety Zone: Annual South Street Seaport New Year's Eve Fireworks, East River, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent safety zone for the annual South Street Seaport New Year's Eve fireworks display located in the East River, New York. The safety zone would be in effect annually on December 31 at 11:30 p.m. until 12:45 a.m. on January 1, unless extended or terminated sooner by the Captain of the Port, New York. The proposed safety zone would close all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

**DATES:** Comments must be received on or before June 2, 1995.

**ADDRESSES:** Comments should be mailed to the U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Maritime Planning Staff, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–010) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment to receipt of comments should enclose a stamped, self-addressed postcard or envelop.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Maritime Planning Staff at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

**Drafting Information**

The drafters of this notice are LTJG K. Messenger, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

**Background and Purpose**

For the last several years, South Street Seaport, Inc. has submitted an Application for Approval of Marine Event for a New Year's Eve fireworks program in the waters of the East River. This regulation would establish a safety zone annually in the waters of the East River at 11:30 p.m. on December 31, until 12:45 a.m. on January 1, unless extended or terminated sooner by the Captain of the Port, New York. This safety zone would preclude all vessels from transiting south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn. It is needed to protect mariners from the hazards associated with fireworks exploding in the area.

This permanent regulation would provide notice to mariners that this event occurs annually at the same location, on the same day and time, allowing them to plan transits accordingly. This regulation will be announced annually via Safety Marine Information Broadcasts and by locally issued notices.

**Regulatory Evaluation**

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

procedures of DOT is unnecessary. This safety zone would close a portion of the East River to all vessel traffic annually at 11:30 p.m. on December 31, until 12:45 a.m. on January 1, unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons. Due to the limited duration of the event; the late hour of the event; the extensive, advance advisories that will be make; that pleasure craft and some commercial vessels can take an alternate route via the Hudson and Harlem Rivers; and that this event has been held annually for the past several years without incident or complaint, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

**Small Entities**

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

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism**

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

**Environment**

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, as revised by 59 FR 38654, July 29, 1994, it is categorically excluded from further environmental documentation. Appropriate environmental analysis of the South Street Seaport New Year's Eve fireworks will be conducted in conjunction with the marine event permitting process each year. Any environmental documentation required under the National Environmental Policy Act for issuance of a marine event permit will be completed prior to the event. A Categorical Exclusion Determination is included in the docket.

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

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

**Proposed Regulations**

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

## PART 165—[AMENDED]

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

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

2. Section 165.174 is added to read as follows:

**§ 165.174 Safety Zone: Annual South Street Seaport New Year's Eve Fireworks Display, East River, New York.**

(a) *Location.* All waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

(b) *Effective period.* This section is in effect annually at 11:30 p.m. on December 31, until 12:45 a.m. on January 1, unless extended or terminated sooner by the Captain of the Port New York. The effective period will be announced annually via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.* (1) The general regulations contained in 33 C.F.R. 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 6, 1995.

**T.H. Gilmour,**

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

[FR Doc. 95–8125 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–14–M

**33 CFR Part 165**

**[CGD01–95–011]**

**RIN 2115–AA97**

## Safety Zone: Annual Rensselaer Festival Fireworks Display, Hudson River, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent safety zone for the annual Rensselaer Festival fireworks display located in the Hudson River, Rensselaer, New York. The safety zone would be in effect annually on the third Saturday in September from 8:30 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York. The proposed safety zone would close all waters of the Hudson River, shore to shore, north of the 42°38′12″ N line of latitude and south of the Dunn Memorial Bridge, Albany, New York.

**DATES:** Comments must be received on or before June 2, 1995.

**ADDRESSES:** Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Maritime Planning Staff, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York, (212) 668–7934.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments.

Persons submitting comments should include their names and addresses, identify this notice (GCD01–95–011) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons

wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Maritime Planning Staff at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

**Drafting Information**

The drafters of this notice are LTJG K. Messenger, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

**Background and Purpose**

For the last several years, the City of Rensselaer has submitted an Application for Approval of Marine Event for a fireworks program in the waters of the Hudson River. This regulation would establish a safety zone in the waters of the Hudson River on the third Saturday in September from 8:30 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port New York. This safety zone would preclude all vessels from transiting a portion of the Hudson River, shore to shore, north of the 42°38′12″ N line of latitude, and south of the Dunn Memorial Bridge, Albany, New York. It is needed to protect mariners from the hazards associated with fireworks exploding in the area.

This permanent regulation would provide notice to mariners that this event occurs annually at the same location, on the same day and time, allowing them to plan transits accordingly. This regulation will be announced annually via Safety Marine Information Broadcasters and by locally issued notices.

**Regulatory Evaluation**

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone would close a portion of the Hudson River to all vessel traffic annually on the third Saturday in September from 8:30 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons. Due to the limited duration of the event; the late hour of the event; the extensive, advance advisories that will be made; and that this event has been held annually for the past several years without incident or complaint, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

**Small Entities**

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

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism**

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

**Environment**

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

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

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

**Proposed Regulations**

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

## PART 165—[AMENDED]

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

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

2. Section 165.167 is added to read as follows:

**§ 165.167 Safety Zone; Annual Rensselaer Festival Fireworks Display, Hudson River, New York.**

(a) *Location.* All waters of the Hudson River, shore to shore, north of the 42°38′12″ N line of latitude, and south of the Dunn Memorial Bridge, Albany, New York.

(b) *Effective period.* This section is in effect annually on the third Saturday in September from 8:30 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port New York. The effective period will be announced via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 8, 1995.

**T.H. Gilmour,**

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

[FR Doc. 95–8126 Filed 3–31–95; 8:45 am]

**BILLING CODE 4910–14–M**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 83–5–6889b; FRL–5165–6]**

### Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from organic liquid bulk terminals and bulk plants, surface coating of miscellaneous metal parts and products, aerospace assembly and component coating operations, flexible and rigid disc manufacturing, gasoline bulk terminals, gasoline bulk plants, and gasoline delivery vehicles. One of the rules concerns the submittal of VOC and oxides of nitrogen ($NO_X$) emissions data to the district.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs and NOx in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the final rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by May 3, 1995.

**ADDRESSES:** Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street SW., Washington, DC 20460.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

**FOR FURTHER INFORMATION CONTACT:** Helen Liu, Rulemaking Section [A–5–3], Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

**SUPPLEMENTARY INFORMATION:** This document concerns Bay Area Air Quality Management District Rule 8.6, Organic Liquid Bulk Terminals and Bulk Plants, Rule 8.19, Surface Coating of Miscellaneous Metal Parts and Products, Rule 8.29, Aerospace Assembly and Component Coatings Operations, Rule 8.33, Gasoline Bulk Terminals and Gasoline Delivery Vehicles, Rule 8.38, Flexible and Rigid Disc Manufacturing, Rule 8.39, Gasoline Bulk Plants and Gasoline Delivery Vehicles, and Rule 2.1, Section 429, Emissions Statement. These rules were all submitted by the California Air Resources Board (CARB) to EPA on September 28, 1994, except for Rule 8.6, which was submitted on May 24, 1994, and Rule 2.1, Section 429, which was submitted on October 19, 1994. For further information, please see the information provided in the direct final action which is located in the rules section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: February 15, 1995.

**Felicia Marcus,**

*Regional Administrator.*

[FR Doc. 95–8043 Filed 3–31–95; 8:45 am]

**BILLING CODE 6560–50–P**

### 40 CFR Part 52

**[IL91–1–6279b; FRL–5169–5]**

### Approval and Promulgation of Implementation Plans; Illinois

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

**ACTION:** Proposed rule.

**SUMMARY:** The USEPA proposes to approve the site-specific State Implementation Plan (SIP) revision request submitted by the State of Illinois on January 25, 1994, for Quantum Chemical Corporation's facility located in Morris, Illinois. This site-specific SIP revision alters certain Reasonably Available Control Technology (RACT) regulations contained within 35 Illinois Administrative Code (IAC) Part 218 as they apply to specific units or plants within this facility. This approval is based upon sufficient demonstration that factors relating to this facility are substantially and significantly different from those relied upon in adopting 35 IAC Part 218, and that these factors warrant a corresponding adjustment of its RACT requirements. In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Please be aware that USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to the direct final rule. Any parties interested in commenting on this notice should do so at this time.

**DATES:** Comments on this proposed rule must be received on or before May 3, 1995. If no such comments are received, USEPA hereby advises the public that the direct final rule will be effective on June 2, 1995.

**ADDRESSES:** Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Mark J. Palermo, Regulation

Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 23, 1995.

**Robert Springer,**

*Acting Regional Administrator.*

[FR Doc. 95–8039 Filed 3–31–95; 8:45 am]

**BILLING CODE 6560–50–P**

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## 40 CFR Part 52

**[IL104–1–6697b; FRL–5158–8]**

## Approval and Promulgation of Implementation Plans; Illinois

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

**ACTION:** Proposed rule.

**SUMMARY:** The United States Environmental Protection Agency (USEPA) proposes to approve Illinois' November 28, 1994, request to amend the marine vessel loading rules for the Chicago and Metro-East areas as part of the State's 15 percent (%) Rate of Progress Plan control measures for Volatile Organic Matter emissions. The control measures require marine terminals, from May 1 through September 15, to operate a vapor collection and control system which achieves a 95% control efficiency. In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this notice should do so at this time.

**DATES:** Comments on this proposed rule must be received on or before May 3, 1995.

**ADDRESSES:** Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Rosanne Lindsay, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–1151.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 9, 1995.

**David A. Ullrich,**

*Acting Regional Administrator.*

[FR Doc. 95–8045 Filed 3–31–95; 8:45 am]

**BILLING CODE 6560–50–P**

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## 40 CFR Part 52

**[MO–20–1–6442; FRL–5181–8]**

## Approval and Promulgation of Implementation Plans; State of Missouri

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision by the state of Missouri that revises the Missouri Part D new source review (NSR) rules, updates and adds numerous definitions, revises the maximum allowable increase for particulate matter under the requirements for prevention of significant deterioration (PSD) of air quality, address emission statements under title I of the Clean Air Act Amendments (CAAA), and generally enhance the SIP.

This revision generally meets requirements of the Clean Air Act (CAA) as Amended in 1990 with regard to NSR in areas that have not attained the national ambient air quality standard (NAAQS). However, Missouri is required to make certain changes to the NSR rules, as outlined in this proposal, before EPA can grant final approval to this SIP revision. This implementation plan was submitted by the state to satisfy certain Federal requirements for an approvable nonattainment NSR SIP for Missouri.

**DATES:** Comments must be received on or before May 3, 1995.

**ADDRESSES:** Comments may be mailed to Robert J. Lambrechts, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Lambrechts at (913) 551–7846.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Act. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIP revisions submitted under part D, including those state submittals containing nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in today's proposal and the supporting rationale.

The EPA is currently developing a proposed rule to assist the implementation of the changes under the amended Act in the NSR provisions in parts C and D of title I of the Act. If EPA has not taken final action on the state's NSR submittals by the time the proposed rule is published for comment, EPA may refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. Upon promulgation of the final regulations, EPA will review the NSR SIPs of all states to determine whether additional SIP revisions are necessary.

Prior to EPA approval of a state's NSR SIP submission, the state may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991, and September 3, 1992. As explained in the March 11 memorandum, EPA does not believe Congress intended to mandate the more stringent Title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to issue permits consistent with requirements in their current NSR SIPs during that period; or apply 40 CFR part 51, appendix S for newly

designated areas that did not previously have NSR SIP requirements.

**II. Construction Permits Required—10 CSR 10–6.060**

*A. General Nonattainment New Source Review (NSR) Nonattainment Permit Requirements*

The Act requires all states to have submitted the following nonattainment NSR provisions.

1. Offset Ratios

*Federal Requirement:* For moderate ozone nonattainment areas, the state must submit provisions to ensure that new or modified major stationary sources obtain offsets at a ratio of at least 1.15 to 1 in order to obtain an NSR permit.

*State Response:* 10 CSR 10–6.060(7)(B)1 requires that by the time the source is to commence operation, sufficient offsetting emissions reductions are to be obtained. The specific offset ratios for all nonattainment classifications are listed at 10 CSR 10–6.020(2)(O)1 and satisfy the requirement that volatile organic compound (VOC) and nitrogen oxides ($NO_X$) emissions in moderate nonattainment areas will require an offset ratio of actual emission reduction to new emissions of 1.15:1. Missouri has satisfied this Federal requirement.

2. Geographic Location of Offsets

*Federal Requirement:* New section 173(c)(1) stipulates that emissions offsets generally must be obtained by the same source or other existing sources in the same nonattainment area, except under narrow circumstances.

*State Response:* 10 CSR 10–6.060(7)(B)1 provides that offsetting emissions reductions are to be obtained from existing sources in the St. Louis nonattainment area. Missouri has satisfied this Federal requirement.

3. Timing of Offsets

*Federal Requirement:* New section 173(c)(1) also adds the condition that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be ''by the time a new or modified source commences operation, in effect and enforceable * * *.'' The 1990 CAAA clarified the offset requirements in the preamended Act by requiring that the offsets be Federally enforceable before permit issuance. Accordingly, while it is possible for a state to issue a permit to construct once sufficient emissions offsets have been identified and made Federally enforceable, the state must also ensure that the required emissions reductions actually occur no later than the date on which the new source or modified source would commence operation.

*State Response:* The Missouri definition of ''Federally enforceable'' found at 10 CSR 10–6.020(2)(F)2 provides that requirements within any applicable state implementation plan, any permit requirement established pursuant to 40 CFR part 52.21, or under regulations pursuant to 40 CFR part 51 are Federally enforceable. Therefore, the requirement to obtain an emission offset will be Federally enforceable once approved into the SIP.

10 CSR 10–6.060(7)(B)1 provides that offsetting emissions reductions are to be obtained by the time the source is to commence operation. In addition, 10 CSR 10–6.060(12)(C)1.C provides that the owner or operator of the source from which offsets are obtained shall enter into a binding agreement to limit emissions of the offset pollutant at the source to the levels identified after the offset is applied. 10 CSR 10–6.060(12)(C)2 provides that it shall be a violation of the construction permits required rule (10 CSR 10–6.060) to operate a source from which offsets were obtained so as to emit the offset pollutant at levels greater than identified in the agreement referred to previously. Therefore, the commitment to obtain emission reductions is Federally enforceable at the time of permit issuance, and the Missouri regulation satisfies the CAAA section 173 mandate.

4. Actual Emissions Reductions

*Federal Requirement:* New section 173(c)(1) includes the provision that:

> * * * Total tonnage of increased emissions from the new or modified source shall be offset by an equal or greater amount, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

EPA's current regulation concerning the baseline for emissions offsets, as contained in the part 51 NSR nonattainment regulations, provides that the offset baseline is the emissions limit under the applicable SIP in effect at the time the permit application is filed, unless the state's demonstration of reasonable further progress (RFP) and NAAQS attainment is based on actual emissions, or the applicable SIP does not contain an emissions limitation for that particular source or source category. The new statutory requirement provides that emissions increases from the new or modified source must be offset by real reductions in actual emissions.

*State Response:* The nonattainment provisions for Missouri found at 10 CSR 10–6.060(7)(B)3 require that offsets be obtained in accordance with the offset procedures found in the offsets appendix of the construction permits rule at 10 CSR 10–6.060(12)(C). The appendix language requires the applicant to provide documentation satisfactory to the permitting authority showing that ''* * * the level of emission of the offset pollutant at the offsetting source prior to and after the offset is applied.'' This language requires that offset calculations must take into account actual emissions as the reference is to the ''level of emission * * * prior to and after the offset * * *.'' Therefore, Missouri satisfies the requirement that emissions increases from the new or modified source must be offset by real reductions in actual emissions.

5. $NO_X$ Requirements

*Federal Requirement:* In addition to requirements for ozone nonattainment areas, section 182(f) of the CAAA states that requirements for major stationary sources of VOC shall apply to major stationary sources of $NO_X$ unless the Administrator determines that net air quality benefits are greater in the absence of $NO_X$ reductions from the sources concerned.

*State Response:* The Missouri construction rule at 10 CSR 10–6.060(7)(E) requires that for purposes of nonattainment area permits, any significant increase due to the levels of emission of $NO_X$ shall be considered significant for ozone. The rule further provides that any installation with the potential to emit one hundred (100) tons per year of $NO_X$ located within an area which is nonattainment for ozone must comply with the specific permit requirements of the nonattainment provisions of the Missouri construction permit rule. Missouri has satisfied this Federal requirement.

6. Creditable Reductions

*Federal Requirement:* Section 173(c)(2) prevents emissions reductions otherwise required by the Act from being credited for purposes of satisfying the Part D offset requirement. However, the statutory language does allow reductions that are achieved indirectly pursuant to a requirement of the CAAA (incidental emission reductions) to be credited if they meet the other criteria for offsets contained in section 173(c)(1).

*State Response:* 10 CSR 10–6.060(12)(C)4 provides that offset credit may not be taken for emission reductions required by state or local emission control rules or ordinances; state or Federal court order; or order of

a Federal, state, or local air pollution control agency. MDNR will be modifying the language of this provision to address how offset credits will be impacted by Federal regulations and permit terms (see section I.D.4 of the Technical Support Document).

7. Prohibition on Old Growth Allowances

*Federal Requirements:* Section 173(b) expands the pre-1990 requirements by prohibiting the continued use of old growth allowances in any nonattainment area that either received a notice that the SIP was substantially inadequate under section 110(a)(2)(H)(ii) of the 1977 Act, or receives notice of inadequacy under new section 110(k)(1) of the amended Act.

*State Response:* MDNR deleted the reference to available growth increment previously found at 10 CSR 10–6.060(4)(B). Therefore, the growth allowance is no longer available for offsets. Missouri has satisfied this Federal requirement.

8. Analysis of Alternatives

*Federal Requirements:* New sources in nonattainment areas must undertake an analysis of alternatives prior to receiving a permit. The section 173(a)(5) analysis and demonstration are now prerequisites to the issuance of any permit for construction or modification of a major source in any nonattainment area. Prior to 1990, the analysis was required only for certain sources of carbon monoxide and ozone.

*State Response:* This requirement is satisfied by the language in 10 CSR 10–6.060(7)(C)4 which specifies that an applicant must provide an alternate site analysis before issuance of a permit for the construction or major modification of an installation with the potential to emit annually 100 tons or more of a nonattainment pollutant, or a permit for a modification with the potential to emit annually 100 tons or more of a nonattainment pollutant. MDNR defines ''alternate site analysis'' at 10 CSR 10–6.020(2)(A)23 as an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source which demonstrates that benefits of the proposed installation significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. Missouri has satisfied this Federal requirement.

9. RFP

*Federal Requirements:* As required by section 173(a)(1)(A) of the CAAA, the permitting authority must be able to ensure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of RFP. The EPA interprets section 173(a)(1)(A) to ratify current EPA regulations requiring that the emissions baseline for offset purposes be calculated in a manner consistent with the emissions baseline used to demonstrate RFP. Regarding the amount of offsets necessary to show noninterference with RFP, EPA will presume that so long as a new source obtains offsets in an amount equal to or greater than the amount specified in the applicable offset ratio, the offsets will represent RFP.

*State Response:* Missouri utilizes 10 CSR 10–6.060(7)(B)1 to obtain reasonable further progress in new source permitting. A permit for construction or major modification of an installation with the potential to emit the nonattainment pollutants in amounts equal to or greater than the de minimis levels, shall not be issued unless the RFP requirements, among others set forth in 10 CSR 10–6.060, are met.

10. Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate Clearinghouse Information

*Federal Requirement:* The 1990 CAAA added a new section 173(d), which requires states to submit to EPA control technology information from permits issued under section 173 for purposes of making such information available to other states and to the general public.

*State Response:* 10 CSR 10–6.060(12)(B)2.G provides that the permitting authority shall submit a copy of the final control technology determination to the Administrator. Therefore, Missouri has satisfied this Federal requirement.

11. Stationary Source Definition

*Federal Requirement:* The 1990 CAAA added a new definition of ''stationary source'' in section 302(z) of Title III of the Act, and amended the existing definition already contained in section 111(a)(3). The addition of the new definition appears to strengthen Congressional intent that certain internal combustion engines must be subject to control under state permit programs, while providing for the exclusion of those internal combustion engines which fall under the newly defined category of ''nonroad engines.''

*State Response:* Missouri uses the definition of ''installation'' at 10 CSR 10–6.020(2)(I)7 as its definition of ''stationary source'' under the Act. The ''installation'' definition encompasses all source operations including activities that result in fugitive emissions. MDNR interprets this definition to include stationary internal combustion engines and the fugitives such as reintrained road dust generated by nonroad machinery. However, it excludes the exhaust emissions of nonroad engines. Missouri has satisfied this Federal requirement. Finally, Missouri exempts from construction permitting requirements any equipment used for any mode of transportation as provided for at 10 CSR 10–6.060(1)(D)2.C.

*B. Missouri Construction Permit Program Deficiencies*

1. Particulate Matter

*Federal Requirement:* On June 3, 1993, EPA published in the **Federal Register** a revision to the maximum allowable increases for particulate matter (PM) under the requirements for PSD of air quality. As a result, the PSD increments and the NAAQS for PM will be measured by the same indicator for PM, namely $PM_{10}$.

*State Response:* $PM_{10}$ increments were incorporated into 10 CSR 10–6.060 during the December 1993 rule adoption by the Missouri Air Conservation Commission. Missouri revised the Ambient Air Increment Table found at 10 CSR 10–6.060(11)(A) Table 1 to include the new $PM_{10}$ ambient air increments for classes I through III, as set forth at 58 FR 31637. However, the Class I Variance table found at 10 CSR 10–6.060 (12)(H)2 does not reflect the revised $PM_{10}$ numerical maximum allowable increases. Specifically, the table at 10 CSR 10–6.060 (12) (H)2 must include $PM_{10}$ as a pollutant with numerical values at least as stringent as those found at 58 FR 31637. There is further discussion following in section II.B.4 regarding MDNR's efforts to incorporate these changes.

2. Waiver Policy

*Federal Requirement:* EPA major NSR rules require that permits be issued prior to construction of a major source or modification. The PSD rules provide that sources may not begin actual construction without a permit. 40 CFR 51.166(b)(11) and 51.166(i)(1). Section 51.165(a)(1)(xv) contains a definition of ''begin actual construction.''

*State Response:* The Missouri Construction Permits Required rule, 10 CSR 10–6.060, in conjunction with the definition of ''construction'' at 10 CSR 10–6.020(2)(C)22, can be interpreted as allowing major sources to commence

construction without a permit in contravention of the CAA and EPA regulations. The definition of ''construction'' allows for synthetic minor sources, those that are major in reality but which seek Federally enforceable limitations to limit their potential-to-emit, to submit a waiver request to MDNR allowing the source to commence limited and specified construction activities. The Missouri SIP submittal cannot be approved into the SIP in its present form. However, MDNR is currently pursuing a course of action that will amend the construction permit rule to allow for approval. This process is discussed below in section II.B.4 of this proposed rulemaking.

3. Offset Credits

A deficiency has also been discovered in the language of 10 CSR 10–6.060(12)(C)4. This provision addresses various situations where offset credits may not be taken. However, the rule lacks any reference to limits on taking offset credits for emission reductions which are required by Federal law or a Federally enforceable permit. MDNR intends to modify this provision by including language that disallows any offset credit for emission reductions required under the Federal CAA or the Missouri Air Conservation Law or regulations promulgated under either.

4. Correction Process

MDNR is aware of the deficiencies outlined above and has agreed to pursue an amendment to the 10 CSR 10–6.020 definition of ''construction'' and the provision in the construction rule at 10 CSR 10–6.060(12)(C)(4) addressing offset credits. By way of this **Federal Register** proposed rule action, EPA is providing notice that a deficiency exists with the MDNR Construction Permits Required rule (10 CSR 10–6.060). MDNR has committed to amend the language of these rules. EPA is proposing to take final action to approve the Construction Permits Required rule (10 CSR 10–6.060), if the change is made to prohibit major sources from beginning construction without a permit.

If the Missouri rule is not amended as described above, then the Construction Permits Required rule (10 CSR 10–6.060), along with specified definitions within 10 CSR 10–6.020, will be disapproved. MDNR has also committed to correct the deficiencies pertaining to the Impacts on Class I Variance table discussed above in section II.B.1., while pursuing corrections pertaining to the waiver policy and the offset credit provision.

## III. Update to Definitions Found in 10 CSR 10–6.020

There are many definitions which are being revised within the SIP or added to the SIP. Many of these definitions pertain to the title V and asbestos programs. These definitions are being approved into the SIP because they provide overall consistency in the use of terms in the air program. Because many of these terms do pertain to Title V, it is important to recognize that EPA approval into the SIP of these definitions does not constitute approval with respect to the title V submission. The reader is referred to the technical support document (TSD) for clarification on changes to definitions and additions to the list of definitions.

## IV. Confidential Information 10 CSR 10–6.210

The SIP currently addresses confidential business information at 10 CSR 10–6.110(5) which EPA approved on April 17, 1986 (51 FR 13000). The December 1993 adoption of 10 CSR 10–6.210 served to transfer the provisions currently found in the SIP at 10 CSR 10–6.110(5) in their entirety to 10 CSR 10–6.210. Only minor adjustments were made to the rule at 10 CSR 10–6.210(4)(D). First, Missouri changed the number of days from 20 to 15 working days that the owner or operator will have from the receipt of the preliminary decision to deny the claim of confidentiality in which to submit further justification or comments to the director.

Second, 10 CSR 10–6.210(5)(D)1 modifies the number of days from 20, as previously set forth in 10 CSR 10–6.110, to 15 in which the owner or operator is given prior notice to obtain an order from a court of competent jurisdiction restraining or enjoining the disclosure to a local agency.

## V. Emission Statement Rule 10 CSR 10–6.110

*A. Background*

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of part D of title I of the CAA, as amended by the 1990 CAAA. EPA has published a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the CAA, including those state submittals for ozone transport areas within the states (see 57 FR 13498 (April 16, 1992) (''SIP: General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990''), 57 FR 18070 (April 28, 1992) (''Appendices to the General Preamble''), and 57 FR 55620 (November 25, 1992) (''SIP: $NO_X$ Supplement to the General Preamble'')).

EPA has also issued a draft guidance document describing the requirements for the emission statement programs discussed in this Notice, entitled ''Guidance on the Implementation of an Emission Statement Program'' (July 1992). The Agency is also conducting a rulemaking process to modify part 51 of the CFR to consolidate the reporting requirements for annual statewide emission inventories, Periodic Ozone/Carbon Monoxide emission inventories, and the emission statement program.

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal nonattainment areas, which are also made applicable in subsections (b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program in paragraph (3) of that subsection for stationary sources to prepare and submit to the state each year emission statements showing actual emissions of VOC and $NO_X$. This section of the Act provides that the states are to submit a revision to their SIPs by November 15, 1992, establishing this emission statement program.

The states may waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plantwide $NO_X$ or VOC emissions in nonattainment areas, if the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA. Whatever minimum reporting level is established in a state emission statement program, if either VOC or $NO_X$ is emitted at or above the designated level, the other pollutant should be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

The CAA requires facilities to submit the first emission statement to the state within three years after November 15, 1990, and annually thereafter. EPA requests that the states submit the emission data to EPA through the Aerometric Information Retrieval System (AIRS). The minimum emission statement data should include: certification of data accuracy, source identification information, operating schedule, emissions information (to include annual and typical ozone season day emissions), control

equipment information, and process data. EPA developed emission statements data elements to be consistent with other source and state reporting requirements. This consistency is essential to assist states with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

In addition to the submission of the emission statement data to AIRS, states should provide EPA with a status report that outlines the degree of compliance with the emissions statement program. Beginning July 1, 1993, states should report quarterly to EPA the total number of sources affected by the emission statement provisions, the number that have complied with the provisions, and the number that have not. This status report should also include the total annual and typical ozone season day emissions from all reporting sources, both corrected and noncorrected for rule effectiveness. States should include in their status report a list of sources that are delinquent in submitting their emission statement and that emit 500 tpy or more of VOC or 2500 tpy or more of $NO_X$. This report should be a quarterly submittal until all the regulated sources have complied for the reporting year. Suggested submittal dates for the quarterly status reports are July 1, October 1, January 1, and April 1.

*B. Description of the State Emission Statement Submittal—Procedural Background*

The Act requires states to observe certain procedural requirements in developing their SIPs, of which the emission statement program will become a part. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing.[1] Section 110(l) similarly provides that each revision to an implementation plan submitted by a state under the CAAA must be adopted by such state after reasonable notice and public hearing.

The submittal was found to be complete and a letter dated June 17, 1994, was forwarded to the Governor's designee indicating the completeness of the submittal and the next steps to be taken in the review process.

*C. Components of Emission Statement Program*

There are several key general and specific components of an acceptable emission statement program. Specifically, the state must submit a revision to its SIP and the emission statement program must meet the minimum requirements for reporting by the sources and the state. In general, the program must include provisions for applicability, definitions, compliance provisions, and specific source requirements. In an August 4, 1993, policy memo from J. David Mobley, Chief of EPA's Emission Inventory Branch to the Regional Air Branch Chiefs, EPA defined the minimum essential elements of an emission statement rule. Missouri rule 10 CSR 6.110 meets or exceeds EPA's minimum guidelines.

*D. Implementation*

The state of Missouri's emission statement SIP will ensure that the requirements of section 182(a)(3)(B) and sections 184(b)(2) and 182(f) are adequately implemented. Once EPA completes the rulemaking process approving Missouri's Emission Statement program as part of the SIP, it will be Federally enforceable.

EPA has determined that the submittal made by the state of Missouri satisfies the relevant requirements of the CAA and EPA's guidance document, ''Guidance on the Implementation of an Emission Statement Program'' (July 1992), and the August 4, 1993, policy memo from J. David Mobley, Chief of EPA's Emission Inventory Branch to the Regional Branch Chiefs regarding ''First Emission Statements Due to EPA/ Essential Emission Statement Rule Elements.'' EPA's detailed review of Missouri's Emission Statement Program is contained in a TSD which is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of the notice.

EPA Action

EPA is proposing to approve a revision that revises the NSR rules, updates and adds numerous definitions, revises the maximum allowable increase for particulate matter, and addresses emission statements under Title I of the CAAA.

However, for Missouri to receive final approval on this SIP revision the state must modify several rules. First, the class I Variance table found at 10 CSR 10–6.060(12)(H)2 does not reflect the revised $PM_{10}$ numerical maximum allowable increases. Specifically, the table at 10 CSR 10–6.060(12)(H)2 must include $PM_{10}$ as a pollutant with numerical values at least as stringent as those found at 58 FR 31637.

Second, the Missouri Construction Permits Required rule, 10 CSR 10–6.060, in conjunction with the definition of ''construction'' at 10 CSR 10–6.020(2)(C)22, can be interpreted as allowing major sources to commence construction without a permit in contravention of the CAA. The definition of ''construction'' allows for synthetic minor sources (those that are major in reality but which seek Rederally enforceable limitations to limit their potential-to-emit) to submit a waiver request to MDNR allowing the source to commence limited and specified construction activities. These Missouri rules cannot be approved into the SIP in their present form. As a result, MDNR is currently pursuing a course of action to amend the definitions rule to satisfy EPA concerns.

Finally, a deficiency has also been discovered in the construction permit rule at 10 CSR 10–6.060(12)(C)4. This provision addresses various situations where offset credits may not be taken. The Missouri rule lacks any reference to limits on taking offset credits which are required by Federal law or a Federally enforceable permit. Again, MDNR intends to modify this provision by including language that disallows any offset credit for emission reductions required under the Federal CAA or the Missouri Air Conservation Law, or regulations promulgated under either.

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

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, EPA certifies 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

[1] Also, section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

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. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

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

Environmental protection, Air pollution control, Hydrocarbons, Lead, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: March 9, 1995.

**Dennis Grams,**

*Regional Administrator.*

[FR Doc. 95–8082 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[TX–10–1–5223b; FRL–5171–2]**

## Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Visible Emissions

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve a revision to the Texas SIP addressing visible emissions. The purpose of proposing to approve this revision is to enable the visible emissions provisions of Texas Regulation I to become federally enforceable. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by May 3, 1995.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Sather or Mr. Bill Deese, Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final action of the same title which is located in the final rules section of this **Federal Register**.

Dated: March 3, 1995.

**Jane N. Saginaw,**

*Regional Administrator.*

[FR Doc. 95–8041 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 63

**[AD–FRL–5181–7]**

## Request for Approval of Section 112(l) Authority for the Lincoln-Lancaster County Health Department (LLCHD) Air Program; State of Nebraska

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to grant approval under section 112(l)(5) and 40 CFR 63.91 of the LLCHD'S program for receiving delegation of future section 112 standards that are unchanged from Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for non-Part 70 sources. When approved, state rules and applicable part 70 operating permit conditions would substitute for the applicable Federal requirements within a state or local jurisdiction.

**DATES:** Comments on this proposed action must be received in writing by May 3, 1995.

**ADDRESSES:** Comments should be addressed to Wayne Kaiser at the address indicated. Copies of the Lincoln-Lancaster submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours at the US EPA, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Wayne A. Kaiser at (913) 551–7603.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Purpose

Section 112(l) of the 1990 Clean Air Act (CAA) enables the EPA to approve state (and local agency) air toxics programs to operate in place of the Federal air toxic program. Approval is granted by the EPA if the Agency finds that the state program or rule meets the criteria described in 40 CFR 63.91 (58 FR 62262). The LLCHD requested such approval for its part 70 sources in its part 70 program submittal. EPA published a notice proposing to approve the LLCHD's part 70 program and 112(l) authority for part 70 sources on January 31, 1995 (60 FR 5883).

On February 2, 1995, LLCHD submitted a letter to EPA requesting approval of its program under section 112(l)(5) and 40 CFR 63.91 for receiving delegation of future section 112 standards that are unchanged from Federal standards as promulgated, and requested delegation of existing standards under 40 CFR parts 61 and 63 for non-part 70 sources. The letter included information which addresses the approval criteria in 40 CFR 63.91. This includes adequate legal authority and resources, an expeditious implementation and compliance schedule, and adequate enforcement authorities.

### II. Analysis of Submission

LLCHD demonstrated it has adequate legal and enforcement authority by referring to the County Attorney's opinion and its rules and regulations submitted with its Part 70 program submittal. This authority and the rules apply to all regulated sources. The LLCHD commits to expeditiously adopting and implementing all future section 112 requirements, whether for part 70 or non-Part 70 sources, after they are promulgated by EPA. The delegation mechanism which the LLCHD intends to use for future section 112 standards and programs is the adoption by reference mechanism.

The LLCHD has already adopted the dry cleaner maximum achievable control technology, subpart M, which applies primarily to non-Part 70 sources, and has adequate resources to

implement it. It commits to providing EPA with future demonstrations of resource adequacy as necessary as new requirements become known.

The LLCHD submitted a schedule for implementing section 112 requirements in its part 70 program submittal. This schedule will apply to both part 70 and non-Part 70 sources, since adoption by reference of the standard will apply simultaneously to both types of sources.

Finally, the LLCHD has demonstrated that it has the legal authority to take civil and enforcement actions against any section 112 source for all CAA requirements, including the section 112 requirements.

The reader may consult the Technical Support Document, available from the contact above, for a more detailed explanation of these topics.

## III. Proposed Action

EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the LLCHD's program for receiving delegation of future section 112 standards that are unchanged from Federal standards as promulgated for both Part 70 and non-Part 70 sources. In addition, EPA proposes to delegate existing standards under 40 CFR parts 61 and 63 for non-Part 70 sources.

## IV. Administrative Requirements

### *A. Request for Public Comments*

The EPA is requesting comments on all aspects of this proposed notice. Copies of LLCHD's submittal and other information relied upon for this proposal are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all information submitted to, or otherwise considered by, EPA in the development of this proposal. The principle purposes of the docket are:

1. To allow interested parties a means to identify and locate documents so they can effectively participate in the approval process; and

2. To serve as the record in case of judicial review, EPA will consider any comments received by May 3, 1995.

### *B. Executive Order 12866*

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

### *C. Regulatory Flexibility Act*

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 63

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: March 13, 1995.

**William Rice,**

*Acting Regional Administrator.*

[FR Doc. 95–8083 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 372

**[OPPTS–400032A; FRL–4944–8]**

**RIN 2070–AC00**

## Ammonia; Ammonium Sulfate (Solution); Ammonium Nitrate (Solution); Water Dissociable Ammonium Salts; Toxic Chemical Release Reporting; Community Right-to-Know

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

**ACTION:** Amended proposed rule.

**SUMMARY:** EPA is amending its March 30, 1990 proposal to grant a petition to delete ammonium sulfate (solution) from the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The March 30, 1990 proposal was based on EPA's belief that releases of ammonium sulfate (solution) can be more effectively covered by the EPCRA section 313 ammonia listing. EPA is amending the proposed rule in order to allow the public to comment on data not available or included at the time of the original proposal. EPA is also expanding the proposal to include the deletion of ammonium nitrate (solution) as a separately listed toxic chemical on the EPCRA section 313 list because EPA believes that releases of ammonium nitrate (solution) are more effectively covered by the EPCRA section 313 listings for ammonia and the recently added water dissociable nitrate compounds category. In addition, EPA is proposing to modify the ammonia listing to make it clear that aqueous ammonia from all water dissociable ammonium salts is reportable under the EPCRA section 313 listing for ammonia. In the March 30, 1990 proposal, EPA discussed two options for the reporting of aqueous ammonia, as total ammonia or as some proportion of total ammonia. Today, EPA is proposing that 10 percent of total aqueous ammonia be reported under the ammonia listing.

**DATES:** Written comments must be received by May 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Maria J. Doa, Petitions Coordinator, 202–260–9592, for specific information on this amended proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

### *A. Statutory Authority*

This amended proposal is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

### *B. Background*

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. EPA has added chemicals to and deleted chemicals from the original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has published a statement

clarifying its interpretation of the section 313(d)(2) criteria for adding and deleting chemicals from the section 313 list (59 FR 61439, November 30, 1994).

Facilities that manufacture, process, or otherwise use ammonia, ammonium sulfate (solution), ammonium nitrate (solution), and other water dissociable ammonium salts may be affected by this amended proposed rule if they meet the following criteria: (1) The facility has the equivalent of 10 or more full-time employees; and (2) the facility is included in Standard Industrial Classification (SIC) Codes 20 through 39; and (3) the facility manufactures (defined to include importing), processes, or otherwise uses the chemicals listed above in quantities equal to or greater than 25,000 pounds for manufacturing or processing and 10,000 pounds for otherwise using.

## II. Description of Petition and Original Proposed Rule

### *A. Description of Petition*

On January 23, 1989, EPA received a petition from Allied-Signal Inc. to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals. The petition was based on Allied-Signal Inc.'s contention that ammonium sulfate (solution) does not meet the EPCRA section 313 criteria for listing. Specifically, Allied-Signal Inc. claimed that: (1) Ammonium sulfate is not known to cause and cannot reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases, (2) ammonium sulfate does not show potential for causing in humans cancer or teratogenic effects, serious or irreversible reproductive dysfunction, neurological disorders, heritable genetic mutations, or other chronic health effects, and (3) ammonium sulfate does not show potential for adverse effects on the environment due to toxicity, persistency in the environment, and/or tendency to bioaccumulate in the environment.

### *B. Review of Proposed Rule*

On March 30, 1990, EPA issued a proposed rule in the **Federal Register** (55 FR 12144), proposing to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals. This proposal, hereafter referred to as ''the original proposal,'' was based on EPA's belief that the only concerns identified for ammonium sulfate (solution) were for the aqueous ammonia present in the solution and that this aqueous ammonia is more appropriately reported under the EPCRA section 313 listing for ammonia. Aqueous ammonia is coincidentally manufactured when ammonium salts that dissociate in water (such as ammonium sulfate) are dissolved in water. Therefore, releases of these ammonium salt solutions are environmentally equivalent to the release of aqueous ammonia generated by dissolving anhydrous ammonia in water.

The original proposal and the combined docket for the original proposal and this proposed amendment contain complete discussions and documentation of EPA's technical review of ammonium sulfate (solution), aqueous ammonia, and the options EPA has considered for resolving the reporting requirements under the ammonia listing. The following two sections summarize EPA's technical evaluation and options as discussed in the original proposal.

1. *Summary of technical review*. The chemistry of ammonia in water (i.e., aqueous ammonia) has been extensively studied and is well understood. When anhydrous ammonia or water dissociable ammonium salts (such as ammonium sulfate) are dissolved in water an equilibrium is reached between two forms of ammonia, the un-ionized form ($NH_3$) and the ionized form ($NH_4^+$). The term ''total ammonia'' refers to the sum of both the un-ionized and ionized forms of ammonia and is synonymous with the term ''aqueous ammonia.'' The relative proportions of each form of ammonia are mainly dependent on the pH and temperature of the solution, with the amount of the un-ionized form increasing with both increased pH and increased temperature. These two forms rapidly interconvert and the relative proportions of each form change instantly with changes in the pH and temperature of the solution. The concentration of the un-ionized form of ammonia increases 10-fold with each one unit increase in pH and approximately doubles with every 10 °C increase in temperature. There are differences in the concentrations of the un-ionized form of ammonia between equimolar solutions of aqueous ammonia generated by dissolving dissociable ammonium salts versus anhydrous ammonia. These differences are due to the buffering effects (mainly reflected as pH differences) of the counter ions from the ammonium salts and disappear when both solutions are released to the environment.

EPA preliminarily concluded that there were no known significant human health effects associated with ammonium sulfate (solution). EPA also preliminarily concluded that the ecotoxicity concerns for ammonium sulfate (solution) were limited to the aqueous ammonia (i.e., total ammonia) present in these solutions and that the sulfate portion was not of concern. The toxicity of aqueous ammonia to aquatic organisms has been extensively studied and is well understood. The toxicity of aqueous ammonia solutions is primarily attributable to the un-ionized form of ammonia with the ionized form being relatively less toxic. Because both the toxicity of aqueous ammonia and the concentration of the un-ionized form of ammonia vary with the pH and temperature of the solution, aqueous ammonia toxicity cannot be represented solely by the concentration of unionized ammonia. Thus, the toxicity of an aqueous solution of ammonia cannot be represented by a single value but must be expressed as a function of pH and temperature. Since the un-ionized ammonia concentration changes with pH and temperature, it is necessary to calculate the total ammonia concentration in order to determine the toxicity of the solution as the pH and temperature conditions change.

EPA's Office of Water has conducted a detailed study of the toxicity of aqueous ammonia which is provided in the criteria document, *Ambient Water Quality Criteria for Ammonia - 1984*. No new information has become available to the Agency that has significantly changed the conclusions reached in this document. Therefore, this document remains the Agency's aquatic toxicity hazard assessment for aqueous ammonia. The criteria developed for this document were derived from toxicity tests conducted with several ammonium compounds, including ammonium sulfate. The criteria are estimates of the highest concentrations that should not cause toxicity to aquatic organisms and are expressed as a function of pH and temperature. The criteria are presented in terms of both the concentrations of the un-ionized form of ammonia and the concentration of total ammonia.

In the original proposal, EPA reported that the majority (95 percent) of the ammonium sulfate consumed in the U.S. is used as a fertilizer and that, based on reports submitted to the Toxic Release Inventory (TRI), in 1987, 90.2 million pounds of ammonium sulfate (solution) were released to water and/or publicly-owned treatment works (POTWs). EPA conducted a limited exposure assessment based on data obtained from the TRI. The assessment focused on releases to surface waters

and POTWs since these releases will have a direct impact on aquatic ecosystems. EPA determined that 30 percent of the facilities reviewed were not being regulated through their State programs for discharges of ammonia.

2. *Summary of options in the original proposal.* EPA considered three options for responding to the petition:

(i) Deny the petition.

(ii) Grant the petition and propose to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals.

(iii) Grant the petition and propose to delete ammonium sulfate (solution) while at the same time, use the rulemaking to revise release reporting of ammonia.

EPA recognized that certain facilities might not be aware of the chemistry of aqueous solutions of ammonium salts. Therefore, under option (iii), EPA discussed three options concerning how to inform the regulated community of the technical determination that these solutions are equivalent to solutions of aqueous ammonia generated by dissolving anhydrous ammonia in water. The options considered were:

(a) Create an ''ammonium salts'' category to make the technical determination more explicit.

(b) Modify the ammonia listing to read as follows: ammonia (includes total ammonia resulting from solutions of water dissociable salts).

(c) Revise EPA's guidance for ammonia reporting.

EPA believed that creating an ammonium salts category would be confusing and could potentially cause problems concerning double reporting and reporting on salts that do not dissociate. EPA believed that modification of the ammonia listing was not necessary in order to capture releases of aqueous ammonium salt solutions and that it would reinforce the artificial distinction between releases of aqueous solutions of ammonia generated from anhydrous ammonia and those generated from water dissociable ammonium salts. EPA, therefore, issued technical guidance clarifying the reporting requirements under the ammonia listing.

In the same issue of the **Federal Register** in which the proposal was published, a notice of availability was published (55 FR 12148) notifying the public and the regulated community of the availability of a guidance document on the reporting of ammonia releases. The guidance document explained that manufacturing, processing, or otherwise using aqueous solutions of ammonium salts that dissociate in water is equivalent to manufacturing, processing, or otherwise using aqueous ammonia solutions generated by dissolving anhydrous ammonia (an EPCRA section 313 listed toxic chemical) in water. Therefore, those facilities that manufacture, process, or otherwise use aqueous solutions of ammonium salts that dissociate in water should make threshold determinations under EPCRA section 313 to assess whether reporting for releases under the ammonia listing is required.

In the original proposal, EPA also discussed two options for reporting releases of aqueous ammonia:

(1) Report releases of total ammonia; or

(2) Report a proportion of the releases of total ammonia.

In discussing the two options, EPA stated that reporting total ammonia would allow communities to determine the proportion of un-ionized ammonia and ionized ammonia present in the receiving stream based on the pH and temperature characteristics of the stream. This information allows communities to easily determine the un-ionized ammonia and ionized ammonia loading resulting from facility releases of aqueous ammonia. EPA stated that although the ionized form of ammonia is less toxic to aquatic organisms than the un-ionized form of ammonia, it is present in a higher proportion under environmental conditions and may present the greater hazard. EPA also stated that reporting releases as a proportion of the amount of un-ionized ammonia released would result in data that cannot be used as well since it must be extrapolated to determine the amount of total ammonia released.

EPA proposed the second option in recognition of the fact that the un-ionized form of ammonia is more toxic than the ionized form of ammonia and that under environmental conditions only a proportion of total ammonia contains un-ionized ammonia. EPA requested comment on whether a proportion, which would be the same for all facilities, of releases of total ammonia should be reported. EPA stated that this proportion would be a worst-case estimate of the proportion of the un-ionized form of ammonia present in processing waters reflecting an upper bound level of the amount of the un-ionized form of ammonia formed. EPA also requested comment on what proportion of total ammonia should be used as an estimate.

## III. Rationale for Amending the Proposal

The issue of what forms of ammonia should be reportable under the ammonia listing has been the source of ongoing discussions between EPA and affected parties since the publication of the original proposal. This has resulted in a significant amount of additional information becoming available to EPA, and is one of the reasons EPA is amending the proposed rule. This information has been placed in the docket for this rulemaking. Also, due to the recent addition of a nitrate compounds category to the EPCRA section 313 list of toxic chemicals (59 FR 61439, November 30, 1994), EPA believes that it would be appropriate to expand the proposed rule to include the deletion of ammonium nitrate (solution) as a separately listed chemical under EPCRA section 313. Therefore, EPA decided to publish this amended proposal to allow for adequate public notice and comment.

The following sections discuss this additional information as well as the expansion of the proposal to include the deletion of ammonium nitrate (solution).

### *A. Additional Information*

1. *Average pH and temperature of U.S. waters (Ref. 1).* Data concerning the pH and temperature of lakes, rivers, and streams in the U.S. were not discussed or provided in the original proposal. This information is important since the pH and temperature of these receiving bodies will determine the proportion of aqueous ammonia that will exist in the more toxic un-ionized form. EPA has analyzed data tabulated from the Agency's STORET data base for all 50 states and found that at the 50th percentile for pH and temperature in surface waters, approximately 1 percent of aqueous ammonia would exist in the un-ionized form, at the 90th percentile it would be 10 percent, and at the 95th percentile it would be 15 percent. This information suggests an upper boundary for the amount of the un-ionized form of ammonia that will be generated from the releases of aqueous ammonia.

2. *Toxicity data (Ref. 2).* Additional data concerning the toxicity of aqueous ammonia to one aquatic organism has become available since the original proposal was issued. This new data indicate that the amphipod *Hyalella azteca* shows no dependency towards pH and temperature with regards to chronic toxicity from aqueous ammonia. This suggests that, for this organism, aqueous ammonia toxicity is not due primarily to the un-ionized form of ammonia and that, for this organism, the ionized form may be equally as toxic as the un-ionized form.

3. *Environmental fate of aqueous ammonia (Ref. 3).* Aqueous ammonia does not persist or bioaccumulate in the

environment as ammonia. In surface waters the important and competitive processes that remove aqueous ammonia are nitrification and volatilization. The rate of volatilization of ammonia from surface waters is highest at the sources of releases, while nitrification processes tend to be more significant in lakes, slow moving rivers, and estuaries. Nitrification, which is one process within the nitrogen cycle, involves two steps that yield metabolic energy for two specific microorganisms. In the first step, *Nitrosomonas* converts ammonia to nitrite and in the second step, *Nitrobacter* converts nitrite to nitrate. Because the nitrogen cycle is dynamic, industrial releases of aqueous ammonia should not result in dramatic buildups of ammonia in surface waters. Nitrification is responsive to high inputs of ammonia such as those from industrial releases. However, it should be noted that high nitrification may lead to low levels of dissolved oxygen and the eutrophication of a water body. This effect is typically limited to coastal waters and estuaries where nitrogen is the limiting nutrient. Aqueous ammonia may also be removed by adsorption to particles which then settle to the sediment where soil-type processes take over. The ionized form of ammonia is also assimilated by most plants.

4. *Additional exposure information (Ref. 4).* EPA has conducted an additional exposure analysis of releases of aqueous ammonia to surface waters. This exposure assessment analyzed the releases of ammonium sulfate (solution) and ammonium nitrate (solution) that were reported to the TRI for reporting year 1992. Releases of ammonia reported under the ammonia listing were not included since this data are a mixture of reports of total ammonia releases and un-ionized ammonia releases and EPA has no way to readily determine how a facility calculated its releases. Although this exposure assessment represents only a small portion of the aqueous ammonia released to surface waters, it was helpful in identifying facilities that might be releasing aqueous ammonia in concentrations that exceed water quality criteria. The results showed that not all facilities with significant releases of these ammonium salts are covered by permits that control releases of aqueous ammonia and for those that are covered by such permits violations of these permits occur.

EPA has recently clarified how exposure information is used in listing and delisting decisions under EPCRA section 313 (59 FR 61432, November 30, 1994). EPA does not consider exposure information when evaluating whether highly ecotoxic chemicals meet the EPCRA section 313(d)(2)(C) listing criteria. EPA believes that for highly ecotoxic chemicals it is sufficient to consider only hazard when determining whether a chemical meets the EPCRA section 313(d)(2)(C) listing criteria. EPA only considers exposure information when evaluating low or moderately ecotoxic chemicals. EPA considers the un-ionized form of ammonia to be highly toxic to aquatic organisms; therefore, EPA did not consider exposure information in evaluating whether aqueous ammonia from ammonium sulfate (solution) contributes to aquatic toxicity. The exposure information provided in this amended proposal and in the original proposal was not used as a basis for determining whether ammonium sulfate (solution) meets the EPCRA section 313(d)(2)(C) listing criteria, but was provided as additional information since many states issue permits that require monitoring or limitation of ammonia releases.

5. *Science Advisory Board review (Ref. 5).* In order to help resolve the scientific issues concerning the reporting of aqueous ammonia under the EPCRA section 313 ammonia listing, EPA asked the Agency's Science Advisory Board (SAB) to review the issues. The SAB assigned the review to the Toxics Reporting Subcommittee of the Ecological Processes and Effects Committee which met in Washington, DC on January 4, 1995, in a public meeting to discuss the issue. EPA submitted two questions for the subcommittee to respond to:

(i) What is the most appropriate way to report releases of aqueous ammonia under EPCRA section 313: as un-ionized ammonia or as total ammonia?

(ii) Does total ammonia meet the EPCRA section 313 listing criteria?

The SAB responded with a letter to the Agency dated February 2, 1995. In this letter the SAB concluded that the acute toxicity of the un-ionized form of ammonia to aquatic life is approximately 100 times greater than the ionized form of ammonia and that the toxicity of the two forms is approximately additive. With regard to what form of ammonia should be reported under EPCRA section 313, the SAB stated that, for aquatic toxicity, reporting concentrations of the un-ionized form of ammonia at a standard pH and temperature would address this endpoint. The SAB also stated that for other effects such as nitrogen nutrient enrichment, the specific forms of ammonia are not very relevant since both have the same nutrient enrichment properties. The SAB went on to conclude, ''Thus, the question of whether to list or how to list ammonia or any of its forms is not a scientific issue but strictly a matter of policy for the Agency to decide.''

With regard to whether total ammonia meets the EPCRA section 313 criteria, the SAB stated that, based on their evaluation of the criteria, total ammonia meets the EPCRA section 313 criteria only if, as stated in the statute, the Administrator determines that it causes a significant adverse effect on the environment of sufficient seriousness to warrant reporting.

### *B. Proposed Deletion of Ammonium Nitrate (solution)*

Ammonium nitrate (solution) is a solution of aqueous ammonia and nitrate ions. On November 30, 1994 (59 FR 61432), EPA added a water dissociable nitrate compounds category to EPCRA section 313 . The addition of this category and reporting of aqueous ammonia from water dissociable ammonium salts under the ammonia listing obviate the need to have ammonium nitrate (solution) as a separately listed chemical under EPCRA section 313. EPA believes that the aqueous ammonia from ammonium nitrate (solution) is more appropriately reported under the EPCRA section 313 ammonia listing and that the nitrate portion of ammonium nitrate (solution) is more appropriately reported under the new water dissociable nitrate compounds category. Although EPA is proposing to delete ammonium nitrate (solution), this action would not result in any loss of information concerning releases of this material.

## IV. Proposed Actions and Rationale

### *A. Proposed Actions*

EPA is proposing to take the following four actions:

1. Delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals.

2. Require that threshold and release determinations for aqueous ammonia be based on 10 percent of the total ammonia present in aqueous solutions of ammonia.

3. Modify the ammonia listing by adding the following qualifier: ammonia (includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing).

4. Delete ammonium nitrate (solution) as a separately listed chemical on the EPCRA section 313 list of toxic chemicals.

*B. Rationale for Proposed Actions*

The rationale for proposing each of these actions is discussed below.

1. *Deletion of ammonium sulfate (solution).* EPA agrees with the petitioner's claim that ammonium sulfate (solution) does not meet the human health listing criteria under EPCRA section 313(d)(2)(A) and (B). However, EPA does not agree with the petitioner's claim that ammonium sulfate (solution) does not show potential for adverse effects on the environment because when a facility dissolves ammonium sulfate in water, that facility, in effect, manufactures aqueous ammonia. The un-ionized form of ammonia present in aqueous ammonia is highly toxic to aquatic organisms and therefore meets the EPCRA section 313(d)(2)(C) criteria for listing. An aqueous solution of ammonium sulfate is environmentally equivalent to aqueous ammonia generated from anhydrous ammonia because when each of these solutions is released to receiving waters the amount of un-ionized ammonia present is dependent upon environmental conditions. In fact, ammonium sulfate is one of the many ammonium salts used by researchers as a source of aqueous ammonia for aquatic toxicity studies.

EPA does not believe that the sulfate portion of ammonium sulfate (solution) meets the EPCRA section 313(d)(2)(A), (B), or (C) criteria. EPA has previously reviewed the toxicity of sodium sulfate (54 FR 7217 and 54 FR 25850) and concluded that sulfate from sodium sulfate did not meet the EPCRA section 313(d)(2)(A), (B), or (C) criteria.

EPA believes that the only component of ammonium sulfate (solution) that meets the EPCRA section 313 listing criteria is the aqueous ammonia present in this solution. EPA believes that this aqueous ammonia is more appropriately reported under the EPCRA section 313 ammonia listing, therefore it is appropriate to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals. Ten percent of the ammonium portion of ammonium sulfate (solution) would remain reportable under the ammonia listing.

2. *Reporting 10 percent of total ammonia.* EPA has considered all data available to the Agency concerning the chemistry, toxicity, and environmental fate of aqueous ammonia and believes that: (1) Aqueous ammonia does not persist or bioaccumulate in the environment as ammonia, (2) the most toxic form of ammonia is the un-ionized form, (3) the un-ionized form of ammonia makes up a relatively small percentage of total ammonia under most environmental conditions, (4) reporting a percentage of total aqueous ammonia under the ammonia listing would adequately represent the toxicity of aqueous ammonia, and (5) reporting un-ionized ammonia without pH and temperature data would not provide sufficient information to quantify potential hazards from releases. EPA believes that reporting aqueous ammonia as 10 percent of total ammonia is appropriate since, based on the 90th percentile pH and temperature data for U.S. waters, releases of aqueous ammonia will consist of no more than approximately 10 percent of the un-ionized form of ammonia. Reporting aqueous ammonia as a percentage of total ammonia would also allow for easy determination of the amount of total ammonia released. The amount of total ammonia released, along with the site-specific pH and temperature data for the receiving body, are required in order to calculate the amount of un-ionized ammonia released to any one specific water body. Under this proposal, facilities would be required to include 10 percent of the total ammonia in aqueous solutions in all threshold and release determinations under the EPCRA section 313 listing for ammonia. The proposal to report 10 percent of total ammonia is consistent with the original proposal in which EPA asked for comment on whether a proportion of total ammonia, that would be the same for all facilities, should be reported. This proposal is also consistent with the SAB conclusion that reporting un-ionized ammonia under standard conditions adequately addresses the aquatic toxicity endpoint. Also, users of TRI data who wish to assess the contribution of ammonia to nitrogen loading in nitrogen limited waters could extrapolate from the reported data.

3. *Modification of the ammonia listing.* In the original proposal, EPA discussed three ways to clarify that aqueous ammonia from water dissociable ammonium salts is reportable under the ammonia listing. One method considered was to add a modifier to the ammonia listing to read: ammonia (includes total ammonia resulting from solutions of water dissociable salts). EPA was concerned, however that such a modification would reinforce the artificial distinction between releases of aqueous solutions of ammonia generated from anhydrous ammonia and those generated from water dissociable ammonium salts, a distinction which is not present under environmental conditions. However, EPA is now concerned that without such a qualifier the regulated community might not realize that the aqueous ammonia from water dissociable ammonium salts is reportable under the ammonia listing. EPA guidance in response to inquires concerning what is reportable under the ammonia listing has been that aqueous ammonia from water dissociable ammonium salts is reportable under the listing. However, even after publishing this guidance in 1990 (55 FR 12148), EPA has continued to receive numerous inquires regarding what should be reported. Therefore, EPA proposes to add a qualifier to the ammonia listing to clarify that aqueous ammonia from water dissociable ammonium salts is reportable under the ammonia listing. EPA believes that modification of the ammonia listing to specify that the listing includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources, would aid the regulated community in determining whether they are required to report and would eliminate any confusion over what is reportable under the ammonia listing. This modification would also include the proposal discussed above to limit reporting of aqueous ammonia to 10 percent of total aqueous ammonia. Upon finalization of this proposed rule, EPA will publish a revised guidance document for the ammonia listing.

4. *Deletion of ammonium nitrate (solution).* EPA is proposing to delete ammonium nitrate (solution) because the recent addition of the water dissociable nitrate compounds category (59 FR 61432, November 30, 1994) and reporting of aqueous ammonia from water dissociable ammonium salts under the ammonia listing negate the need for a separate listing for this chemical solution. EPA does not believe that this would be a significant change since the releases of ammonium nitrate (solution) would still be reported under the EPCRA section 313 listing for ammonia and the nitrate compounds category. Under the nitrate compounds category, the amount of ammonium nitrate in solution would be counted in threshold determinations for the category, but only the amount of nitrate ion would be counted in release and transfer determinations, therefore no double counting of releases would occur. This proposal would simply consolidate the reporting of ammonium nitrate (solution) under existing EPCRA section 313 listings. The original proposal discussed the reporting of water dissociable ammonium salts under the ammonia listing. Since ammonium nitrate is a water dissociable ammonium salt and since no loss of

information would result from this deletion, EPA believes that it is appropriate to add this proposal to this rulemaking.

## V. Effective Dates

The changes described in this amended proposal (with the exception of the deletion of ammonium nitrate (solution)) would be effective on the date of publication of the final rule, which EPA expects to occur prior to July 1, 1995. These changes would therefore be effective for the 1994 reporting year.

Section 313(d)(4) of EPCRA provides, ''Any revision [to the section 313 list] made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.'' EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list; EPA may, at its discretion, make deletions from the list and amendments to listings immediately effective.

EPA believes that the purpose behind section 313(d)(4) is to allow facilities adequate planning time to incorporate newly added chemicals to their TRI release data collection processes. A facility would not need additional planning time not to report releases of a delisted chemical. Moreover, where EPA has determined that a chemical does not satisfy the criteria of section 313(d)(2)(A) through (C), no purpose is served by requiring facilities to collect release data or file release reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. Nothing in the legislative history suggests that section 313(d)(4) was intended to apply to deletions as well as additions. Thus, a reasonable construction of section 313(d)(4), given the overall purposes and structure of EPCRA—to provide the public with information about chemicals which meet the criteria for inclusion on the section 313 list — is to apply the delayed effective date requirement only to additions to the list. This construction of section 313(d)(4) is also consistent with previous rules deleting chemicals from the section 313 list.

An immediately effective date for the actions in this amended proposal is also consistent with 5 U.S.C. 553(d)(1), since a deletion from the section 313 list relieves a regulatory burden. EPA believes the combined effect of the changes in this amended proposal would be to reduce the burden by clarifying what is reportable under the ammonia listing and by simplifying the reporting requirements for ammonia. In addition, the proposal to require facilities to include 10 percent of total ammonia in aqueous solutions in threshold determinations might relieve some facilities from the obligation to report for aqueous ammonia.

If EPA were to publish a final rule before July 1, 1995, the following effective dates and requirements would apply.

1. *Deletion of ammonium sulfate (solution).* The deletion of ammonium sulfate (solution) would be effective for the 1994 reporting year (reports due July 1, 1995).

2. *Deletion of ammonium nitrate (solution).* The deletion of ammonium nitrate (solution) would be effective for the 1995 reporting year (reports due July 1, 1996). EPA is proposing to delay the effective date of this provision to coincide with the effective date of the recently added water dissociable nitrate compounds category (59 FR 61432, November 30, 1994). The requirement that aqueous ammonia from ammonium nitrate (solution) be reported under the ammonia listing as 10 percent of total aqueous ammonia would also be effective for the 1995 reporting year.

3. *Reporting 10 percent of total aqueous ammonia.* The requirement that 10 percent of total aqueous ammonia be reported under the ammonia listing for aqueous ammonia from all water dissociable ammonium salts (except ammonium nitrate (solution)) would be effective for the 1994 reporting year. EPA believes that facilities that have been subject to record keeping requirements for ammonium sulfate (solution) already have the information needed to calculate threshold and release quantities for 10 percent total aqueous ammonia. Specifically, a facility would multiply the appropriate ammonium sulfate (solution) quantities by 2.7 percent, which represents 10 percent of the weight percent of aqueous ammonia from ammonium sulfate (solution).

Facilities that currently report or make threshold determinations for the aqueous ammonia from other water dissociable ammonium salts may not be keeping the kind of information in their records that would allow them to calculate 10 percent of total aqueous ammonia from their un-ionized ammonia data. EPA recognizes that issuance of the final rule may come so late in the reporting year that some of these facilities may not be able to comply with this requirement before the July 1, 1995 reporting date. Accordingly, for this one year, such facilities could continue to use the pH and temperature of their process and waste streams to estimate the quantities of un-ionized ammonia present for threshold and release determinations, respectively.

Facilities that had already reported under the current requirements at the time the final rule is issued would not be required to resubmit their reports under the new requirements. They could, however, withdraw their reports if they did not meet the threshold for ammonia under the revised ammonia listing.

## VI. Request for Public Comment

EPA requests public comment on the actions discussed in this amended proposed rule. Comments should be submitted to the address listed under the ADDRESSES unit. All comments must be received on or before May 3, 1995. In developing the final rule, EPA will consider comments submitted in response to this amended proposal and comments previously submitted on the original proposal.

## VII. Rulemaking Record

The record supporting the original proposal and proposed amendment is contained in docket number OPPTS–400032. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

## VIII. References

(1) Data from EPA's STORET water quality data base as tabulated in, *Industry Comments for the U.S. EPA Science Advisory Board Ecological Processes and Effects Committee on Delisting of Ammonium Sulfate Under EPCRA Section 313 and Reporting of Ammonia Releases*, December 16, 1994, by BP Chemicals Inc., Monsanto, and Sterling Chemicals.

(2) Uwe Borgmann, *Chronic Toxicity of Ammonia to the Amphipod Hyalella azteca; Importance of Ammonium Ion and Water Hardness*, Environmental Pollution, 86 (1994) 329–335.

(3) *Summary Review of Health Effects Associated with Ammonia*, U.S. EPA Office of Health and Environmental Assessment, EPA/600/8–89/052F June 1989.

(4) U.S. EPA, OPPT, EETD, EAB, *Water Quality Modeling of Ammonium Sulfate (solution) and Ammonium Nitrate (solution) Toxic Release*

*Inventory (TRI) Surface Water Releases and Transfers to POTWs*, March 13, 1995.

(5) Letter of February 2, 1995 to Carol M. Browner, Administrator U.S. EPA from Dr. Genevieve Matanoski, Chair, Executive Committee, Science Advisory Board.

### IX. Regulatory Assessment Requirements

*A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this amended proposed rule is not ''significant'' and therefore not subject to OMB review.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by a proposed rule. Because the amended proposed rule does not create any new requirements and consolidates other requirements, it would not significantly affect facilities, including small entities.

*C. Paperwork Reduction Act*

This amended proposed rule does not result in any new information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

### List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: March 29,1995.

**Susan H. Wayland,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

Therefore it is proposed that, 40 CFR part 372 be amended as follows:

## PART 372—[AMENDED]

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

### § 372.65 [Amended]

2. Sections 372.65(a) and (b) are amended by removing the entire entry for ammonium sulfate (solution) and ammonium nitrate (solution) and by adding the following language to the ammonia listing ''includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing'' under paragraph (a) and removing the entire CAS No. entry for 7783–20–2 and 6484–52–2 under paragraph (b).

[FR Doc. 95–8202 Filed 3–30–95; 1:29 pm]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 94–67; RM–8481]**

### Radio Broadcasting Services; Collegeville, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** This document dismissed a petition for rule making filed by Saint John's University requesting the allotment of Channel 260A to Collegeville, Minnesota, and reservation of the channel for noncommercial educational use. *See* 59 FR 35292, July 11, 1994. In reviewing this proceeding, we discovered that we erroneously proposed reservation of the channel at Collegeville. The *Notice* should only have proposed allotment of a channel to Collegeville. Saint John's proposal does not meet the established guidelines to reserve a channel in the commercial band. Since no comments were received expressing an intention to use the channel as a commercial station, we have terminated the proceeding without making an allotment. With this action, this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, MM Docket No. 94–67, adopted March 16, 1995, and released March 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–7947 Filed 3–31–95; 8:45 am]

BILLING CODE 6712–01–F

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AD11**

### Endangered and Threatened Wildlife and Plants: Proposal To Determine Endangered Status for Three Wetland Species Found in Southern Arizona and Northern Sonora

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

**ACTION:** Proposed rule and notice of petition findings.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for two plants, *Spiranthes delitescens* (Canelo Hills ladies'-tresses) and *Lilaeopsis schaffneriana* spp. *recurva* (Huachuca water umbel), and one amphibian, the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*). These species occur in a limited number of wetland habitats in southern Arizona and northern Sonora, Mexico. They are threatened by one or more of the following—collecting, disease, predation, competition with nonnative species, catastrophic floods, drought, and degradation and destruction of

habitat resulting from livestock overgrazing, water diversions, dredging, and groundwater pumping. All three taxa are also threatened with stochastic extirpations or extinction due to small numbers of populations or individuals. This proposed rule, if made final, would extend the Act's protection to these three taxa.

**DATES:** Comments from all interested parties must be received by June 2, 1995. Public hearing requests must be received by May 18, 1995.

**ADDRESSES:** Comments and materials should be sent to the Arizona Ecological Services State Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jim Rorabaugh at the above address (telephone 602/640–2720: facsimile 602/379–6629).

**SUPPLEMENTARY INFORMATION:**

## Background

Cienegas are mid-elevation wetland communities often surrounded by relatively arid environments. They are typically associated with permanent perennial springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring (Hendrickson and Minckley 1984). Cienegas support diverse assemblages of animals and plants, including many species of limited distribution, such as the three taxa in this proposed rule (Hendrickson and Minckley 1984, Lowe 1985, Minckley and Brown 1982, Ohmart and Anderson 1982). Although *Spiranthes delitescens (Spiranthes)*, *Lilaeopsis schaffneriana* spp. *recurva* (*Lilaeopsis*), and Sonora tiger salamander typically occupy different microhabitats, they all occur in cienegas: *Lilaeopsis* also occurs along streams and rivers.

Cienegas and perennial streams and rivers in the desert southwest are extremely rare. The Arizona Game and Fish Department (1993) recently estimated that riparian vegetation associated with perennial streams comprises about 0.4 percent of the total Arizona land area, with present riparian areas being remnants of what once existed. The State of Arizona (1990) estimates that up to 90 percent of the riparian habitat along Arizona's major desert watercourses has been lost, degraded, or altered in historic times. *Spiranthes*, *Lilaeopsis*, and the Sonora tiger salamander occupy small portions of these rare habitats.

*Spiranthes delitescens (Canelo Hills ladies'-tresses). Spiranthes delitescens* is a slender, erect, terrestrial orchid that when in bloom reaches approximately 50 centimeters (cm) 20 inches (in)) tall. Five to ten, linear-lanceolate, grass-like leaves, 18 cm (7.1 in) long and 1.5 cm (0.6 in) wide, grow basally on the stem. The fleshy swollen roots are approximately 5 millimeters (mm) (0.2 in) in diameter. The top of the flower stalk contains up to 40 small white flowers arranged in a spiral. The species is presumed to be perennial, but mature plants rarely flower in consecutive years and in some years have no visible aboveground structures (McClaren and Sundt 1992, Newman 1991).

P.S. Martin first collected *Spiranthes delitescens* in 1968 at a site in Santa Cruz County, Arizona (Sheviak 1990). This specimen was first identified as *Spiranthes graminea*, a related Mexican species. Sheviak (1990) found that the *Spiranthes* in Arizona, previously thought to be *S. graminea*, displayed a distinct set of morphological and cytological characteristics and named them *S. delitescens*.

This species is known from four cienegas at about 1,525 meters (m) (5,000 feet (ft)) elevation in the San Pedro River watershed in Santa Cruz and Cochise Counties, southern Arizona (Newman 1991). The total amount of occupied habitat is less than 81 hectares (ha) (200 acres (ac)). All populations are on private land less than 37 kilometers (km) (23 miles (mi)) north of the U.S./Mexico border.

Potential habitat in Sonora, Mexico, has been surveyed, but no *Spiranthes* populations have been found.

The dominant vegetation associated with *Spiranthes* includes grasses. *Carex* spp. (sedges), *Juncus* spp. (rushes), *Eleocharis* spp. (spike rushes), *Typha* spp. (cattails), and *Equisetum* spp. (horsetails) (Cross 1991, Warren *et al.* 1991). The surrounding vegetation is semidesert grassland or oak savannah.

All *Spiranthes* populations occur where scouring floods are very unlikely (Newman 1991). Soils supporting the populations are finely grained, highly organic, and seasonally or perennially saturated. Springs are the primary water source, but a creek near one population contributes near-surface groundwater (McClaran and Sundt 1992).

Some *Spiranthes* life history information has been gained from studies at one site. As with most terrestrial orchids, successful seedling establishment probably depends on the formation of endomycorhizae (a symbiotic association between plant root tissue and fungi) (McClaran and Sundt 1992). The time needed for subterranean structures to produce aboveground growth is unknown. Plants may remain dormant in a subterranean state or remain vegetative (nonflowering) for more than one consecutive year. Plants that flower one year can be dormant, vegetative, or reproductive the next (McClaran and Sundt 1992, Newman 1991). The saprophytic/autotrophic state of orchid plants may be determined by climatic fluctuations and edaphic factors such as pH level, temperature and soil moisture (Sheviak 1990).

Estimating *Spiranthes* population size and stability is difficult because nonflowering plants are very hard to find in the dense vegetation, and yearly counts underestimate the population because dormant plants are not counted. McClaran and Sundt (1992) monitored marked individuals in a *Spiranthes* population during two three-year periods. They concluded that the subpopulations at both monitored sites were stable between 1987 and 1989, although Newman (1991) later reported that one monitored site was reduced to one nonflowering plant in 1991. Due to the propensity of *Spiranthes* plants to enter and remain in a vegetative state and the lack of new flowering plants at one monitoring site. McClaran and Sundt (1992) also speculated that population numbers may be declining. Problems of experimental design acknowledged by the authors confounded McClaran and Sundt's (1992) conclusions about population stability; the Service believes additional long-term studies are needed to more accurately determine the stability of *Spiranthes* populations.

The fire ecology of this *Spiranthes* is unknown, but should be determined. Experts disagree about the role of fire in cienegas. Some believe upland lightning-caused fires spread into cienegas and burn at cool temperatures while others believe the wet, marsh-like habitats will not support fires. Determining the best method of managing healthy cienegas will depend, in part, on resolving this controversy. Studies at one site have been inconclusive about the effect of fires on *Spiranthes* (Gori and Fishbein 1991, Fishbein and Gori 1992).

*Lilaeopsis schaffneriana ssp. recurva (Huachuca water umbel). Lilaeopsis schaffneriana* ssp. *recurva* is an herbaceous, semi-aquatic, perennial plant with slender, erect leaves that grow from creeping rhizomes. The leaves are cylindrical, hollow, and have septa (thin partitions) at regular intervals. The yellow-green or bright

green leaves are generally 1–3 mm (0.04–0.12 in) in diameter and often 3–5 cm tall (1–2 in), but can reach up to 20 cm (8 in) tall under favorable conditions. Three to ten very small flowers are born on an umbel that is always shorter than the leaves. The fruits are globose, 1.5–2 mm (0.06–0.08 in) in diameter, and usually slightly longer than wide (Affolter 1985). The species reproduces sexually and from rhizomes asexually, the latter probably being the primary reproductive mode.

*Lilaeopsis schaffneriana* ssp. *recurva* was first described by A.W. Hill, based on the type specimen collected near Tucson in 1881 (Hill 1926). Hill applied the name *Lilaeopsis recurva* to the specimen, and the name prevailed until Affolter (1985) revised the genus. Affolter applied the name *L. schaffneriana* ssp. *recurva* to plants found west of the continental divide.

*Lilaeopsis* has been documented from 21 sites in Santa Cruz and Cochise Counties, Arizona, and in adjacent Sonora, Mexico, west of the continental divide (Saucedo 1990, Warren *et al.* 1989, Warren *et al.* 1991, Warren and Reichenbacher 1991). Six of the 21 sites have been extirpated. The 15 extant sites occur in four major watersheds—San Pedro River, Santa Cruz River, Rio Yaqui, and Rio Sonora. All sites are between 1,148 and 2,133 m (3,500 and 6,500 ft) elevation.

Eight *Lilaeopsis* populations occur in the San Pedro River watershed in Arizona and Sonora, on sites owned or managed by private landowners, the Fort Huachuca Military Reservation, the Coronado National Forest, and the Bureau of Land Management (BLM)-Safford District. Two extirpated populations in the upper San Pedro watershed in Arizona occurred at Zinn Pond in St. David and the San Pedro River near St. David. Cienega-like habitats suitable for *Lilaeopsis* were probably common along the San Pedro River prior to 1900 (Hendrickson and Minckley 1984, Jackson *et al.* 1987), but these habitats are now largely gone.

The four *Lilaeopsis* populations in the Santa Cruz River watershed probably represent very small remnants of larger populations that may have occurred in the extensive riparian and aquatic habitat formerly along the river. Before 1890, the spatially intermittent, perennial flows on the middle Santa Cruz River most likely provided a considerable amount of habitat for *Lilaeopsis* and other aquatic plants. The middle section of the Santa Cruz River mainstem, about a 130–km (80–mi) reach, flowed perennially from the U.S./Mexico border north to the Tubac area then intermittently from Tubac north to the Tucson area (Davis 1986). In 1859, a traveler described the Santa Cruz River in the Tucson area as a ''* * * rapid brook * * * clear as crystal, and full of aquatic plants, fish and tortoises of various kinds * * *'' (in Humphrey 1958). This habitat and species assemblage no longer occurs in the Tucson area. A population at Monkey Spring in the upper watershed of the middle Santa Cruz River has been extirpated, although suitable habitat still exists (Warren *et al.* 1991).

Two *Lilaeopsis* populations occur in the Rio Yaqui watershed. The species was recently discovered at Presa Cuquiarichi, in the Sierra de los Ajos, several miles east of Cananea, Sonora (Deecken, pers. comm. 1994). The species remains in small areas (generally less than 1 square meter ($m^2$)) in Black Draw, Cochise County, Arizona. Transplants from Black Draw have been successfully established in nearby wetlands and ponds. Recent renovation of House Pond on private land near Black Draw extirpated the *Lilaeopsis* population. A population in the Rio San Bernardino in Sonora was also recently extirpated (Gori *et al.* 1990). One *Lilaeopsis* population occurs in the Rio Sonora watershed at Ojo de Agua, a cienega in Sonora at the headwaters of the river (Saucedo 1990).

*Lilaeopsis* has an opportunistic strategy that ensures its survival in healthy riverine systems, cienegas, and springs. In upper watersheds that generally do not have scouring floods, *Lilaeopsis*occurs in microsites where interspecific plant competition is low. At these sites, *Lilaeopsis* occurs on wetted soils interspersed with other plants at low density, along the periphery of the wetted channel, or in small openings in the understory. The upper Santa Cruz River and associated springs in the San Rafael Valley, where a population of *Lilaeopsis* occurs, is an example of a site that meets these conditions. the types of microsites required by *Lilaeopsis* were generally lost from the main stems of the San Pedro and Santa Cruz rivers when channel entrenchment occurred in the late 1800s.

In stream and river main channels, *Lilaeopsis* can occur in backwaters, side channels, and nearby springs. After a flood, *Lilaeopsis* can rapidly expand its population and occupy disturbed habitat until interspecific competition exceeds its tolerance. This response was observed at Sonoita Creek in August 1988, when a scouring flood removed about 95 percent of the *Lilaeopsis* population (Gori *et al.* 1990). One year later, *Lilaeopsis* had recolonized the stream and was again codominant with *Rorippa nasturtium-aquaticum* (watercress) (Warren *et al.* 1991). The expansion and contraction of *Lilaeopsis* populations appears to depend on the presence of ''refugia'' where the species can escape the effects of scouring floods, a watershed with an unaltered hydrograph, and a healthy riparian community that stabilizes the channel.

Density of *Lilaeopsis* plants and size of populations fluctuates in response to both flood cycles and site characteristics. Some sites, such as Black Draw, have a few sparsely distributed clones, possibly due to the dense shade of the even-aged overstory trees and deeply entrenched channel. The Sonoita Creek population occupies 14.5 percent of a 500.5 $m^2$ (5.385 $ft^2$) patch of habitat (Gori *et al.* 1990). Some populations are as small as 1–2 $m^2$ (11–22 $ft^2$). The Scotia Canyon population, by contrast, has dense mats of leaves. Scotia Canyon contains the largest *Lilaeopsis* population, occupying about 57 percent of the 1.450 m (4,756 ft) perennial stream reach (Gori *et al.* 1990, J. Abbott, Forest Supervisor, Coronado National Forest, *in litt.* 1994). The Coronado National Forest plans to continue monitoring the populations in Scotia and Bear canyons.

While the extent of occupied habitat can be estimated, it is impossible to determine the number of individuals in each population because of the intermeshing creeping rhizomes. A population of *Lilaeopsis* may be composed of one or many genetically distinct individuals.

Introduction of *Lilaeopsis* into ponds on the San Bernardino National Wildlife Refuge (Refuge) appears to have been successful (Warren 1991). In 1991, *Lilaeopsis* was transplanted from Black Draw into new ponds and other Refuge wetlands. Transplants placed in areas with low plant density expanded rapidly (Warren 1991). In 1992, *Lilaeopsis* naturally colonized a pond created in 1991. However, as plant competition increased around the perimeter of the pond, the *Lilaeopsis* population decreased. This response seems to confirm observations (K. Cobble, San Bernardino National Wildlife Refuge, pers. comm. 1994, and P. Warren, pers. comm. 1993) that other species such as *Typha* sp. (cattails) will outcompete *Lilaeopsis*.

Other reintroductions are being considered. The Service has funded a project to reintroduce *Lilaeopsis* on the Santa Cruz River and tributaries, and the BLM (1993) plans to re-establish it along the San Pedro River.

Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*). The Sonora tiger salamander is a large salamander with

light-colored blotches or reticulation on a dark background. Snout-vent lengths of metamorphosed individuals range from approximately 6.7–12.5 cm (2.6–4.9 in) (Jones *et al.* 1988. Lowe 1954). Larval salamanders are aquatic with plume-like gills and well developed tail fins (Behler and King 1980). Larvae hatched in the spring are large enough to metamorphose into terrestrial salamanders from late July to early September, but only an estimated 17–40 percent metamorphose annually. Remaining larvae mature into branchiates (aquatic and larval-like, but sexually mature salamanders that remain in the breeding pond) or overwinter as larvae (Collins and Jones 1987); James Collins, Arizona State University, pers. comm. 1993).

The Sonora tiger salamander was discovered in 1949 at the J.F. Jones Ranch stock tank in Parker Canyon, San Rafael Valley, Arizona (Reed 1951). Based on color patterns of metamorphosed animals, Lowe (1954) described the Sonora tiger salamander from southern Santa Cruz County, Arizona, as the subspecies *stebbinsi* of the broad-ranging tiger salamander (*Ambystoma tigrinum*). However, again based on color patterns, Gehlbach (1965, 1967) synonomized *A. t. stebbinsi* and *A. t. utahense* (from the Rocky Mountains region) with *A. t. nebulosum* (from northern Arizona and New Mexico). Nevertheless, *A. t. stebbinsi* continued to be recognized in the scientific literature (Jones *et al.* 1988).

Jones *et al.* (1988) found Lowe's description of color patterns in *A. t. stebbinsi* was only accurate for recently metamorphosed individuals and that older metamorphosed adults exhibited either a distinctive reticulate pattern or large light-colored blotches on a dark background similar to *A. t. mavortium*, found in the central United States and adjacent portions of Mexico. Starch gel electrophoresis of 21 presumptive gene loci of *A. t. stebbinsi* were compared with gene loci of *A. rosaceum* (from Sonora). *A. t. mavortium*, and *A. t. nebulosum* (Jones *et al.* 1988). Based on this analysis, distinctive reticulate color patterns, low heterozygosity, and apparent geographic isolation, subspecific designation of *A. t. stebbinsi* was considered warranted by Collins and Jones (1987) and Jones *et al.* (1988). Further analysis of mitochondrial DNA reaffirmed subspecific designation and suggested that *A. t. stebbinsi* may have been derived from hybridization between *A. t. nebulosum* and *A. t. mavortium* (Collins *et al.* 1988).

The grassland community of the San Rafael Valley and surrounding hillsides, where all extant populations of *A. t. stebbinsi* occur, may represent a relictual grassland and a refugium for tiger salamander populations that became isolated and, over time, genetically distinct.

Based on color patterns and electrophoretic analysis, *Ambystoma* collected in Mexico at one site in Sonora and 17 sites in Chihuahua were all *A. rosaceum*, not *A. t. stebbinsi* (Jones *et al.* 1988). Reanalysis of reported *A. t. stebbinsi* collected in Sonora (Hansen and Tremper 1979) and at Yepomera, Chihuahua (Van Devender 1973) revealed that these specimens were actually *A. rosaceum* (Jones *et al.* 1988).

Collins *et al.* (1988) list 18 recorded sites for the Sonora tiger salamander. All of these sites are in the headwaters of the Santa Cruz River, including sites in the San Rafael Valley and adjacent foothills of the Patagonia and Huachuca Mountains and the Canelo Hills, in Santa Cruz and Cochise Counties, Arizona. The taxon is currently extant at 15 of these sites, where populations of mature branchiates range from approximately 50 to several hundred (Collins and Jones 1987). Populations of Sonora tiger salamanders also have been discovered recently in Scotia Canyon on the western slopes of the Huachuca Mountains (Jeff Howland, Arizona Game and Fish Department, pers. comm. 1993) and in Copper Canyon of the Huachuca Mountains (Russell Duncan, Southwestern Field Biologists, pers. comm. 1993). Salamanders tentatively identified as Sonora tiger salamander also have been found recently at Portrero del Alamo at the Los Fresnos cienega in the headwaters of the San Pedro River, San Rafael Valley, Sonora, Mexico (Sally Stefferud, U.S. Fish and Wildlife Service, pers. comm. 1993). In addition, a single terrestrial Sonora tiger salamander was found near Oak Spring in Copper Canyon of the Huachuca Mountains (J. Howland, pers. comm. 1993). This individual probably moved from the newly discovered aquatic population located approximately 1 km (0.6 mi) to the southwest. All historic and extant sites occur within 31 km (19 mi) of Lochiel, Arizona. The Los Fresnos and Oak Spring sites are springs or cienegas; all other sites are livestock tanks or impounded cienegas. Historically, the Sonora tiger salamander probably inhabited springs and cienegas where permanent or nearly permanent water allowed survival of mature branchiates.

Other potential localities have been surveyed in or near the San Rafael Valley, but no other Sonora tiger salamander populations have been found. *A. rosaceum* and *A. t. velasci* occur at localities in Sonora and Chihuahua to the south and east of the extant range of the Sonora tiger salamander (Collins 1979, Collins and Jones 1987, Van Devender and Lowe 1977). *A. t. mavortium* occurs at scattered localities to the east in the San Pedro, Sulphur Springs, and San Simon Valleys (Collins and Jones 1987), but at least some of these populations were introduced by anglers and bait collectors (Collins 1981, Lowe 1954, Nickerson and Mays 1969).

A variety of human activities threaten the Sonora tiger salamander. The species has been recently extirpated from at least three of the 18 localities described by Collins *et al.* (1988). Disease and predation by introduced nonnative fish and bullfrogs (*Rana catesbeiana*) have been implicated in the extirpation of these populations (Collins and Jones 1987). Tiger salamanders are also widely used as fishing bait in Arizona, and this use poses additional threats. Other subspecies of tiger salamander introduced into habitats of the Sonora tiger salamander for bait propagation could, through interbreeding, genetically swamp the distinct *A. t. stebbinsi* populations (Collins and Jones 1987). Collecting Sonora tiger salamanders for bait could also extirpate or greatly reduce populations. Additional threats include habitat destruction, reduced fitness resulting from low genetic heterozygosity, and the increased probability of stochastic extirpation characteristic of small populations.

**Previous Federal Action**

Federal government actions on *Spiranthes delitescens*, *Lilaeopsis schaffneriana* ssp. *recurva*, and Sonora tiger salamander began with their inclusion in various Service notices of taxa under review for listing as endangered or threatened species. Sonora tiger salamander was included as a category 2 candidate in the first notice of review of vertebrate wildlife (December 30, 1982; 47 FR 58454), and in subsequent notices published September 18, 1985 (50 FR 37958), and January 6, 1989 (54 FR 554). Category 2 candidates are those for which the Service has some evidence of vulnerability, but for which there is insufficient scientific and commercial information to support a proposed rule to list them as threatened or endangered. The most recent animal notice, published November 15, 1994 (59 FR 58982), included the Sonora tiger salamander in category 1. Category 1 includes those taxa for which the Service has sufficient information to

support proposed rules to list the species as threatened or endangered.

*Lilaeopsis schaffneriana* ssp. *recurva*, then under the name *L. recurva*, was included as a category 2 candidate in the November 28, 1983 (45 FR 82480) and September 27, 1985 (50 FR 39526) plant notices. It was included under its present name as a category 1 candidate in the February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), notices.

*Spiranthes delitescens* was included for the first time in the September 30, 1993, plant notice. It was included in that notice as a category 1 candidate.

On June 3, 1993, the Department of the Interior, Washington, DC, received three petitions, dated May 31, 1993, from a coalition of conservation organizations (Suckling *et al.* 1993). The petitioners requested the listing of *Spiranthes, Lilaeopsis*, and Sonora tiger salamander as endangered species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). On December 14, 1993, the Service published a notice of three 90-day findings that the petitions presented substantial information indicating that listing these three species may be warranted, and requested public comments and biological data on the status of the species (58 FR 65325).

Section 4(b)(3)(B) of the Act requires the Secretary to reach a final decision on any petition accepted for review within 12 months of its receipt. Publication of this proposed rule constitutes the warranted findings for the petitioned actions.

**Summary of Factors Affecting the Species**

Section 4 of the Endangered Species Act 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 an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Spiranthes delitescens* Sheviak (Canelo Hills ladies'-tresses), *Lilaeopis schaffneriana* spp. *recurva* (A.W. Hill) Affolter (Huachuca water umbel), and the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi* Lowe) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Humans have affected southwestern riparian systems over a period of several thousand years. From prehistoric or historic times, human settlement in southern Arizona has centered on oasis-like cienegas, streams, and rivers. Before the early 1800s, indigenous peoples and missionaries used southern Arizona cienegas and riparian areas mostly for subsistence enterprises, including wood cutting, agriculture (including livestock grazing), and food and fiber harvesting. In the early 1800s, fur trappers nearly eliminated beaver from southern Arizona streams and rivers (Davis 1986) significantly changing stream morphology. In addition, human-caused fires and trails may have significantly altered riparian systems (Bahre 1991, Dobyns 1981).

There was a significant human population increase in southern Arizona and northern Sonora in the early to middle 1800s. New immigrants substantially increased subsistence and commercial livestock production and agriculture. By the late 1800s, many southern Arizona watersheds were in poor condition primarily due to uncontrolled livestock grazing, mining, hay harvesting, timber harvesting, and other management practices, such as fire suppression (Bahre 1991, Humphrey 1958, Martin 1975). The watershed degradation caused by these management practices led to widespread erosion and channel entrenchment when above average rainfall and flooding occurred in the late 1800s (Bahre 1991, Bryan 1925, Dobyns 1981, Hastings and Turner 1980, Hendrickson and Minckley 1984, Martin 1975, Sheridan 1986, Webb and Betancourt 1992). These events contributed to long-term cienega and riparian habitat degradation throughout southern Arizona and northern Mexico. Physical evidence of cienega and other riparian area changes can be found in the black organic soils of the drainage cut banks in the San Rafael Valley (Hendrickson and Minckley 1984), San Pedro River (Hereford 1992), Black Draw, and elsewhere. Although these changes took place nearly a century ago, the ecosystem has not fully recovered and, in some areas, may never recover.

Wetland habitat degradation and loss continues today. Human activities such as groundwater overdrafts, surface water diversions, impoundments, channelization, improper livestock grazing, chaining, agriculture, mining, road building, nonnative species introductions, urbanization, wood cutting, and recreation all contribute to riparian and cienega habitat loss and degradation in southern Arizona. The local and regional effects of these activities are expected to increase with increasing human population. Each threat is discussed in more detail below.

Growing water demand threatens the existence of southern Arizona perennial surface water and the species that depend on it. The North American Free Trade Agreement (NAFTA) will likely stimulate borderland development, with a concurrent water demand increase that could accelerate riparian area destruction and modification and increase threats to plants and animals dependent on surface water, including the species in this proposal.

The largest area currently available for recovery of *Lilaeopsis* is the San Pedro River along the perennial reach between Hereford and Fairbank. Whether or not the species can be recovered there depends largely on the future presence of perennial surface flows in the river and a natural unregulated hydrograph. Perennial flow in the San Pedro River between Hereford and Fairbank comes from a deep regional aquifer and a shallower floodplain (alluvial) aquifer (Arizona Department of Water Resources 1991, Arizona Department of Water Resources 1994, Jackson *et al.* 1987, Vionnet and Maddock 1992). Groundwater pumping from both the regional and floodplain aquifers has occurred for some time and threatens the base flow in the river (Jackson *et al.* 1987, University of Arizona San Pedro Interdisciplinary Team 1991). Pumping from wells used primarily for agriculture, particularly in the Palominas and Hereford area, is having the largest current effect on the floodplain aquifer (Arizona Department of Water Resources 1994, Jackson *et al.* 1987). A significant effect to the regional aquifer results from groundwater pumping from deeper wells that are the main sources of municipal, military, and industrial water for Sierra Vista, Fort Huachuca Military Reservation, and Huachuca City (Jackson *et al.* 1987, Arizona Department of Water Resources 1991 and 1994, Vionnet and Maddock 1992). Groundwater pumping from this deep regional aquifer has formed a cone of depression in the Sierra Vista/Fort Huachuca area intercepting mountain front flows that would have contributed to aquifer recharge (Arizona Department of Water Resources 1994, Jackson *et al.* 1987).

Groundwater pumping is expected to increase with human population growth. In anticipation of population growth, Fort Huachuca Military Reservation has filed a claim for 10,087 acre-feet (A–F) per year of tributary groundwater, more than three times the estimated 3,000 A–F currently used (Arizona Department of Water Resources 1991). Even if water conservation measures are employed, groundwater drafts and the capture of mountain front recharge are likely to adversely affect flows in the San Pedro

River. If base flow in the river continues to decrease, the future existence of the riparian plant community is threatened (Arizona Department of Water Resources 1994, Jackson *et al.* 1987). If the groundwater drops below the elevation of the channel bed, the wetland plant (herb) association where *Lilaeopsis* is found will be the first plant association lost (Arizona Department of Water Resources 1994).

Fort Huachuca Military Reservation also relies on water from a well and springs in Garden Canyon (Arizona Department of Water Resources 1991). These diversions and pumping could dewater the stream and damage or destroy the *Lilaeopsis* population, particularly during below-average rainfall periods.

Flows in certain reaches of the Santa Cruz River remained perennial until groundwater pumping lowered the water table below the streambed. In 1908, the water table near Tucson was above the streambed, but from 1940–1969, the water table was 6.0–21.0 m (20–70 ft) below the streambed (De la Torre 1970). Recovery of perennial flow in the Santa Cruz River and of *Lilaeopsis* near Tucson is unlikely, given the importance of groundwater for the metropolitan area.

Groundwater pumping in Mexico threatens *Lilaeopsis* populations on both sides of the border. South of the San Bernardino National Wildlife Refuge, groundwater is being pumped to irrigate farmlands in Mexico, and this pumping threatens to dry up the springs and streams that support several listed endangered fish and a population of *Lilaeopsis*. The large copper mine at Cananea. Sonora, pumps groundwater for processing and support services. Although little is known about how groundwater pumping near Cananea may affect the spring at Ojo de Agua de Cananea, it is likely that overdrafts would decrease springflow or dewater the spring, extirpating the *Lilaeopsis* population. The spring at Ojo de Aqua de Cananea is also the main municipal water source for the town of Cananea. This water diversion, particularly if increased, may adversely affect *Lilaeopsis*.

Sections of may southern Arizona rivers and streams have been channelized for flood control, which disrupts natural channel dynamics and promotes the loss of riparian plant communities. Channelization modifies the natural hydrograph above and below the channelized section, which may adversely affect *Lilaeopsis* and *Spiranthes*. Channelization will continue to contribute to riparian habitat decline. Additional channelization will accelerate the loss any/or degradation of *Lilaeopsis* and *Spiranthes* habitat.

Dredging extirpated the *Lilaeopsis* population in House Pond. near the extant population in Black Draw (Warren *et al.* 1991). The *Lilaeopsis* population at Zinn Pond in St. David near the San Pedro River was probably lost when the pond was dredged and deepened. This population was last documented in 1953 (Warren *et al.* 1991).

Livestock grazing potentially affects *Lilaeopsis* at the ecosystem, community, population, and individual levels. Cattle generally do not eat *Lilaeopsis* because the leaves are too close to the ground, but they can trample plants. *Lilaeopsis* is capable of rapidly expanding in disturbed sites and could recover quickly from light trampling by extending undisturbed rhizomes (Warren *et al.* 1991). Light trampling may also keep plant density low providing favorable *Lilaeopsis* microsites.

Poor livestock grazing management can destabilize stream channels and disturb cienega soils creating conditions unfavorable for *Lilaeopsis*. which requires stable stream channels and cienegas. Such management can also change riparian community structure and diversity causing a decline in watershed conditions. Poor livestock grazing management is widely believed to be one of the most significant factors contributing to regional stream channel entrenchment in the late 1800s.

Poor livestock grazing management in Mexico has severely degraded the riparian area along Black Draw and its watershed. The degraded habitat most likely contributed to the severity of a destructive scouring flood on San Bernardino Creek in 1988, which extirpated two patches of *Lilaeopsis*. Overgrazing is occurring immediately adjacent to the San Bernardino National Wildlife Refuge and has destabilized the channel of Black Draw. A headcut moving upstream threatens to undermine the riparian area recovery that has occurred since the refuge was acquired. The refuge is implementing management to avoid the destructive downstream grazing effects.

Well managed livestock grazing and *Lilaeopsis* are compatible. The fact that *Lilaeopsis* and its habitat occur in the upper Santa Cruz River system in the San Rafael Valley attests to the good land stewardship of the private landowner and of prior generations of the family.

The effect of livestock grazing on *Spiranthes* is unclear. A *Spiranthes* population growing at a site grazed for more than 100 years is larger and more vigorous than a population growing at a site ungrazed since 1969 (McClaran and Sundt 1992, Newman 1991). Sundt (pers. comm. in Newman 1991) has suggested differences in soil moisture and topography between the two sites could explain the differences in *Spiranthes* population size and vigor. Another explanation is that *S. delitescens*, like many species in the genus, shows an affinity for habitats with sparse herbaceous cover (McClaran and Sundt 1992). Further research is needed, but the Service's preliminary conclusion is that well managed livestock grazing does not harm *Spiranthes* populations.

Livestock often denude the vegetation around stock tanks. The impact of this effect on Sonora tiger salamander populations is unknown (Collins and Jones 1987), however, the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*), a related endangered species from the central coast of California requires dense vegetation around breeding ponds and surrounding uplands used by mature metamorphs (U.S. Fish and Wildlife Service 1986). Aquatic, shoreline, and nearby terrestrial vegetation cover at Sonora tiger salamander breeding ponds likely conseals salamanders from predators and provides a forage base for invertebrates that make up a portion of the salamander's diet. In addition, livestock probably trample metamorphs, eggs, and possibly brachiate salamanders. Although Sonora tiger salamanders persist in stock tanks heavily used by cattle, the effects of grazing and trampling probably reduce the viability of these populations.

Sand and gravel mining along the San Pedro, Babocomari, and Santa Cruz Rivers in the United States has occurred, and probably will continue unless regulated, although no mining occurs within the San Pedro Riparian National Conservation Area. Sand and gravel mining removes riparian vegetation and destabilizes the ecosystem, which could cause *Spiranthes* or *Lilaeopsis* habitat or population losses upstream or downstream from the mining. These mines also pump groundwater for processing, and could locally affect groundwater reserves and perennial stream base flows. Since 1983, groundwater has been used to wash sand and gravel mined near the Babocomari River. 0.8 km (0.5 mi) west of highway 90 (Arizona Department of Water Resources 1991). This activity could affect at least one *Spiranthes* population.

Rural and urban development, road building, chaining, agriculture, mining, and other land disturbances that degrade the watershed can adversely affect *Lilaeopsis*. These activities are common in the middle Santa Cruz basin, but much less prevalent in the San Pedro basin. For these reasons, conservation and recovery of the middle Santa Cruz River is unlikely, but may still be possible for the upper San Pedro watershed, given region-wide planning decisions favorable to good watershed management. Increased development in the upper San Pedro Valley, including the expansion of existing cities and increased rural development, will likely increase erosion and have other detrimental hydrologic effects.

There are few watershed-level disturbances in the upper Santa Cruz and Black Draw drainages. There were irrigated fields in the Black Draw watershed, but these were abandoned when the Service acquired the area as a refuge. The fields are returning to natural vegetation. The San Rafael Valley, which contains the upper Santa Cruz River, is privately owned, well managed, and currently undeveloped, with few watershed disturbing activities. However, there is potential for commercial development in the upper Santa Cruz basin and resulting watershed effects.

Riparian areas and cienegas offer oasis-like living and recreational opportunities for residents of southern Arizona and northern Sonora. Riparian areas and cienegas such as Sonoita Creek, the San Pedro River, Canelo Hills cienega, and the perennial creeks of the Huachuca Mountains receive substantial recreational visitation, and this is expected to increase with the increasing southern Arizona population. While well-managed recreation is unlikely to extirpate *Spiranthes* or *Lilaeopsis* populations, severe impacts in unmanaged areas can compact soils, destabilize steam banks, and decrease riparian plant density.

Stream headcutting threatens the *Lilaeopsis* and presumed Sonora tiger salamander populations at Los Fresnos cienega in Sonora. Erosion is occurring in Arroyo Los Fresnos downstream from the cienega and the headcut is moving upstream. The causes of this erosion are uncertain, but are presumably from livestock overgrazing and roads in this sparsely populated region. If the causes of this erosion are left unchecked and headcutting continues, it is likely the cienega habitat will be lost within the foreseeable future. The loss of Los Fresnos cienega may extirpate the *Lilaeopsis* and Sonora tiger salamander populations. If the salamanders at the Los Fresnos cienega are Sonora tiger salamanders, this would represent the only known natural cienega habitat occupied by an aquatic population of this species.

The 15 extant aquatic Sonora tiger salamander populations described by Collins *et al.* (1988) and the new localities in Scotia Canyon and Copper Canyon are all in stock tanks or impounded cienegas constructed to collect runoff for livestock. Most of these tanks likely date to the 1920s and 1930s when government subsidies were available to offset construction costs (Brown 1985). These stock tanks, to some degree, have created and replaced permanent or semi-permanent Sonora tiger salamander water sources.

Although the tanks provide relatively permanent aquatic habitats, current management and the dynamic nature of these artificial impoundments compromise their ability to support salamander populations in the long term. The tanks collect silt from upstream drainages and must be cleaned out periodically, typically with heavy earth moving equipment. This maintenance is done when stock tanks are dry or nearly dry at an average interval of about 15 years (L. Dupee. Coronado National Forest, Sierra Vista, Arizona, pers. comm. 1993). As the tanks dry out, aquatic salamanders typically metamorphose and migrate from the pond. However, if water is present during maintenance, some branchiate salamanders would likely be lost due to excavation of the remaining aquatic habitat. Any terrestrial metamorphs at the tank or in areas disturbed would also be lost during maintenance activities.

Flooding and drought pose additional threats to stock tank populations of Sonora tiger salamanders. The tanks are simple earthen impoundments without water control structures. Heavy flooding could erode and breach downstream berms resulting in aquatic habitat loss. Long-term drought could dry up the tanks.

Sonora tiger salamanders have persisted in stock tanks despite periodic maintenance, flooding, and drought. If the tanks refill soon after events that damage the aquatic habitat, they could presumably be recolonized through terrestrial metamorph reproduction. However, if a tank was dry for several years and isolated from other salamander populations, insufficient terrestrial salamanders may remain and immigration from other populations may be inadequate to recolonize the stock tank. Potential grazing practice changes also threaten aquatic Sonora tiger salamander populations. Stock tanks could be abandoned or replaced by other watering facilities, such as windmills and troughs, which do not provide habitat for salamanders.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No commercial, recreational, or educational uses for *Lilaeopsis* are known. A limited amount of scientific collecting is likely, but is expected to pose no threat to the species.

Although no specific cases of commercial *Spiranthes delitescens* collecting have been documented, commercial dealers, hobbyists, and other collectors are widely known to significantly threaten some natural orchid populations. The commercial value of an orchid may increase after it is listed as threatened or endangered. To limit the possible adverse effects of illegal collecting, no specific *Spiranthes* population locations are discussed in this proposed rule, nor will critical habitat be designated. No recreational or educational uses for *Spiranthes* are currently known. The small amount of scientific collecting that has occurred is regulated by the Arizona Native Plant Law (A.R.S. Chapter 7, Article 1).

Collecting *Ambystoma* in the San Rafael Valley of Arizona is currently prohibited by Arizona Game and Fish Commission Order 41. Collins and Jones (1987) reported an illegal *Ambystoma* collection from the San Rafael Valley and suspected that bait collectors and anglers often move salamanders among stock tanks. The extent of this activity and its threat to populations is unknown. However, all Sonora tiger salamander populations are relatively small (Collins and Jones 1987). Collecting may significantly reduce the size of branchiate populations and increase the chance of extirpations.

C. *Disease or predation.* Neither *Lilaeopsis* nor *Spiranthes* are known to be threatened by disease or predation.

Sonora tiger salamanders are invariably eliminated through nonnative fish predation, particularly by sunfish and catfish (Collins and Jones 1987). Nonnative fish introductions were implicated in three recent Sonora tiger salamander extirpations from stock tanks (Collins *et al.* 1988). The effect of native fishes on salamander populations is unknown, but some native species may also prey on Sonora tiger salamanders.

Bullfrogs occur at some Sonora tiger salamander localities. These introduced predators likely prey on salamander eggs, larvae, and adults (Collins *et al.* 1988). They may also be a vector for a disease with symptoms similar to *Aeromonas* infection (''red leg'') (Marcus 1981) that killed all branchiate

salamanders at Huachuca Tank, Parker Canyon Tank #1, and Inez Tank in 1985 (Collins *et al.* 1988). The latter two tanks were recolonized within the next two years, presumably by reproducing terrestrial metamorphs that survived the disease. However, no recolonization of Huachuca Tank had occurred as of spring 1988 (Collins *et al.* 1988), and the species was not observed there during surveys in 1993 (J. Collins, pers. comm. 1993). Nonnative fish were also present at Huachuca Tank and likely contributed to this extirpation.

Surveys conducted in 1993 and 1994 revealed that nonnative fish and bullfrogs were recently introduced at several northern San Rafael Valley Sonora tiger salamander localities. Populations appear very low or are extirpated at several of these localities, particularly in the northwestern portion of the valley. Additional survey work in 1994 will clarify the status of these populations. In contrast, populations in the southeastern portion of the valley appear large and robust (J. Collins, pers. comm. 1994).

D. *The inadequacy of existing regulatory mechanisms.* Many Federal and State laws and regulations can protect these three species and their habitat. However, Federal and State agency discretion allowed under these laws still permits adverse affects on listed and rare species. Adding *Lilaeopsis*, *Spiranthes*, and the Sonora tiger salamander to the endangered species list will help reduce adverse affects to these species and will direct Federal agencies to work towards their recovery.

None of the taxa in this proposed rule are considered rare, threatened, or endangered by the Mexican government (Secretario de Desarrollo Urbano Y Ecologia 1991), nor do their habitats receive special protection in Mexico.

On July 1, 1975, all species in the Orchid family (including *Spiranthes delitescens*) were included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. A CITES export permit must be issued by the exporting county before an Appendix II species may be shipped. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade. CITES provides no protection to *Lilaeopsis* or the Sonora tiger salamander.

The Lacey Act (16 U.S.C. 3371 *et seq.*), as amended in 1982, provides some protection for these three species. Under the Lacey Act it is prohibited to import, export, sell, receive, acquire, purchase, or engage in interstate or foreign commerce in any species taken, possessed, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or any law or regulation of any State. Interstate transport of protected species occurs despite the Lacey Act because enforcement is difficult.

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) and National Forest Management Act of 1976 (NFMA) (16 U.S.C. 1600 *et seq.*) direct Federal agencies to prepare programmatic-level management plans to guide long-term resource management decisions. The goals of the Coronado National Forest Plan (Plan) include a commitment to maintain viable populations of all native wildlife, fish, and plant species within the Forest's jurisdiction through improved habitat management (Coronado National Forest 1986a). The Plan provides a list of rare plants and animals found on the Forest, but gives only a very general description of programmatic-level management guidelines and expected effort (Coronado National Forest 1986a). The Coronado National Forest is committed to multiple use, and where the demands of various interest groups conflict, the Forest must make decisions that represent compromises among these interests (Coronado National Forest 1986b). These types of compromises have sometimes resulted in adverse effects to listed endangered and threatened species.

The Plan's endangered species program includes participation in reaching recovery plan objectives for listed species, habitat coordination and surveys for listed species, and habitat improvement (Coronado National Forest 1986b). After acknowledging budget constraints, the Plan states that studies of endangered plants will occur at approximately the 1980 funding level. The Coronado National Forest, which manages habitat for 10 of the 18 extant aquatic Sonora tiger salamander populations, considers the Sonora tiger salamander a sensitive species and a management indicator species, which receives special consideration in land management decisions (Coronado National Forest 1986a). The ability of the Forest Service to manage the three species addressed here is limited because many of the populations occur off Forest Service lands and/or require ecosystem-wide management largely beyond Forest Service control.

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321–4370a) requires Federal agencies to consider the environmental impacts of their actions. NEPA requires Federal agencies to describe a proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision-making process. It does not require Federal agencies to select the alternative having the least significant environmental impacts. A Federal action agency may choose an action that will adversely affect listed or candidate species provided these effects were known and identified in a NEPA document.

All three species in this proposed rule inhabit wetlands that have varying protection under section 404 of the Federal Water Pollution Control Act of 1948 (33 U.S.C. 1251–1376), as amended, and Federal Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). Cumulatively, these Federal regulations have been inadequate to halt population extirpations and habitat losses for the three proposed species.

The Arizona Native Plant Law (A.R.S. Chapter 7, Article 1) protects *Spiranthes delitescens* and *Lilaeopsis schaffneriana* spp. *recurva* as ''highly safeguarded'' species. A permit from the Arizona Department of Agriculture (ADA) must be obtained to legally collect these species on public or private lands in Arizona. Permits may be issued for scientific and educational purposes only. It is unlawful to destroy, dig up, mutilate, collect, cut, harvest, or take any living ''highly safeguarded'' native plant from private, State, or Federal land without a permit. However, private landowners and Federal and State public agencies may clear land and destroy habitat after giving the ADA sufficient notice to allow plant salvage. Despite the protections of the Arizona Native Plant Law, legal and illegal damage and destruction of plants and habitat occur.

Collecting *Ambystoma* in the San Rafael Valley is prohibited under Arizona Game and Fish Commission Order 41, except under special permit. Nevertheless, illegal collecting occurs (Collins and Jones 1987). The species is listed by the State as endangered (Arizona Game and Fish Department 1988), however, this designation affords the species or its habitat no legal protection. Transport and stocking of live bullfrogs and fishing with live bait fish or *Ambystoma* within the range of this salamander in Arizona is prohibited

by Arizona Game and Fish Commission Orders 41 and R12–4–316, respectively. However, bullfrogs and nonnative fish are present at several extant and historic Sonora tiger salamander localities and introductions continue (Collins and Jones 1987; James Collins, pers. comm. 1994). Furthermore, abandonment, modification, or breaching of stock tanks is allowed on either private or public lands. Such actions could eliminate Sonora tiger salamander populations.

State of Arizona Executive Order Number 89–16 (Streams and Riparian Resources), signed June 10, 1989, directs State agencies to evaluate their actions and implement changes, as appropriate, to allow for riparian resources restoration. Implementation of this regulation may ameliorate adverse effects of some State actions on the species in this rule.

E. *Other natural or manmade factors affecting its continued existence.* Arizona anglers and commercial bait dealers often introduce larval tiger salamanders into ponds for future bait collecting (Lowe 1954, Collins *et al.* 1988). Collins and Jones (1987) reported that tiger salamanders were illegally collected from the San Rafael Valley and transported to at least two tanks in the northern Patagonia Mountains. Bait dealers or others moving Sonora tiger salamanders to new locations could establish new populations. Collins and Jones (1987) suggest that moving of salamanders has greatly influenced their present distribution in the San Rafael Valley. Moving could also transmit disease and cause unintentional fish or bullfrog introductions, which would extirpate extant populations.

Moving poses an additional threat. *A. t. mavortium* is common in Arizona stock tanks and ponds to the east of the San Rafael Valley. Bait dealers and anglers introduced many of these populations (Collins 1981, Collins and Jones 1987). If *A. t. mavortium* is introduced into Sonora tiger salamander localities, populations could be lost due to genetic swamping by interbreeding of the two subspecies.

Two populations of *Lilaeopsis* have been lost due to unknown causes. Despite the presence of suitable habitat, no plans have been observed at Monkey Spring near Sonita Creek since 1965. *Lilaeopsis* collected in 1958 along the San Pedro River near St. David, but no longer exists there, nor is their suitable habitat.

Aggressive nonnative plants disrupt the native riparian plant community. The nonnative *Sorghum halepense* (Johnson grass) is invading one *Spiranthes* site (Gori *in litt.* 1993). This tall grass forms a dense monoculture, displacing less competitive native plants. If Johnson grass continues to spread, the *Spiranthes* population may be lost (Gori *in litt.* 1993). *Cynodon dactylon* (Bermuda grass) also displaces native riparian plants, including cottonwoods and willows that stabilize stream channels. Bermuda grass forms a thick sod in which many native plants are unable to establish. In certain microsites, Bermuda grass may directly compete with *Lilaeopsis* or *Sprianthes.* There are no known effective methods for eliminating Bermuda grass or Johnson grass from natural plant communities.

*Rorippa nasturtium-aquaticum* (watercress) is another nonnative plant now abundant along perennial streams in Arizona. It is successful in disturbed areas and can form dense monocultures that can outcompete *Lilaeopsis* populations.

The limited number of populations and individuals threatens all three taxa in this proposed rule with demographic and environmental stochastic extinction. The restriction of these three species to a relatively small area in southeastern Arizona and adjacent Sonora also increases the chance that a single environmental catastrophe, such as a severe tropical storm, could eliminate populations or cause extinction. This is of particular concern for Sonora tiger salamanders inhabiting stock tanks that could wash out during a storm. Furthermore, Sonora tiger salamander genetic heterozygosity is the lowest reported for any salamander (Jones *et al.* 1988). Low heterozygosity indicates low genetic variation, which increases demographic stochasticity and the chance of local extirpations (Shafer 1990).

Finding of a Sonora tiger salamander recently at Oak Spring, approximately 1.0 km (0.6 mi) from the nearest known aquatic population, provides evidence these animals are capable of at least that distance of overland dispersal. Seasonal movement to and from breeding ponds is a common phenomenon in amphibians. Distances of these seasonal movements are generally less than 0.5 km (0.3 mi), although movements of more than 11 km (7 mi) have been documented for the red-bellied newt (*Taricha rivularis*) (Zug 1993). The ability of Sonora tiger salamanders to move between populations is unknown, but arid grassland, savanna, or pine-oak woodland separates all populations and movement through these relatively dry landscapes is probably limited. Movement would be most likely during storms or where wet drainages are available as movement corridors. The distance between aquatic populations of Sonora tiger salamander is more than 2 km (1.2 mi) in most cases, and much greater distances separate many of the sites. Thus, even if these salamanders are capable of moving relatively long distances, some populations are probably effectively geographically isolated. Small isolated populations have an increased probability of extirpation (Wilcox and Murphy 1985). Once populations are extirpated, natural recolonization of these isolated habitats may not occur (Frankel and Soule 1981).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose this rule. These three taxa are vulnerable to one or more of the following threats—habitat degradation and loss through groundwater pumping, livestock grazing, watershed degradation, flooding, drought, urbanization, and recreation; nonnative plant and vertebrate competition or predation; disease; and increased extirpation chance due to low genetic variation in the Sonora tiger salamander. The limited distributions of these taxa and the small size of most extant populations makes them particularly vulnerable to extinction from stochastic events.

Because *Spiranthes, Lilaeopsis,* and the Sonora tiger salamander are in danger of extinction throughout all or significant portions of their ranges, they fit the Act's definition of endangered. Based on the Service's evaluation of the status and threats facing these species, the preferred action is to propose *Spiranthes, Lilaeopsis,* and the Sonora tiger salamander as endangered. The Service believes that designation of critical habitat is prudent for the *Lilaeopsis* and the Sonora tiger salamander, but finds that critical habitat is not now determinable for these two species. Critical habitat designation would not be prudent for the *Spiranthes.* The rationales for these decisions are discussed in the following section of this proposal.

**Critical Habitat**

Critical habitat is defined in Section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon

a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 242.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Spiranthes delitescens* at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed under Factor B in the ''Summary of Factors Affecting the Species,'' *Spiranthes* is threatened by collecting. If it is listed, collecting of *Spiranthes* would be prohibited under the Act in cases of (1) removal and reduction to possession from lands under Federal jurisdiction, or malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying *Spiranthes* in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *Spiranthes* more vulnerable and increase enforcement problems. All involved parties and principal landowners are aware of the location and importance of protecting this species' habitat. Habitat protection will be addressed through the recovery process and through the Section 7 provisions of the Act. Therefore it would not now be prudent to determine critical habitat for *Spiranthes delitescens.*

*Lilaeopsis* is not threatened by collecting and the Service knows of no circumstance where the species is threatened by vandalism. Therefore, critical habitat designation is prudent for this species.

Salamander collecting by bait dealers and anglers has been identified as a Sonora tiger salamander threat and publication of salamander localities rule could facilitate collecting. However, other subspecies of *A. tigrinum* are readily available from numerous less remote Arizona localities, collecting these other subspecies is legal, and State law prohibits collecting and stocking salamanders in the range of the Sonora tiger salamander. Thus, publication of critical habitat localities is unlikely to substantially increase threats to the Sonora tiger salamander. The Service finds the benefits of designating critical habitat outweigh any risk of increased collecting and determines that designation of critical habitat is prudent for the Sonora tiger salamander.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. Information concerning probable impacts that would be associated with designation of critical habitat for these two species has not yet been fully assessed or analyzed. Efforts aimed at gathering and analyzing such information are currently underway, but have not been completed. Regulations at 50 CFR 424.12(a)(2)(i) specify that critical habitat is not determinable when ''Information sufficient to perform required analyses of the impacts of the designation is lacking * * *'' The Service therefore finds that critical habitat for the Huachuca water umbel and the Sonora tiger salamander is not now determinable. When information becomes available and the review has been completed, the Service intends to propose designation of critical habitat for both species to the maximum extent prudent.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. the Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, 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 the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Two of the taxa in this proposal, the Sonora tiger salamander and *Lilaeopsis,* occur on the Coronado National Forest. The latter species also occurs on the Fort Huachuca Military Reservation managed by the Department of Defense.

Examples of Federal actions that may affect the three species in this proposal include—issuing mining permits, managing recreation, road construction, livestock grazing, granting right-of-ways, stock tank development and maintenance, and military activities. These and other Federal actions would require formal section 7 consultation if the action agency determines that the proposed action may affect listed species. Development on private or State lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers, would also be subject to the section 7 consultation process. Private actions that are not Federally funded or permitted would require a section 10(a)(1)(B) permit if implementation would result in incidental take of Sonora tiger salamander.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale listed species in interstate or foreign commerce, or to remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain

exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued for *Lilaeopsis* or *Spiranthes* because these species are not common in cultivation or in the wild.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities.

Requests for copies of the regulations on listed plants and wildlife and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service. Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505/766–3972; facsimile 505/766–8063).

### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning.

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species;

(4) Current or planned activities in the subject areas and their possible impacts on these species; and

Final promulgation of regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Request must be received within 45 days of the date of publication of the proposal in the **Federal Register.** Such requests must be made in writing and addressed to the State Supervisor (see **ADDRESSES** section).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, 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 of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Arizona Ecological Services State Office (see **ADDRESSES** section).

### Authors

The primary authors of this proposed rule are Susan Rutman, formerly of the Service's Arizona Ecological Services State Office, and Jim Rorabaugh (see **ADDRESSES** section).

### List of Subjects in 50 CFR Part 17

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

### Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, 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. Section 17.11(h) is amended by adding the following in alphabetical order, under ''Amphibians,'' to the List of Endangered and Threatened Wildlife to read as follows:

**§ 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 | | | | | | |
| * | * | * | * | * | * | * | * |
| AMPHIBIANS | | | | | | | |
| * | * | * | * | * | * | * | * |
| Salamander, Sonora tiger. | *Ambystoma tigrinum stebbinsi.* | U.S.A. (AZ), Mexico | Entire ..... | E | | NA | NA |
| * | * | * | * | * | * | * | * |

3. Section 17.12(h) is amended by adding the following two species in alphabetical order to the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| FLOWERING PLANTS | | | | | | | |
| * | * | * | * | * | * | | * |
| *Lilaeopsis schaffneriana* ssp. *recurva*. | Huachuca water umbel. | U.S.A. (AZ), Mexico | Apiaceae ..... | E | | NA | NA |
| * | * | * | * | * | * | | * |
| *Spiranthes delitescens*. | Canelo Hills ladies'-tresses. | U.S.A. (AZ) ..... | Orchidaceae ..... | E | | NA | NA |
| * | * | * | * | * | * | | * |

Dated: March 29, 1995.

**Mollie H. Beattie,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 95–8176 Filed 3–31–95; 8:45 am]

**BILLING CODE 4310–55–M**

# Notices

**Federal Register**

Vol. 60, No. 63

Monday, April 3, 1995

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

### Forest Service

### Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Western Washington Cascades PIEC Advisory Committee will meet on May 90 and May 10, 1995 at the Mount Baker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, Washington. The meeting will begin at 9 a.m. and continue until 4:30 p.m. both days. Agenda items to be covered include: (1) Context of the Advisory Committee, including background on the President's Forest Plan; (2) introduction of members and orientation; (3) operating guidelines and ground rule; (4) mission and purpose of the Province Advisory Committee; (5) relationship between the Advisory Committee and the PIEC; (6) brief presentation by Advisory Committee members on who they represent; and (7) Open public forum. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:**

Direct questions regarding this meeting to Bob Dunblazier, Province Liaison, USDA, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 206–744–3270.

Dated: March 24, 1995.

**Dennis E. Bschor,**

*Forest Supervisor,*

[FR Doc. 95–8072 Filed 3–31–95; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Agency Information Collections Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).
*Title:* Northeast Regional Logbook Family of Forms.
*Form Number:* Agency: NOAA 88–30, 88–59, 88–140; OMB Number 0648–0212.
*Type of Request:* Extension of the expiration date.
*Burden:* 6,170 hours; 5,525 respondents with 68,550 responses; Avg. Hours Per Response ranges between 5 and 15 minutes depending on the requirement.
*Needs and Uses:* Logbooks are needed to obtain fishery dependent data on the fishing industry. Data are used for stock assessment, quota compliance, regulatory analyses, monitoring and resource management.
*Affected Public:* Businesses or other for-profit organizations.
*Frequency:* On occasion, weekly, monthly.
*Obligation:* Mandatory.
*OMB Desk Officer:* Don Arbuckle (202) 395–7340.

*Agency:* National Oceanic and Atmospheric Administration (NOAA).
*Title:* Albacore Fishing Operation Information.
*Form Number:* Agency: None; OMB Number 0648–0223.
*Type of Request:* Revision of a currently approved collection.
*Burden:* 100 hours; 50 respondents with 2 responses; Avg. Hours Per Response is 30 minutes.
*Needs and Uses:* Since the early 1970s, the National Marine Fisheries Service has contracted with the Pacific Marine Fisheries Commission to assemble and maintain an albacore database. Vessel captains voluntarily supply information on catches, fishing effort, sizes of fish caught, and other operational and environmental information. This information is used by U.S. negotiators in international, as well as domestic forums, to develop policy for the continued harvesting of Pacific albacore.
*Affected Public:* Businesses or other for-profit organizations.
*Frequency:* On occasion; annually.
*Obligation:* Voluntary.
*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* National Oceanic and Atmospheric Administration (NOAA).
*Title:* U.S. Fishermen Fishing in Russian Waters.
*Form Number:* Agency—None; OMB Number 0648–0228.
*Type of Request:* Extension of the expiration date.
*Burden:* 450 hours; 60 respondents for a total of 900 responses; Avg. Hours Per Response is approximately 30 minutes.
*Needs and Uses:* U.S. fishermen who wish to fish in the Russian Federation Economic Zone must apply for a Russian permit by submitting an application information to the National Marine Fisheries Service for transmittal to Russian authorities. Permit holders must provide information regarding their permits and must report on entering and exiting the U.S. Exclusive Economic Zone.
*Frequency:* Annually; on occasion.
*Obligation:* Mandatory.
*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Gerald Taché, (202)482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: March 28, 1995.

**Gerald Taché,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 95–8112 Filed 3–31–95; 8:45 am]

BILLING CODE 3510–CW–M

### Agency Information Collections Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for

clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* International Trade Administration (ITA).
*Title:* Request for Duty Free Entry of Scientific Instruments or Apparatus.
*Form Number:* Agency: ITA–338P; OMB Number: 0625–0037.
*Type of Request:* Extension of the expiration date.
*Burden:* 600 hours; 150 respondents (300 responses); Avg. Hours Per Response is 2 hours.
*Needs and Uses:* The United States is a signatory to the Florence Agreement, a UNESCO sponsored Agreement on the importation of education, scientific, and cultural materials. Under the implementing statute, the Departments of Commerce and Treasury share the responsibility of determining whether or not institutions are entitled to duty-free treatment. This form is an application for such waiver and provides the information necessary for agency findings required by statute.
*Affected Public:* Not for-profit institutions; federal government; state, local or tribal governments.
*Frequency:* On occasion.
*Obligation:* Required to obtain a benefit.
*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* International Trade Administration (ITA).
*Title:* Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty.
*Form Number:* Agency: ITA–362P; OMB Number: 0625–0118.
*Type of Request:* Extension of the expiration date.
*Burden:* 417 hours; 390 respondents (5,000 responses): Avg. Hours Per Response is 5 minutes.
*Needs and Uses:* Congress, when it enacted legislation to implement the Nairobi Protocol the Florence Agreement, included a provision for the Departments of Treasury and Commerce to collect information on the import of articles for the handicapped. To ensure that these imports do not cost U.S. jobs, Congress established a safeguard mechanism under which the U.S. could modify its tariff treatment of such articles in the event domestic injury resulted. The data collected on this form assists the U.S. Government and domestic industry to assess injury.
*Affected Public:* Individuals; business or other for-profit organizations; not-for-profit institutions; federal government; and, state, local, or tribal governments.
*Frequency:* On occasion.
*Obligation:* Required to obtain a benefit.
*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Forms Clearance Officer, Gerald Taché, (202) 483–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: March 28, 1995.

**Gerald Taché,**

*Department Clearance Officer, Office of Management and Organization.*

[FR Doc. 95–8111 Filed 3–31–95; 8:45 am]

BILLING CODE 3510–CW–M

## Bureau of Export Administration

### Subcommittee on Export Administration of the President's Export Council; Notice of Closed Meeting

A meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held April 26, 1995, 3:00 p.m., in the Herbert C. Hoover Building, Room 4830, 14th Street and Pennsylvania Avenue, N.W., Washington, DC. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

The Subcommittee will meet only in closed session to discuss matters that are properly classified under Executive Order 12356 and that pertain to the control of exports for national security, foreign policy, or short supply reasons under the Export Administration Act of 1979, as amended. A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 552b(c) was approved November 1, 1993, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C.

For further information, contact Ms. Lee Ann Carpenter (202) 482–2583.

Dated: March 28, 1995.

**Iain S. Baird,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 95–8113 Filed 3–31–95; 8:45 am]

BILLING CODE 3510–DT–M

## International Trade Administration

### President's Export Council: Meeting of the Subcommittee on Export Promotion and Support

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Subcommittee on Export Promotion and Support of the President's Export Council will hold an open meeting to discuss topics relating to export financing, export assistance for small business, and the promotion of Services' exports. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979 to advise the President on matters relating to U.S. export trade. It was most recently renewed on September 30, 1993, by Executive Order 12689.

**DATES:** April 21, 1995, from 9:30 a.m.–2:30 p.m.

**ADDRESSES:** Main Commerce Building, Room 3407, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Linda Breslau, President's Export Council, Room 2015B, Washington D.C. 20230. Seating is limited and will be on a first come, first serve basis.

**FOR FURTHER INFORMATION CONTACT:** Linda Breslau, President's Export Council, Room 2015B, Washington, D.C. 20230.

Dated: March 29, 1995.

**Jane Siegel,**

*Staff Director and Executive Secretary, President's Export Council.*

[FR Doc. 95–8114 Filed 3–31–95; 8:45 am]

BILLING CODE 3510–DR–P

## National Institute of Standards and Technology

**[Docket No. 950314074–5074–01]**

**RIN 0693–AB39**

## Proposed Revision of Federal Information Proceeding Standard (FIPS) 128–1, Computer Graphics Metafile (CGM)

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** NIST is proposing a revision of FIPS PUB 128–1, CGM, to adopt voluntary industry specification American National Standards Institute/International Organization for Standardization (ANSI/ISO) Computer Graphics Metafile (CGM), ANSI/ISO 8632.1–4:1992[1994], and ISO 8632:1992/Amd. 1:1995, and to adopt three CGM profiles.

Prior to the submission of this proposed revision to FIPS 128–1 to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views,

This proposed revision contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standards; and (2) a specification section. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications ANSI/ISO 8632.1–4:1992[1994] and CGM Amendment 1: Rules of Profiles, ISO 8632:1992/Amd. 1:1994 from the American National Standards Institute (ANSI), 11 West 42nd Street, 13th Floor, New York, NY 10036, (212) 642–4900. To obtain copies of the three proposed CGM profiles (ATA Specification 2100, Model Profile, and MIL–D–28003A), contact the Standards Processing Coordinator, National Institute of Standards and Technology, Technology Building, Room B–64, Gaithersburg, MD 20899, telephone (301) 975–2816.

**DATES:** Comments on this proposed revision must be received on or before July 3, 1995.

**ADDRESSES:** Written comments concerning the adoption of this proposed revision should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed Revision of FIPS 128–1, CGM, Technology Building, Room B154, national Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynne Rosenthal, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3353.

Executive Order 12866: This FIPS notice has been determined to be ''not significant'' for purposes of E.O. 12866.

Dated: March 28, 1995.

**Samuel Kramer,**

*Associate Director.*

## Proposed Federal Information Processing Standards Publication 128–2

### Date

### Announcing the Standard for Computer Graphics Metafile (CGM)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administration Service Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Computer Graphics Metafile (CGM) (FIPS PUB 128–2).

2. Category of Standard. Software Standard, Graphics.

3. Explanation. This publication is a revision of FIPS PUB 128–

1. This revision supersedes FIPS PUB 128–1 is its entirety and modifies the standard by:

(1) Adopting the Computer Graphics Metafile standard designated, ANSI/ISO 8632.1–4: 1992[1994], and CGM Amendment 1: *Rules for Profiles*, ISO 8632:1992.Amd. 1:1994;

(2) Requiring the use of conforming profiles. Conformance of metafiles (i.e., date files) and implementations (i.e., generators and interpreters) is defined in terms of conformance to profiles; and

(3) Adopting several profiles, one of which is required for implementation of this FIPS PUB.

FIPS PUB 128–2 adopts the American National Standards Institute/International Organization for Standardization (ANSI/ISO) 8632.1–4:1992[1994], ISO 8632:1992/Amd. 1:1994, and the following profiles:

(1) Model Profile as contained in CGM Amendment 1;

(2) Air Transport Association (ATA) Specification 2100, Graphics Exchange for CGM;

(3) Continuous Acquisition and Life-Cycle Support (CALS), MIL–D–28003A.

CGM is a graphics data interchange standard which defines a neutual computer-interpretable representation of 2D graphical (pictorial) information in a manner that is independent from any particular application or system. The purpose of the standard is to facilitate the storage and retrieval of graphical information between applications, software systems, and/or devices. A CGM can contain:

—Vector graphics (e.g., polylines, ellipses, NURBS);

—Raster graphics (e.g., tile array); and

—Text,

The CGM standard defines three upward compatible versions. Each version provides additional functionality.

CGM Amendment 1 provides the rules for defining profiles of CGM and conformance requirements for profiles, metafiles, and implementations. Since a proliferation of CGM profiles is not desirable, only those profiles needed for Federal agency use have been added to the FIPS CGM. The exact specification is in Section 10 of this standard.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory (CSL).

6. Cross index.

a. American National Standard/International Organization for Standardization (ANSI/ISO) Computer Graphics Metafile (CGM), ANSI/ISO 8632.1–4:1992 [1994] (Part 1: Functional Specifications; Part 2: Character Encoding; Part 3: Binary Encoding; Part 4: Clear Text Encoding).

b. International Organization for Standardization (ISO) Computer Graphics Metafile (CGM), ISO 8632:1992/Amd. 1:1994.

c. Air Transport Association Specification 2100, Digital Data Standards for Aircraft Support, Graphics Exchange v2.1, October 1994.

d. Military Specification, Digital Representation of Illustration Data: CGM Application Profile (AP), MIL–D–28003A, November 15, 1991.

7. Related Documents. Related ISO documents are listed in the reference section of the CGM standard, ANSI/ISO 8632.1–4:1992 [1994].

a. Federal Information Processing Standards Publication (FIPS PUB) 29–3,

Interpretation Procedures for FIPS Software.

b. Federal Information Processing Standards Publication (FIPS PUB) 120–1, Graphical Kernel System (GKS).

c. Federal Information Resources Management Regulations 201–20.303, Standards, and subpart 201–39.1002, Federal Standards.

d. NISTIR 5475, Validated Products List, J. Kailey and P. Himes, editors, republished quarterly.

e. NISTIR 5372, CGM: Procedures for NIST CGM Validation Test Service, L. Rosenthal and J. Schneider, February 1994.

f. ISO 10641–1992, Conformance Testing of Implementations of Graphics Standards.

8. Objectives. The primary objectives of this standard are:

—To reduce the overall life-cycle cost for digital systems by establishing a common exchange format for storing, transferring, and archiving graphical data across organizational boundaries and independent from any particular system.

—To promote the exchange of graphical information enabling applications to share data and reduce time spent recomputing in efforts to regenerate pictorial information.

—To specify application profiles which provide functional subsets of the CGM standard and maximize the probability of interchange between systems implementing the profile.

—To promote the use and development of conforming profiles and the harmonization of conformance testing efforts for metafiles, generators, and interpreters.

9. Applicability.

9.1 Applications acquired for government use which purport to create or read graphical pictures shall contain a conforming CGM generator or CGM interpreter. FIPS CGM enables the representation, transfer, and storage of graphical information between different software systems, graphics devices, and/or applications (e.g., word processing, publishing, drawing, spreadsheet, computer-aided design).

9.2 FIPS CGM shall be used when one or more of the following situations exist:

—Graphical information (e.g. illustrations, clip art) will be acquired for government use and incorporated into computer applications or documents.

—Computer applications, programs, systems, or devices will be acquired and used to create, modify, display, or render grapical information.

—Graphical information created by an application will be reviewed, modified, or incorporated into another application on the same or different computer systems.

—Graphical information will be used and maintained by other than the original designer.

—Graphical information will be used by multiple people, groups, or organizations within the Government or private sector.

9.3 The use of a profile is required for all metafiles and implementations of CGM. A profile defines the options, elements, and parameters of ANSI/ISO 8632 necessary to accomplish a particular function and to maximize the probability of interchange between systems implementing the profile. A profile addresses metafile requirements as well as implementation requirements. The profiles added by this FIPS CGM are required for industry specific and Federal government applications.

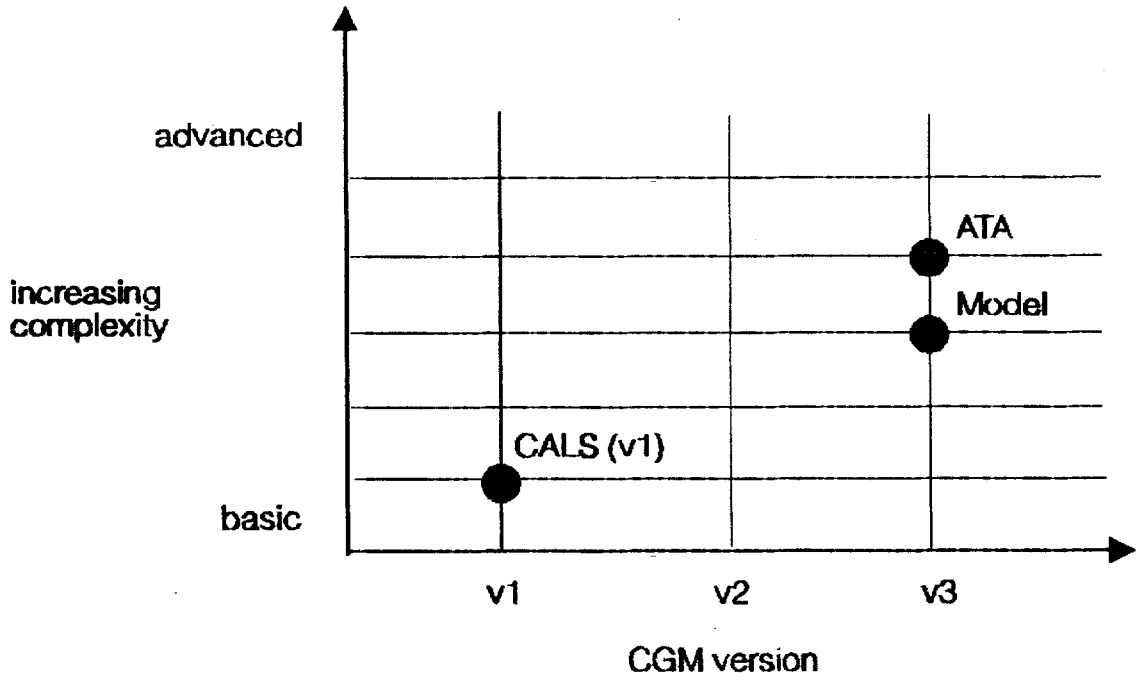
—Model Profile: The Model Profile is appropriate for basic scientific and technical graphics (e.g., computer-aided design, mapping, earth sciences, cartography) and presentation, visualization, and publishing applications (graphics arts, high end desk top publishing). This is a general purpose profile which supports all three CGM encodings at the CGM version 3 functionality level. For FIPS CGM, if no profile is specified, the Model Profile will be assumed by default.

—ATA Specification 2100: The ATA profile is appropriate for presentation, visualization, and publishing applications (e.g., graphical arts, imaging, electronic review of documents, hypermedia, and multimedia documents). Although similar to the Model Profile, the ATA profile allows for symbol libraries and the use of intelligent graphics (i.e., graphics which contain application-specific information along with the information necessary to render a picture). This profile, developed by the Air Transport Association, supports the binary and clear text encodings at the CGM version 3 functionality level. Except for metafiles containing symbols or raster images, the ATA profile limits the number of pictures per metafiles to one.

—MIL–D–28003A: The CALS profile is appropriate for basic scientific and technical graphics, presentation and publishing applications (e.g., business presentation graphics, desktop publishing). In addition, this profile is appropriate for a basic level of general-purpose graphical interchange. This profile, developed by CALS, supports only the binary encoding and is limited (by this FIPS CGM) to the CGM version 1 functionality level.

The diagram illustrates the relationship between the profiles. The x-axis represents the level of functionality by CGM version; the y-axis represents the complexity of problems that can be solved.

BILLING CODE 3510–CN–M

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10. Specifications. ANSI/ISO 8632.1–4:1992[1994], Computer Graphics Metafile, defines the scope of the specifications, the syntax, and semantics of the CGM elements. The ANSI/ISO 8632 consists of four parts: (Part 1: Functional Specifications; Part 2: Character and Coding; Part 3: Binding and Coding; Part 4: Clear Text Encoding). ISO 8632:1994/Amd. 1 defines the rules for profiles, conformance, and the Model profile, an instance of a CGM profile. In addition, one of the following profiles shall be used when implementing FIPS CGM: the Model Profile as specified in ISO 8632:1992/Amd. 1:1994, the ATA Specification 2100 Graphics Exchange for CGM, or the Military Specification MIL–D–28003A.

All implementations claiming conformance to this FIPS CGM must adhere to the specific requirements defined in the ''Conformance'' clause of ISO 8632:1992/Amd. 1:1994 and the application profile.

11. Implementation. The implementation of this standard involves four areas of consideration: effective date, acquisition, interpretation, and validation.

11.1 Effective Date. This publication is effective six (6) months after date of publication upon final announcement in the **Federal Register**. A transition period of twelve (12) months, beginning on the effective date, allows industry to produce CGM implementations and CGM files conforming to this standard. Agencies are encouraged to use this standard for solicitation proposals during the transition period. This standard is mandatory for use in all solicitation proposals for CGM files and implementations (i.e., products or software containing CGM generators and/or interpreters) acquired twelve (12) months after the effective date.

11.2 Acquisition of CGM Files and Implementations. The use of one of the profiles specified in Section 9.3 is required for conformance to CGM. Agencies should specify a profile in all acquisitions.

Conformance to this standard shall be considered whether CGM files or implementations are developed internally, acquired as part of a system procurement, acquired by separate procurement, used under a leasing agreement, or specified for use in contracts for programming services. Recommended terminology for procurement of FIPS CGM is contained in the U.S. General Services Administration publication Federal ADP and Telecommunications Standards Index, Chapter 5, Part 1.

11.3 Interpretation of FIPS CGM. Resolution of questions regarding this standard will be provided by NIST. Procedures for interpretations are specified in FIPS PUB 29–3. Questions concerning the content and specifications should be addressed to: Director, Computer Systems Laboratory, Attn: CGM Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

11.4 Validation of CGM Files and Implementations. CGM files and implementations of FIPS CGM shall be validated in accordance with the NIST Computer Systems Laboratory (CSL) validation procedures for FIPS CGM, NISTIR 5372, Procedures for the NIST CGM Validation Test Service. Recommended procurement terminology for validation of FIPS CGM is contained in the U.S. General Services Administration publication Federal ADP and Telecommunications Standards Index, Chapter 5, Part 2. This GSA publication provides terminology for three validation options: Delayed Validation, Prior Validation Testing, and Prior Validation. The agency shall select the appropriate validation option and shall specify appropriate time frames for validation and correction of nonconformities. The agency is advised to refer to the NIST publication Validated Products List for information about the validation status of CGM products. This information may be used to specify validation time frames that are not unduly restrictive of competition.

Metafiles and implementations shall be evaluated in terms of conformance to a particular profile of CGM, using the NIST CGM Test Service. If no profile is specified, the Model Profile will be used. The goal of the NIST CGM Test Service, is to assist users and vendors in determining compliance to FIPS PUB 128–2. The results of validation testing by the NIST CGM Validation Test Service are published on a quarterly basis in the Validated Products List, available from the National Technical Information Service (NTIS).

Current information about the NIST CGM Validation Test Service and validation procedures for FIPS CGM is available from: National Institute of Standards and Technology, Computer Systems Laboratory, Graphics Software Group, CGM Test Service, Building 225, Room A266, Gaithersburg, MD 20899, (301) 975–3265.

12. Waivers.

Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, but amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 128–2 (FIPSPUB128–2), and title. Payment

may be made by check, money order, or NTIS deposit account.

[FR Doc. 95–8069 Filed 3–31–95; 8:45 am]
BILLING CODE 3510–CN–M

**[Docket No. 950314073–5073–01]**

**RIN 0693–AB41**

## Proposed Revision of Federal Information Processing Standard (FIPS) 161–1, Electronic Data Interchange (EDI)

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** A revision of Federal Information Processing Standard (FIPS) 161–1, Electronic Data Interchange, is being proposed. The revision reflects changes in the development of voluntary industry standards for Electronic Data Interchange (EDI), including the planned alignment of the X12 and UN/EDIFACT families of standards, and provides updated guidance to Federal agencies in the selection of EDI standards. The revision also establishes a Federal EDI Standards Management Committee to harmonize the development of EDI transaction set and message standards among Federal agencies, and the setting of government-wide implementation conventions for EDI applications used by Federal agencies.

The purpose of this notice is to solicit views from the public, manufacturers, and Federal, state, local government, and private users prior to submission of this proposed revision to the Secretary of Commerce for review and approval.

The proposed revision consists of the following announcement, which provides information concerning the applicability, implementation, and maintenance of the standard. Interested parties may obtain copies of documents defining the EDI standards from Data Interchange Standards Association, Inc. (DISA), 1800 Diagonal Road, Suite 200, Alexandria, VA 22314–2852, telephone (703) 548–7005.

**DATES:** Comments on this proposed revision must be received on or before July 3, 1995.

**ADDRESSES:** Written comments concerning the proposed revision should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed Revision of FIPS 161–1, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roy Saltman, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3376.

**EXECUTIVE ORDER 12866:** This FIPS notice has been determined to be ''not significant'' for purposes of E.O. 12866.

Dated: March 28, 1995.

**Samuel Kramer,**

*Associate Director.*

## Proposed Federal Information Processing Standards Publication 161–2; Draft 1995 February 16; Draft Announcing the Standard for Electronic Data Interchange (EDI)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

1. Name of Standard. Electronic Data Interchange (EDI) (FIPS PUB 161–2).

2. Category of Standard. Software Standard, Electronic Data Interchange.

3. Explanation. EDI is the computer-to-computer transmission of strictly formatted messages that represent documents; EDI is an essential component of electronic commerce (EC). EC is the use of documents in electronic form, rather than paper, for carrying out functions of business or government that require interchanges between organizations of information, obligations, or monetary value.

This publication adopts, as a Federal Information Processing Standard, recognized national and international standards for EDI. In EDI, data that would be traditionally conveyed on paper documents are transmitted or communicated electronically according to established rules and formats. The data that are associated with each type of functional document, such as a purchase order or invoice, are transmitted together as an electronic message. The formatted data may be transmitted from originator to recipient via telecommunications or physically transported on electronic storage media.

EDI typically implies a sequence of messages between two parties, for example, buyer and seller, either of whom may serve as originator or recipient. Messages from buyer to seller could include, for example, the data necessary for request for quotation (RFQ), purchase order, receiving advice, and payment advice; messages from seller to buyer could include similarly the data for response to RFQ, purchase order acknowledgment, shipping notice, and invoice. EDI is being used also for an increasingly diverse set of concerns, for example, for interchanges between healthcare providers and insurers, and for governmental regulatory, tax, and statistical reporting.

Implementation of EDI requires the use of a family of interrelated standards. The family must include standards for types of messages (also called ''transaction sets''), and for transmission envelopes, data elements, and short sequences of data elements called data segments. A message or transaction set standard defines the sequence of data segments that constitute that message or transaction set. The data segment directory lists all data segments, and defines the identifier and sequence of data elements constituting each. The data element directory (also called a ''dictionary'') provides specifications of all data elements. Transmission envelopes provide control information about the included messages to the carrying and receiving systems.

The standardization of message formats, and of data segments and elements within the messages, makes possible the assembling, disassembling, and processing of the messages by computer.

This FIPS PUB adopts, with specific conditions, the families of standards known as X12 and UN/EDIFACT. This FIPS PUB does not mandate the implementation of EDI systems within the Federal Government; rather it requires the use of X12 or UN/EDIFACT, subject to the conditions specified below, when Federal departments or agencies implement EDI systems. The X12 and UN/EDIFACT standards were originally developed respectively by Accredited Standards Committee X12 on Electronic Data Interchange (ASC X12), accredited by the American National Standards Institute (ANSI), and by the United Nations (UN) Economic Commission for Europe—Working Party (Four) on Facilitation of International Trade Procedures (UN/ECE/WP.4). Technical input from the United States in the development of UN/EDIFACT at the UN is through the Pan American EDIFACT Board (PAEB). The PAEB is separate from ASC X12, and it serves as the coordinating body for national

standards organizations of North, Central, and South America.

FIPS PUB 161–2 supersedes FIPS PUB 161–1 in its entirety. FIPS PUB 161–2 contains editorial changes, updated references to documents and organizations, and updated guidance to agencies on the selection of X12 and UN/EDIFACT standards and implementation conventions. This guidance is based on recent voluntary industry standards activities and on the Federal Government initiative that commenced with the Presidential Memorandum of October 26, 1993 entitled ''Streamlining Procurement Through Electronic Commerce.''

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory.

6. Cross Index and Related Documents.

6.1. Cross Index.

—FIPS PUB 113, Computer Data Authentication, May 1985.
—FIPS PUB 46–2, Data Encryption Standard, December 1993.
—FIPS PUB 186, Digital Signature Standard (DSS), May 1994.
—FIPS PUB 146–2, Profiles for Open Systems Internetworking Technologies, expected approval 1995.
—FIPS PUB 180–1, Secure Hash Standard, expected approval 1995.

6.2. Related Documents.

—NIST Special Publication 500–224, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 8, Edition 1, March 1995.
—NIST Special Publication 800–9, Good Security Practices for Electronic Commerce, Including Electronic Data Interchange, December 1993.
—ASC X12W/94–710, ASC X12 Plan for Technical Migration To And Administrative Alignment With UN/EDIFACT, approved by ASC X12 on January 13, 1995 and modified at the ASC X12 plenary meeting, February 6, 1995.
—NISTIR xxxx, Charter for Federal EDI Standards Management Committee, expected 1995.

6.3. Sources of Documents. For the source of cited NIST publications, including FIPS PUBS, see Section 13. For the source of X12 and UN/EDIFACT documents, see Subsection 10.1.

7. Objectives. The primary objectives of this standard are:

a. To promote the achievement of the benefits of EDI: reduced paperwork, fewer transcription errors, faster response time for procurement and customer needs, reduced inventory requirements, and more timely payment of vendors;

b. To ease the interchange of data sent via EDI by the use of standards for data formats and transmission envelopes;

c. To minimize the cost of EDI implementation by preventing duplication of effort.

8. Applicability.

8.1. Conditions of Application. EDI may be employed with any type of operational data representable as a sequence of data elements that is needed to be transmitted or received on a repetitive basis by a Federal agency in the course of its activities. This standard is applicable to the interchange of such data on a particular subject, between a Federal agency and another organization (which may be another Federal agency), if (1) the data are to be transmitted electronically using EDI, and (2) X12 transaction sets or UN/EDIFACT messages meeting the data requirements of the Federal agency for the subject of the interchange have been developed and approved, and are acceptable for use under the conditions set forth in this FIPS PUB.

8.2. Subject Matter. Examples of applications (not necessarily the subject of current standards) are:

a. Vendor search and selection: Price/sales catalogs, bids, proposals, requests for quotations, notices of contract solicitation, debarment data, trading partner profiles;

b. Contract award: Notices of award, purchase orders, purchase order acknowledgments, purchase order changes;

c. Product data: Specifications, manufacturing instructions, reports of test results, safety data;

d. Shipping, forwarding, and receiving: Shipping manifests, bills of lading, shipping status reports, receiving reports;

e. Customs: Release information; manifest update;

f. Payment information: Invoices, remittance advices, payment status inquiries, payment acknowledgments;

g. Inventory control: Stock level reports, resupply requests, warehouse activity reports;

h. Maintenance: Service schedules and activity, warranty data;

i. Tax-related data: Tax information and filings;

j. Insurance-related data: Health care claim; mortgage insurance application;

k. Other government activities: Communications license application; hazardous waste report; court conviction record.

9. Federal EDI Standards Development and Coordination.

9.1. Federal EDI Standards Management Committee. There is established a Federal EDI Standards Management Committee (FESMC). The goal of the FESMC is to assure a single Government face to industry, consistency among instances of an application across agencies, streamlined data, and coordinated Government representation at standards bodies. Functions of the committee include harmonization of development of EDI transaction set and message standards among Federal agencies, and the setting of Government-wide implementation conventions for each EDI application used by Federal agencies. Workgroups in subject areas such as finance, procurement, and transportation will be established under FESMC. Membership on the committee shall be from Federal agencies using or planning to use EDI; selection of the chair of the committee shall be approved by the Office of Management and Budget.

9.2. Agency Responsibilities.

9.2.1. Agencies already employing X12 or UN/EDIFACT standards or draft standards approved under this FIPS PUB shall submit their implementations to FESMC for coordination.

9.2.2. For the case in which X12 or UN/EDIFACT documents are available or under development for a needed subject area but do not meet agency requirements, agencies shall submit their requirements to FESMC to coordinate need changes, and shall submit their requirements to ASC X12 by following procedures specified in ASC X12 Standing Document (SD) 2, Operations Manual, and SD 6, Operations Manual (UN/EDIFACT Standards). These are available from Data Interchange Standards Association, Inc. (DISA) (see Subsection 10.1 for address and phone number).

9.2.3. For the case in which a subject area for which an agency wishes to use EDI has not yet been considered for standardization, agencies shall submit their requirements for standardization to FESMC and to ASC X12, as described in Subsection 9.2.2. Proposed implementations shall maximize use of existing X12 and/or UN/EDIFACT standards or draft standards to the extent possible. Use of already approved documents should minimize the administrative work involved in new development and in standards maintenance.

9.2.4. Agencies shall adopt the implementation conventions (ICs) established by FESMC. ICs shall be classified as Implementer's Agreements pursuant to this FIPS PUB, but are not themselves FIPS PUBS. Proposed ICs will be coordinated with industry. NIST

will publish ICs and maintain a registry of them.

10. Specifications. Documents are available that define the standard X12 transaction sets and UN/EDIFACT messages as well as the foundation standards for both families. Developments are continuing in both families of standards.

10.1 Source of Documents. Documents defining both the X12 and UN/EDIFACT families of standards, as well as ASC X12 and PAEB operational and procedural documents, are available from DISA or from a contractor named by DISA. DISA serves as the secretariat for ASC X12 and the PAEB: its address and phone number are: Address: Data Interchange Standards Association, Inc., 1800 Diagonal Road—Suite 200, Alexandria, VA 22314–2852, Phone: (703) 548–7005.

A list of available publications, as well as descriptive material, prices and ordering procedures, may be found in the most recent DISA Publications Catalog.

10.2. ASC X12 Documents.

10.2.1. X12 standards are published periodically with revisions and updates, and standards included in a publication may have one of two possible statuses:

(1) Draft Standards for Trial Use (DSTUs); these are fully approved by ASC X12, and are typically published as ''releases'' at one-year intervals. DSTU Version 3, Release 4, identified as 003040, was published in December 1993; Version 3, Release 5, identified as 003050, was published in December 1994. Two interim subreleases also are published annually. The 1994 subreleases were identified as 003041 and 003042.

(2) American National Standards (ANSs); these are fully approved by ASC X12 and by ANSI, and are typically published as ''versions'' at intervals of three to five years. ANS Version 3, published in March 1992, is functionally equivalent to DSTU Version 2, Release 4. It is expected that ANS Version 4, planned for 1997, will be functionally equivalent to DSTU Version 3, Release 7, identified as 003070.

10.2.2. A particular X12 standard is one of three types; it may be a ''control and foundation standard,'' it may be a ''transaction set'' (which uses X12 syntax), or it may be an EDIFACT-syntax ''message.''

10.2.3. Control and foundation standards currently include the following:

Data Element Dictionary X12.3
Interchange Control Structure X12.5
Application Control Structure X12.6
Segment Directory X12.22
Interconnect Mailbag Control Structures X12.56
Security Structures X12.58
Implementation of EDI Structures—Semantic Impact X12.59

Standards X12.5 and X12.6 define the X12 syntax.

10.2.4. DSTU Version 3 Release 5 includes 225 transaction set standards and two EDIFACT-syntax message standards.

10.3 UN/EDIFACT Documents.

10.3.1. Un/EDIFACT standards are published periodically with revisions and updates, and standards included in a publication may have one of two possible statuses:

(1) Status 1, approved for trial use. A set of status 1 messages and directories is typically published yearly. The most recent set, identified as UN/EDIFACT Draft Messages and Directories, Version D94.B, was published in October 1994.

(2) Status 2, fully approved by UN/ECE/WP.4. These may be referred to as the UN Trade Data Interchange Directory (UNTDID).

Version S93.A was approved in March 1994, and Version S95.A is expected in September 1995.

10.3.2. The D94.B Status 1 Draft Messages and Directories include the following:

Uniform Rules of Conduct for Interchange of Trade Data by Teletransmission (UNCID);
UN/EDIFACT Terminology;
United National Rules for EDIFACT
United Nationals Directories for EDIFACT
75 Messages of Status 1

The United Nations Rules for EDIFACT include sections on establishment of United Nations standard message types (UNSMs), syntax rules (see Subsection 10.3.4), syntax implementation guidelines, message design guidelines, and general introduction for UNSM descriptions. The United Nations Directories for EDIFACT include the standard message type directory, message, frameworks, segment directory, composite data element directory, data element directory, and code lists.

10.3.3. The S93.A Status 2 Messages and Directories (UNTDID) includes the same types of information provided in D94.B, excepting that approved messages of Status 2 instead of Status 1 are listed. Forty-two messages of Status 2 are specified.

10.3.4. A foundation standard used in UN/EDIFACT is approved by the International Organization for Standardization (ISO); it is entitled ISO 9735—UN/EDIFACT Application Level Syntax Rules. There are several versions: Version 1 (1988), Version 2 (1990), and Version 3 (Version 2 with Amendment 1 of December, 1992). Version 3 is included in D94.B. Version 4 is expected in March, 1995.

11. Implementation.

11.1 Schedule for Adoption. FIPS PUB 161 was effective on September 30, 1991. Federal agencies that are not using EDI for subject matter for which X12 or UN/EDIFACT standards have been approved and issued shall utilize only those standards in EDI systems that they procure or develop, subject to the qualifications of Subsections 11.3, 11.4 and 11.5. Agencies already using those standards continue to do so. Agencies that were using industry-specific standards for EDI on September 30, 1991 shall be governed by Subsection 11.6.

11.2. Acceptance of UN/EDIFACT. In January 1995, ASC X12, by a vote of its membership, approved the *ASC X12 Plan for Technical Migration To And Administrative Alignment with UN/EDIFACT*. This plan was modified at the February 1995 plenary meeting of ASC X12. Key features of the modified Alignment Plan are:

(1) Draft standards based on X12 syntax or on UN/EDIFACT syntax may be submitted by ASC X12 for processing as ANSs.

(2) X12 Release 003070 shall form the basis of Version 4 of draft proposed X12 American National Standards (ANSs).

(3) After the release of Version 4, ASC X12 shall continue for a period of time, in accordance with the plan, to develop, maintain, approve and publish X12-syntax transaction sets and supporting documents.

(4) An ASC X12 ballot shall be conducted in 1998 to determine if X12-syntax transaction set development should be terminated. If the ballot for termination is not approved, a three-year repeating cycle shall occur thereafter, until no new x12-syntax transaction sets are being developed.

11.3. Selection of X12 or UN/EDIFACT. X12 and UN/EDIFACT are separate although similar, families of standards. The existence of one does not preclude the other, and equivalent functionality may be obtained in either system. Software that assembles and disassembles messages and transaction sets called translation software, is available for both systems, often in the same package.

In selecting a family of standards, agencies should attempt to maximize economy and efficiency and to minimize the costs imposed on U.S. businesses.

11.3.1. For domestic interchanges, agencies may use, at this time, standards employing either X12 or UN/EDIFACT syntax or both. Selection of syntax for an interchange shall take into account the prevailing syntax used in the industry of the interchange partner. However, standards using UN/EDIFACT syntax shall be employed for new or significantly upgraded interchanges in the absence of demonstrably higher costs, or at the request of interchange partners providing a significant fraction of interchange traffic. Continued long-term use and maintenance of dual standards is unacceptably inefficient.

11.3.2. For internal interchanges, migration to standards using UN/EDIFACT syntax shall commence at this time if that syntax is not currently being used. A timetable for conversion to UN/EDIFACT of existing international implementations shall be set as applicable standards and software becomes available. New or significantly upgraded interchanges shall employ only standards using UN/EDIFACT syntax.

11.4. Use of Draft Standards. Both X12-syntax and EDIFACT-syntax standards approved and published by ASC X12, if not approved at a higher level are designated DSTUs for purposes of this FIPS PUB. Federal agencies shall use only the following two type of standards for EDI implementations: (1) Draft standards, i.e., UN/EDIFACT Status 1 standards or STUs from ASC X12, or (2) full standards, i.e., UN/EDIFACT Status 2 standards or ANSs submitted by ASC X12. Industry practice is to use draft standards; these represent the latest consensus and are available sooner than the corresponding full standards. Consequently, draft standards are preferred for use over full standards.

11.5. Age-Limitations on Acceptable Standards. Agencies, in their agreements with interchange partners, may not use any version of an acceptable standard specified in Subsections 11.3 and 11.4 that is more than four years old, unless it is the most recent version. Any version of an ISO standard may be used, e.g., ISO 9735, subject to the same age-limitation.

11.6. Continued Use of EDI Industry Standards. Federal agencies using industry-specific EDI standards on September 30, 1991 may continue to use those standards for five years from that date. However, such agencies shall, without delay, submit their standardization requirements as indicated in Subsections 9.2.2 and 9.2.3. Industry-specific EDI standards may be used beyond five years only if no equivalent X12 or UN/EDIFACT standards, as appropriate, have been approved and issued by September 30, 1995. If an equivalent X12 DSTU or UN/EDIFACT Status 1 standard, as appropriate, is approved and issued after September 30, 1995, Federal agencies using an industry-specific standard shall have one year to convert, following the first publication of the approved standard. Implementation shall be consistent with the requirements of Subsections 11.3 and 11.4.

11.7. Security and Authentication. Agencies shall employ risk management techniques to determine the appropriate mix of security controls needed to protect specific data and systems. The selection of controls shall take into account procedures required under applicable laws and regulations.

Optional tools and techniques for implementation of security and authentication may be provided by ASC X12 and UN/ECE/WP.4 for use in connection with their respective families of standards. Agencies may utilize these tools and techniques, and/or they may utilize other methods in systems supporting the EDI data interchange. Methods and procedures implemented shall be consistent with applicable FIPS PUBS and guidance documents issued by NIST.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S.Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as part of the notice of solicitation for officers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to Obtain Copies of NIST Publications. Copies of this publication and NIST publications referenced in Section 6 are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161; phone (703) 487–4650. When ordering this publication, refer to Federal Information Processing Standards Publication 161–2 (FIPSPUB161–2), the title. Payment may be made by check, money, or NTIS deposit account.

[FR Doc. 95–8068 Filed 3–31–95; 8:45 am]
BILLING CODE 3510–CN–M

## National Oceanic and Atmospheric Administration

**[I.D. 032395B]**

## Endangered Species; Permits

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

**ACTION:** Issuance of Amendment 1 to Permit 895 (P504D).

Notice is hereby given that on March 28, 1995, as authorized by the provisions of 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), NMFS issued Amendment 1 to Permit Number 895 held by the Army Corps of Engineers (P504D), to transport listed Snake River

chinook and sockeye salmon below the Bonneville Dam, subject to certain conditions set forth therein.

This Amendment is being issued to conform to guidelines in the Reinitiation of Consultation on 1994–1998 Operation of the Federal Columbia River Power System and Juvenile Transportation Program in 1995 and Future Years (FCRPS). All transportation activities conducted under this permit must comply with the guidelines of the FCRPS.

Issuance of this Amendment, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of the permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This Amendment 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, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, NMFS, NOAA, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503-230-5400).

Dated: March 28, 1995.

**Robert C. Ziobro,**

*Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 95–8059 Filed 3–31–95; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Government Owned Inventions; Availability for Licensing

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice of availability of invention for licensing.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Request for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

**FOR FURTHER INFORMATION CONTACT:** Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application Serial No. 08/080,418: Thermal Insulation of Wet Shielded Metal Arc Welds; filed 18 June 1993.

Dated: March 27, 1995.

**M.D. Schetzsle**

*Lt, JAGC, USNR, Alternate Federal Register Liaison Officer.*

[FR Doc. 95–8057 Filed 3–31–95; 8:45 am]

**BILLING CODE 3810–AE–M**

### Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Station, Long Beach, CA (Los Angeles Parcels)

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** This Notice provides information regarding the redevelopment authority established to plan the reuse of the former Naval Station, Long Beach, CA, (Los Angeles Parcels), the surplus property that is located at that base closure site, and the timely election by the redevelopment authorities to proceed under the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

**FOR FURTHER INFORMATION CONTACT:** John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Ms. Kimberly Kesler, Base Closure Manager, Southwest Division, Naval Facilities Engineering Command, 1420 Kettner Blvd., Suite 507, San Diego, CA 92101–2404, telephone (619) 556–0771. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, condition, exact street address, etc.), contact Lieutenant Commander Kevin Barre, Base Transition Coordinator, Long Beach Naval Shipyard, Building 5, Long Beach, CA 90822–5080, telephone (310) 547–6875.

**SUPPLEMENTARY INFORMATION:** In 1991, the Naval Station, Long Beach, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. On October 8, 1993, and April 21, 1994, respectively, the Taper Avenue housing site and the Seaside Avenue parcel, both of which are described below, were declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of surplus properties, and (b) homeless providers pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

#### Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of the Act gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 19, 1994, the City of Los Angeles submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the former Naval Station, Long Beach, (Los Angeles Parcels), is published in the **Federal Register**:

#### Redevelopment Authorities

The redevelopment authority for the Taper Avenue housing and the Seaside Avenue parcel at the former Naval Station, Long Beach, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Los Angeles. The City has established a local community advisory committee to provide recommendations to the City concerning the redevelopment plan. This committee is known as the ''San Pedro Area Reuse Committee (SPARC).'' A cross section of community interests is represented on the committee. Day-to-day operations of the committee are handled by Ms. Nancy Scrivner. The address of the committee is Los Angeles

City Planning Dept., Community Planning Bureau, 221 S. Figueroa Street, Room 310, Los Angeles, CA 90012, telephone (213) 485–6647 and facsimile (213) 485–8005.

**Surplus Property Descriptions**

The following is a listing of the land and facilities at the former Naval Station, Long Beach, CA, (Los Angeles Parcels) that were declared surplus to the federal government on October 8, 1993, and April 21, 1994.

**Land**

Approximately 27 acres of improved and unimproved fee simple land at the Taper Avenue housing of the former Naval Station, Long Beach, located in the City of Los Angeles, Los Angeles County. This area is currently available.

Approximately 14 acres of improved and unimproved fee simple land at the Seaside Avenue parcel of the former Naval Station, Long Beach, located in the City of Los Angeles, Los Angeles County. It is anticipated that this area will be available in August 1997 upon expiration of a proposed interim lease.

**Buildings**

The following is a summary of the facilities located at Taper Avenue housing which are currently available. Property numbers are available on request.

—Family housing units (24 duplex and 23 quadplex structures with 140 individual housing units). Comments: Approx. 187,380 square feet. All units are vacant.
—Vehicle carports (16 structures with 140 spaces). Comments: Approx. 22,304 square feet.
—Children's play yards (3 structures).

The following is a summary of the facilities located on the Seaside Avenue parcel. It is anticipated that this area will be available in August 1997 upon expiration of a proposed interim lease. Property numbers are available on request.

—Storage sheds (2 structures). Comments: Approx. 1,815 square feet.
—Administrative offices (2 structures). Comments: Approx. 1040 square feet.
—Truck scale (1 structure).

**Expressions of Interest**

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the former Naval Station, Long Beach, may submit to said redevelopment authorities (City of Los Angeles) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant paragraphs 7(C) and (D) of said section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Los Angeles the date by which expressions of interest must be submitted. Under section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the City of Los Angeles elected to proceed under the new statute, i.e., December 19, 1994.

Dated: March 28, 1995.

**M.D. Schetzsle,**

*LT, JAGC, USNR, Alternate Federal Register Liaison Officer.*

[FR Doc. 95–8060 Filed 3–31–95; 8:45 am]

BILLING CODE 3810–FF–P

## Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Station, New York, Staten Island, NY (off-site components)

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of certain off-site components of the Naval Station, New York, Staten Island, NY, known as the Front Street properties, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

**FOR FURTHER INFORMATION CONTACT:** John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Marian E. DiGiamarino, Special Assistant for Real Estate, Base Closure Team, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Mail Stop #82, Lester, PA 19113–2090, telephone (610) 595–0762. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Lieutenant Commander R.M. Pondelick, Caretaker Site Office, Naval Station, New York, 109 Mont Sec Avenue, Staten Island, NY 10305–5015, telephone (718) 816–1111.

**SUPPLEMENTARY INFORMATION:** In 1993, the Naval Station, New York, Staten Island, NY, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, as amended. Pursuant to this designation, certain off-site components at this installation were on January 31, 1995, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

**Election to Proceed Under New Statutory Procedures**

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 20, 1994, the City of New York, NY, submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Station, New York, Staten Island, NY, is published in the **Federal Register**.

**Redevelopment Authority**

The redevelopment authority for the Naval Station, New York, Staten Island, NY, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of New York, acting by and through its Mayor, Rudolph W. Giuliani. The City of New York has designated the New York City Economic Development Corporation (NYEDC), Christopher O. Ward, Senior Vice President, to serve as the City's representative for all purposes related to the Front Street properties. For further information contact Mr. Christopher O. Ward at the NYEDC, 110 William Street, New York, NY 10038, telephone (212) 312–3852 and facsimile (212) 312–3916.

**Surplus Property Descriptions**

The following is a listing of the off-site Front Street properties at the Naval Station, New York, Staten Island, NY, that were declared surplus to the federal government on January 31, 1995.

**Land**

Approximately 0.725 acres of improved and unimproved fee simple land at the U.S. Naval Station, New York, Staten Island, in the Borough of Staten Island, Richmond County, City and State of New York.

**Buildings**

The following is a summary of the facilities located on the above described land which are presently available. The station closed on August 31, 1994.

—Parcel 2, Sand Street near Front Street (Block 490, Lot 24), 0.069 acres of vacant land.
—Parcel 15, 44 Canal Street (Block 494, Lot 18), 0.063 acres of land improved with a two-story garage.
—Parcel 16, 42 Canal Street (Block 494, Lot 19), 0.056 acres of land improved with a one-story garage.
—Parcel 17, 36 Canal Street (Block 494, Lot 21), 0.116 acres of land improved with a one-story garage.
—Parcel 19, 150 Front Street (Block 494, Lot 30), 0.421 acres of land improved with a one-story industrial building.

Parcels 15, 16, 17, and 19 are contiguous.

**Expressions of Interest**

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Station, New York, Staten Island, shall submit to the redevelopment authority (City of New York) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in New York, NY, the date by which expressions of interest must be submitted. Under section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the City of New York elected to proceed under the new statute, i.e., December 20, 1994.

Dated: March 28, 1995.

**M.D. Schetzsle,**

*LT, JAGC, USNR, Alternate Federal Register Liaison Officer.*

[FR Doc. 95–8064 Filed 3–31–95; 8:45 am]

BILLING CODE 3810–FF–P

## Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Realignment: Naval Air Warfare Center, Aircraft Division, Warminster, PA

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Air Warfare Center, Aircraft Division, Warminster, PA, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

**FOR FURTHER INFORMATION CONTACT:** John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Marian E. DiGiamarino, Special Assistant for Real Estate, Base Closure Team, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Mail Stop #82, Lester, PA 19113–2090, telephone (610) 595–0762. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Joseph P. Cody, Base Transition Coordinator, Naval Air Warfare Center, Aircraft Division, Street and Jacksonville Roads, Warminster, PA 18974–5000, telephone (215) 441–3444.

**SUPPLEMENTARY INFORMATION:** In 1991, the Naval Air Warfare Center, Aircraft Division, Warminster, PA was designated for realignment pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended.

Pursuant to this designation, the excess land and facilities at this installation were on January 31, 1995, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

**Election to Proceed Under New Statutory Procedures**

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 14, 1994, the Bucks County (Commonwealth of Pennsylvania) Board of Commissioners submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Air Warfare Center, Aircraft Division,

Warminster, PA, is published in the **Federal Register**.

**Redevelopment Authority**

The redevelopment authority for the Naval Air Warfare Center, Aircraft Division, Warminster, PA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Federal Lands Reuse Authority of Bucks County (FLRA–BC). A cross section of community interests is represented on the FLRA–BC. Chairman of the FLRA–BC is Robert Finley. For further information contact Ms. Sheila Bass, Acting Administrator, Federal Lands Reuse Authority of Bucks County, 622 Mary Street, Suite 1A, Warminster, PA 18974, telephone (215) 957–2310 and facsimile (215) 957–2322.

**Surplus Property Descriptions**

The following is a listing of the land and facilities at the Naval Air Warfare Center, Aircraft Division, Warminster, PA, that were declared surplus to the federal government on January 31, 1995.

**Land**

Approximately 727 acres of improved and unimproved fee simple land at the U.S. Naval Air Warfare Center, Aircraft Division, Warminster, in Warminster Township, Northampton Township, and Ivyland Borough, County of Bucks, PA.

**Buildings**

The following is a summary of the facilities located on the above described land which will also be available when the station closes in March 1997 unless otherwise indicated. Property numbers are available on request.

—Administrative/office/laboratory/communication/miscellaneous facilities (5 structures). Comments: Approx. 1,011,872 square feet.
—Aircraft operations/maintenance/support facilities (8 structures). Comments: Approx. 126,781 square feet.
—Ammunition storage facilities (4 structures). Comments: Approx. 996 square feet.
—Bachelor quarters housing (1 structure). Comments: Approx. 31,945 square feet.
—Community facilities (7 structures). Comments: Approx. 4,501 square feet.
—Family housing units (2 single family structures and 1 detached garage). Comments: Approx. 14,250 square feet.
—Fuel storage facilities (13 structures). Comments: Approx. 678 square feet in 2 structures and approx. 98,594 gallon storage capacity in other 11 structures.
—Hazardous storage facilities (3 structures). Comments: Approx. 9,865 square feet.
—Maintenance facilities (1 structure). Comments: Approx. 720 square feet.
—Medical clinic facilities (1 structure). Comments: Approx. 5,335 square feet.
—Miscellaneous facilities (9 structures). Comments: Measuring systems vary. Pedestrian bridges, flag poles, fencing, etc.
—Open storage area. Comments: Approx. 1,698 square yards.
—Paved areas. Comments: Approx. 557,160 square yards. Roads, parking areas, sidewalks, aprons, runways, taxiways, etc.
—Railroad trackage. Comments: Approx. 0.10 mile.
—Recreational facilities (16 structures). Comments: Approx. 88,267 square feet, includes hobby shop, clubs, picnic pavilions, outdoor swimming pool, playing courts, playing fields, etc.
—Utilities. Comments: Measuring systems vary. Telephone, electric, steam, sewage, storm sewer, water, and gas.
—Warehouse/storage facilities (5 structures). Comments: Approx. 12,229 square feet.

**Expressions of Interest**

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Warfare Center, Aircraft Division, Warminster, shall submit to the redevelopment authority (FLRA-BC) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Bucks County, PA, the date by which expressions of interest must be submitted. Under section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Bucks County Board of Commissioners elected to proceed under the new statute, i.e., December 14, 1994.

Dated March 28, 1995.

**M. D. Schetzsle,**

*LT, JAGC, USNR, Alternate* **Federal Register** Liaison Officer.

[FR Doc. 95–8062 Filed 3–31–95; 8:45 am]

BILLING CODE 3810–FF–P

## Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Reserve Center, Staunton, VA

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Reserve Center, Staunton, VA, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

**FOR FURTHER INFORMATION CONTACT:** John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Patricia M. Hankins, Realty Specialist, Operations Branch A (Code 241PH), Real Estate Division, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, VA 23511–2699, telephone (804) 322–4928.

**SUPPLEMENTARY INFORMATION:** In 1993, the Naval Reserve Center, Staunton, VA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the land and facility at this installation were on September 1, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

**Election to Proceed Under New Statutory Procedures**

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub.

L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 21, 1994, the City of Staunton, VA, submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Reserve Center, Staunton, VA, is published in the **Federal Register**.

**Redevelopment Authority**

The redevelopment authority for the Naval Reserve Center, Staunton, VA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Staunton, VA. Day-to-day operations of the City of Staunton, VA redevelopment authority are handled by a professional staff. For further information contact Ms. Sharon Angle, Director of Planning, Department of Planning, City of Staunton, P.O. Box 58, Staunton, VA 24402, telephone (703) 332–3862 and facsimile (703) 332–3807.

**Surplus Property Descriptions**

The following is a listing of the land and facilities at the Naval Reserve Center, Staunton, VA, that were declared surplus to the federal government on September 1, 1994.

**Land**

Approximately 0.57 acres of improved fee simple land on the corner of Liberty Street and Nelson Street known as the Naval Reserve Center Staunton, City of Staunton, VA. One building and parking for 39 vehicles are located on the land.

**Building**

The following details the facility located on the above described land. The facility operationally closed on June 30, 1994. The property number is available on request.

—Administration/training building. Comments: The building is a former church which consists of a 9,306 square foot main building and 5,154 square foot attached addition for a total size of 14,460 square feet. The main building has two stories with a basement and the addition is two story.

**Expressions of Interest**

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Reserve Center, Staunton, shall submit to the redevelopment authority (City of Staunton) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Staunton, VA, the date by which expressions of interest must be submitted. Under section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the City of Staunton Redevelopment Authority elected to proceed under the new statute, i.e., December 21, 1994.

Dated: March 28, 1995.

**M.D. Schetzsle,**

*LT, JAGC, USNR, Alternate Federal Register* Liaison Officer.

FR Doc. 95–8061 Filed 3–31–95; 8:45 am]

BILLING CODE 3810–FF–P

## Record of Decision to Dispose Solid Waste Generated at Marine Corps Base, Camp Lejeune, NC

Pursuant to section 102(c) of the National Environmental Policy Act (NEPA) of 1969, and the Council of Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to dispose non-hazardous solid waste generated at Marine Corps Base (MCB), Camp Lejeune, North Carolina at an on-base facility that will comply with state and Federal Resource Conservation Recovery Act (RCRA) Subtitle D regulations on solid waste disposal. The new facility will be a multi-celled, double lined landfill with leachate collection. The location of the facility will be a 170 acre site located at MCB Camp Lejeune along the east side of Piney Green Road. The paving of Piney Green Road and the construction of an entrance road, operations building with scales, and waste transport truck steam wash building will provide the necessary support facilities for the landfill. A Material Recovery Facility to process and house recyclable solid waste, a smaller separate landfill for disposal of non-hazardous construction and demolition debris, and a composting facility for the processing of yard waste will also be constructed and operated as funding becomes available.

The landfill will be constructed and operated one cell at a time in order to minimize operational costs and maximize the ability to adjust landfill operations to changes in regulatory requirements. The landfill site will accommodate multiple cells based on projected cell size and regulatory requirements.

Alternatives evaluated during the solid waste disposal study process included no action; construction and operation of an on-base incinerator, construction and operation of an on-base energy plant; and hauling solid waste off-base for disposal in municipal or private facilities. Eleven on-base sites were evaluated for the placement of the on-base alternatives.

The no action alternative was rejected early in the study process due to the increased potential for adverse environmental impacts from the continued use of an unlined landfill and the violation of state and Federal laws associated with disposal of solid waste.

The on-base incinerator and waste to energy plant had the highest capital costs of the alternatives studied. Except for air quality and ash disposal, environmental impacts would be minor for these alternatives. Both air quality and ash disposal would increase operating cost of these alternatives. With the continuing efforts of MCB Camp Lejeune to reduce and recycle its waste stream, the cost per ton to operate these plants would continue to increase. The prospect of increasing annual operating costs, reduced waste stream, and the need for a hazardous waste landfill for ash disposal significantly reduced the viability of these alternatives and weighed heavily in the elimination of these alternatives from further consideration.

Off-base alternatives, such as private waste disposal facilities and municipal landfills, were rejected due to the long hauling distances involved, or because operators could not commit to accepting MCB Camp Lejeune solid waste for a sufficient period.

Sites for on-base landfill and associated construction were evaluated against engineering and environmental criteria for suitability. The Piney Green Road site was chosen as the preferred site due to ease of construction, isolation from population centers, and minimization of adverse environmental impacts.

The operation of the landfill and construction and demolition debris waste landfill at the Piney Green Road site will provide MCB Camp Lejeune with a system for non-hazardous solid waste disposal. As regulatory requirements demand more reduction and recycling of solid waste products, the life of this site will increase because less material will be placed in the landfill. The extension of the life of the landfill cannot be calculated at this time since changes in laws and regulations regarding solid waste are not known at this time. MCB Camp Lejeune currently has a program in place for source reduction of waste and recycling of waste materials. The recycling of waste materials could include the composting of wastewater sludge along with yard waste, wood waste, and other solid waste materials.

This action will have no impact on ambient air quality or noise levels. No cultural resources listed, or determined eligible for listing, on the National Register of Historic Places will be impacted by any facility constructed for this project. No impacts to state or Federally listed endangered or threatened plant or animal species are expected from construction and operation of the landfill.

Specific measures will be used to control soil movement from construction and operation activities. These measures will include fabric silt fencing, pervious barriers in drainage ways to reduce runoff velocities and retain sediments on site, and the seeding of open areas when construction activities have ceased at that location.

The terrestrial habitat displaced by these facilities is currently used in part for training. No significant adverse effects to environmentally important habitats will occur. These effects have been minimized by the siting decision made during site evaluation and various studies.

About two acres of wetlands are located on the 170 acre site, any impact to these wetlands will not occur until the need arises to open future cells of the landfill. Proper permits will be obtained and mitigation, as required, will be performed prior to disturbing these wetlands.

The proposed action has been evaluated with the respect to environmental and social impacts, as well as access to public information and an opportunity for public participation in the NEPA process as required by Executive Order 12989, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.'' The landfill is consistent with the goals and provisions of the Executive Order.

A Coastal Consistency Determination was prepared for this action and concluded that the action is being conducted in a manner consistent with the enforceable policies of the North Carolina Coastal Zone Management Plan. The North Carolina Division of Coastal Management concurs with this determination.

Preparation of the Environmental Impact Statement began with a public scoping process to identify issues that should be addressed in the document. Involvement was offered through a public announcement of the Notice of Intent to Prepare an Environmental Impact Statement. This Notice was published in the **Federal Register** on April 29, 1992. Scoping letters were sent to 70 addresses. The Notice was also published in the Jacksonville Daily News and the Wilmington Star News on October 11–12, 1992.

The Notice of Availability of the Draft Environmental Impact Statement was published in the **Federal Register** on October 15, 1993. This document was distributed to officials of Federal, state, and local government agencies, citizen groups and associations, public libraries, and other interested parties. The public review period on the Draft Environmental Impact Statement was from October 15, 1993 through November 29, 1993. A public hearing was held at the Jacksonville Senior High School, Jacksonville, North Carolina, on November 16, 1993. A small number of comments were received during the comment period. The comments centered on the alternative analysis, wetland impacts, and landfill design. These comments were addressed in the Final Environmental Impact Statement.

The Notice of Availability of the Final Environmental Impact Statement was published in the **Federal Register** on December 16, 1994. This document was also distributed to officials of Federal, state, and local government agencies, citizen groups and associations, public libraries, and other interested parties.

The Department of the Navy believes there are no outstanding issues to be resolved with respect to this project. Questions regarding the Environmental Impact Statement prepared for this action may be directed to Mr. Robert Warren, Environmental Management Department, MCB Camp Lejeune, NC 28542, telephone (910) 451–5003.

March 27, 1995.

**Elsie L. Munsell,**

*Deputy Assistant Secretary of the Navy (Environmental and Safety).*

[FR Doc. 95–8063 Filed 3–31–95; 8:45 am]

BILLING CODE 3810–FF–M

## CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet April 27-28, 1995, from 9:00 a.m. to 4:00 p.m., on each day at 4401 Ford Avenue, Alexandria, Virginia. These sessions will be closed to the public.

The purpose of this meeting is to conduct policy discussions to prepare a final briefing on naval warfare innovations in the areas of joint operations, information warfare, naval doctrine, and research and development. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: March 28, 1995

*L.R. McNees,*

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 95–8056 Filed 3–31–95; 8:45 am]

BILLING CODE 3810–FF–F

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 17, 1995.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Ahstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 28, 1995.

**Gloria Parker,**

*Director, Information Resources Group.*

### Office of Postsecodary Education

*Type of Review:* Expedited
*Title:* Income Contingent Repayment Plan—Authorization to Release Information
*Frequency:* Annually
*Affected Public:* Individual or households
*Reporting Burden:*
Responses: 300,000
Burden Hours: 60,000
*Recordkeeping Burden:*
Recordkeepers: 0
Burden Hours: 0
*Abstract:* This form will be used by borrowers of defaulted student loans as a repayment option. This form will provide a five year consent to the Internal Revenue Service (IRS) to disclose certain tax information to the Department of Education and program contractors for the purposes of calculating the borrower's monthly repayment. Copies of this instrument can be obtained by calling (202) 260–1837.
*Additional Information:* Clearance for this information collection is requested by April 17, 1995. An expedited review is requested in order to meet the schedule of the program development process with the IRS. Without this expedited review, the schedule for finalized form will be delayed further.

[FR Doc. 95–8029 Filed 3–31–95; 8:45 am]

**BILLING CODE 4000–01–M**

## Federal Interagency Coordinating Council Meeting (FICC)

**AGENCY:** Federal Interagency Coordinating Council, Education.

**ACTION:** Notice of a public meeting.

**SUMMARY:** This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals With Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

**DATE AND TIME:** April 20, 1995, from 1 p.m. to 4:30 p.m.

**ADDRESSES:** Hubert H. Humphrey Building, Room 703A/727A, 200 Independence Avenue SW., Washington, D.C. 20202.

**FOR FURTHER INFORMATION CONTACT:** Connie Garner, U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, D.C. 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

**SUPPLEMENTARY INFORMATION:** The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals With Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to: (1) update the membership on the White House Disability review; and (2) review the early intervention and preschool report from the field.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations

should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, D.C. 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

**Howard R. Moses,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 95–8023 Filed 3–31–95; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Environmental Management Site Specific Advisory Board, Nevada Test Site; Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

**DATE AND TIME:** Wednesday, April 12, 1995: 5:30 p.m.–10 p.m.

**ADDRESSES:** Holiday Inn Crowne Plaza, 4255 South Paradise Road, Las Vegas, Nevada.

**FOR FURTHER INFORMATION CONTACT:** Kevin Rohrer, U.S. DOE, Nevada Operations Office, AMEM, P.O. Box 98518, Las Vegas, NV 89193–8518, ph. 702–295–0197, fax 702–295–1810.

**SUPPLEMENTARY INFORMATION:** Purpose of the Committee: The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda:

Wednesday, April 12, 1995

5:30 p.m.—Call to Order, Review of Agenda, Minutes Acceptance, Financial Report, Correspondence, Reports from Committees, Delegates and Representatives, Unfinished Business, New Business, Evaluation of Board and Environmental Restoration and Waste, Management Programs, Announcements

10 p.m. Adjournment.

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting Wednesday, April 12, 1995.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on March 29, 1995.

**Rachel Murphy Samuel,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 95–8109 Filed 3–31–95; 8:45 am]

BILLING CODE 6450–01–P

## Bonneville Power Administration

### Notice of Intent to Prepare an Environmental Impact Statement, Notice of Floodplain and Wetlands Involvement and Notice of Scoping Meetings for the Hood River Fisheries Restoration Project

**AGENCY:** Boneville Power Administration (BPA), Department of Energy (DOE).

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS), and conduct scoping meetings and notice of floodplain and wetlands involvement.

**SUMMARY:** Today's notice announces BPA's intention to prepare an EIS on actions to protect and improve anadromous salmonid populations in the Hood River Basin. These actions are proposed to mitigate the losses of fish and wildlife associated with the construction and operation of Federal hydro-power facilities in the Columbia River Basin. These actions are expected to protect and improve the status of native stocks of salmonids in the Hood River and Columbia River Basin, establish a viable spring chinook population in the Hood River Basin, and protect, to the extent practicable, other aquatic and terrestrial resources in the Hood River Basin, consistent with tribal treaty rights, Federal environmental legislation, and the fish and wildlife management objectives of the confederated Tribes of the Warm Springs Indian Reservation (Tribes), and the State of Oregon. In addition to protecting and improving salmonid populations, these actions would also provide a sustainable Indian and non-Indian harvest of salmon and steelhead. The Tribes and the State of Oregon, Department of Fish and Wildlife, will be cooperating agencies and will participate in the development of the EIS. This action may involve floodplain and wetlands located in Hood River County, Oregon.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment and a floodplain statement of findings will be included in the EIS being prepared for the proposed project in accordance with NEPA.

**DATES:** BPA has established a 45-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. Written comments are due to the address below no later than May 21, 1995.

Comments may also be made at an open house technical scoping meeting for Federal, State and interested parties on April 11, 1995, at the Bonneville Power Administration, 905 NE 11th, Room 106, Portland, Oregon, from 1:00 PM to 3:00 PM; an open house public scoping meeting on April 12, 1995, at the Yaucoma Buildings, 902 Wasco, Hood River, Oregon, from 6:30 pm to 8:30 pm; and an open house scoping

meeting on April 13, 1995, at the Warm Springs Community Center, Social Hall, 2200 Hollywood Blvd., Warm Springs, Oregon, from 6:00 pm to 8:00 pm. Written information also will be available, and BPA staff will answer questions and accept oral and written comments.

When completed, the Draft EIS will be circulated for review and comment, and BPA will hold public comment meetings for the Draft EIS. BPA will consider and respond to comments received on the Draft EIS in the Final EIS.

**ADDRESSES:** BPA invites comments and suggestions on the proposed scope of the Draft EIS. Send comment letters and requests to be placed on the project mailing list to the Public Involvement and Information Manager, Bonneville Power Administration-CKP, PO Box 12999, Portland, Oregon 97212. The phone number of the Public Involvement and Information Office is 503–230–3478 in Portland; toll-free 1–800–622–4519 outside of Portland.

**FOR FURTHER INFORMATION CONTACT:** Tom Morse-EWN, Bonneville Power Administration, PO Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–3694, fax number 503–230–4564.

**SUPPLEMENTARY INFORMATION**

## Proposed Action

BPA proposes to initiate actions to protect, enhance, and mitigate fish resources in the Hood River basin impacted by the construction and operation of Columbia River hydroelectric projects as defined by section 7.4L2 of the 1994 Columbia River Basin Fish and Wildlife Program in accordance with the Pacific Northwest Electric Power Planning and Conservation Act of 1980.

*Specific Goals of the Project Are*

1. Re-establish a spring chinook population in the Hood River Basin.
2. Improve native winter and summer steelhead populations in the Hood River Basin.
3. Achieve goals 1 and 2 in a manner that protects and improves, where practicable, habitat for other aquatic and terrestrial species in the Hood River Basin.
4. Contribute to tribal and non-tribal fisheries, ocean fisheries, and the Northwest Power Planning Council's interim goal of doubling salmon runs.

*Alternatives Proposed for Consideration*

Most alternatives would use one or more of the following mitigation techniques:

(1) A hatchery program (continued planting of hatchery reared fish in a stream to provide harvest opportunities).

(2) A supplementation program (use of hatchery reared fish to maintain or increase natural production of target species where it is inadequate to meet management objectives, while protecting system diversity and genetic character of all populations).

(3) Habitat improvement (alteration of existing habitat to improve its ability to support fish).

Alternative #1: Re-establish, or re-build naturally sustaining anadromous salmonid runs in the Hood River Basin via a combination of hatchery (see #1 above), supplementation (see #2 above), and habitat improvement actions (see #3 above) that can provide Indian and non-Indian harvest of fish.

Alternative #2: Re-establish, or re-build and sustain populations of anadromous salmonids in the Hood River Basin via a hatchery program that can provide Indian and non-Indian harvest of fish.

Alternative #3: Re-establish, or re-build and sustain populations of anadromous salmonids in the Hood River Basin via a supplementation program that can provide Indian and non-Indian harvest of fish.

Alternative #4: Re-establish, or re-build and sustain populations of anadormonous salmonids in the Hood River Basin via a program of habitat improvements that can provide Indian and non-Indian harvest of fish.

Alternative #5: No Action.

*Identification of Environmental Issues*

The following issues have been identified to be addressed in this EIS:

1. Effectiveness of different fish management techniques.

A. Supplementation and hatchery protocols.

B. Use of out-of-basin stocks.

C. Wild versus hatchery stocks.

D. Disease prevention.

2. Effects on other species in Hood River Basin.

3. Effects on endangered species in Columbia and Hood River Basins.

4. Ability to measure program effects.

5. Indian cultural and treaty concerns.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on March 27, 1995.

**Sue Hickey,**

*Chief Operating Officer.*

[FR Doc. 95–8110 Filed 3–31–95; 8:45 am]

**BILLING CODE 6540–01–P–M**

## Federal Energy Regulatory Commission

**[Docket No. ER93–568–000, et al.]**

## Consolidated Edison Company of New York, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 27, 1995.

Take notice that the following filings have been made with the Commission:

### 1. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–568–000]

Take notice that on February 27, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing additional information concerning two agreements for the interconnection and delivery of energy between the JFK Cogeneration Project and the JFK International Airport.

Con Edison states that a copy of this filing has been served by mail upon KIAC Partners and the Port Authority of New York and New Jersey.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 2. Boston Edison Company

[Docket No. ER94–1135–000]

Take notice that on March 6, 1995, Boston Edison Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 3. Union Electric Company

[Docket No. ER95–744–000]

Take notice that on March 15, 1995, Union Electric Company (UE), tendered for filing an Agreement dated March 10, 1995, between UE and the City of Sikeston, Missouri. UE asserts that the Agreement provides for the sale of Maintenance Energy by UE to the Department of Municipal Utilities, Sikeston, Missouri for the period March 17, 1995 to April 14, 1995.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 4. Power Smart, Inc.

[Docket No. ER95–751–000]

Take notice that on March 15, 1995, Power Smart, Inc. (PSI) tendered for filing a Petition for Waivers, Blanket Approvals, Disclaimer of Jurisdiction and Order Approving Rate Schedule. PSI requests approval of its initial rate schedule, to be effective as soon as possible.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**5. Duke Energy Marketing Corp.**

[Docket No. ER95–755–000]

Take notice that on March 17, 1995, Duke Energy Marketing Corp. (DEMC), tendered for filing its FERC Electric Rate Schedule No. 1 to be effective May 16, 1995, and requested that the Commission waive certain of its regulations and grant blanket approval of future issuances of securities and assumptions of liabilities. DEMC is a subsidiary of Duke Power Company.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

**6. Duke/Louis Dreyfus L.L.C.**

[Docket No. ER95–756–000]

Take notice that on March 17, 1995, Duke/Louis Dreyfus L.L.C. (DLD), tendered for filing its FERC Electric Rate Schedule No. 1 to be effective May 16, 1995 and requested that the Commission waive certain of its regulations and grant blanket approval with respect to the issuance of securities and assumption of obligations or liabilities.

DLD was formed by Duke Energy Marketing Corp., a third-tier subsidiary of Duke Power Company, and Louis Dreyfus Electric Power Inc.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

**7. Central Hudson Gas and Electric Corporation**

[Docket No. ER95–757–000]

Take notice that on March 17, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement for (Commission) between CHG&E and New York Power Authority. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

**8. Louis Dreyfus Electric Power Inc.**

[Docket No. ER95–758–000]

Take notice that on March 17, 1995, Louis Dreyfus Electric Power Inc. (LDEP), tendered for filing revisions to its FERC Electric Rate Schedule No. 1 and notified the Commission of a change in status.

The revision and change in status result from the formation by LDEP and Duke Energy Marketing Corp., a third-tier subsidiary of Duke Power Company, of a joint venture to market power.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

**9. Niagara Mohawk Power Corporation**

[Docket No. ER95–759–000]

Take notice that on March 17, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Citizens Power and Light Corporation (CPL) dated January 25, 1995 providing for certain transmission services to CPL.

Copies of this filing were served upon CPL and the New York State Public Service Commission.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

**10. Duke Power Company**

[Docket No. ER95–760–000]

Take notice that on March 17, 1995, Duke Power Company, tendered for filing its FERC Electric Rate Schedule No. 1 to be effective May 16, 1995 and requested that the Commission waive certain of its regulations and grant blanket approval of future issuances of securities and assumptions of liabilities.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

**11. New England Power Company**

[Docket No. ER95–761–000]

Take notice that on March 17, 1995, New England Power Company (NEP), tendered service agreements with and certificates of concurrence from Maine Public Service under NEP's Tariff 5 and Tariff 6.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

**12. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)**

[Docket No. ER95–762–000]

Take notice that on March 17, 1995, Northern States Power Company-Minnesota (NSP-M) and Northern States Power Company-Wisconsin (NSP-W), jointly tender and request the Commission to accept two Transmission Services which provide for Limited and Interruptible Transmission Service to Wisconsin Public Service Corporation (WPS).

NSP requests that the Commission accept for filing both Transmission Service Agreements effective on April 1, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreement may be accepted for filing effective on the date requested.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

**13. Massachusetts Electric Company**

[Docket No. ER95–763–000]

Take notice that on March 17, 1995, Massachusetts Electric Company, tendered for filing an amendment and rate change to its FERC Electric Tariff, Original Volume No. 1 for borderline sales.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

**14. Illinois Power Company**

[Docket No. ER95–764–000]

Take notice that on March 20, 1995, Illinois Power Company (IP or the Company), tendered for filing three transmission tariffs; a network integration service tariff; a firm point-to-point transmission service tariff; and a non-firm point-to-point transmission service tariff. The Company proposes that these three tariffs become effective upon acceptance by this Commission.

Copies of this filing have been served on the Illinois Commerce Commission and the current wholesale requirements customers of Illinois Power.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

**15. New England Power Company**

[Docket No. ER95–765–000]

Take notice that on March 20, 1995, New England Power Company (NEP) submitted for filing various Amendments to its Service Agreements with Granite State Electric Company, New Hampshire Electric Cooperative, and the Town of Littleton, New Hampshire under NEP's FERC Electric Tariff, Original Volume No. 1.

NEP requests waiver of the Commission's notice requirements so that the Amendments may become effective on varying dates.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

**16. Potomac Electric Power Company**

[Docket No. ER95–776–000]

Take notice that on March 16, 1995, Potomac Electric Power Company

submitted minor corrections and additions to Schedule 2 to PEPCO's As-Available Power Sales Tariff, increasing certain of the ceiling power sale rates by about 0.1 percent and decreasing others.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. 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, N.E., Washington, D.C. 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 the comment date. 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. 95–8095 Filed 3–31–95; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. ER95–574–000, et al.]**

## Niagara Mohawk Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

March 24, 1995.

Take notice that the following filings have been made with the Commission:

**1. Niagara Mohawk Power Corp.**

[Docket No. ER95–574–000]

Take notice that on March 7, 1995, Niagara Mohawk Power Corporation tendered for filing an amendment in the above-referenced docket.

*Comment date:* April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

**2. Arizona Public Service Co.**

[Docket No. ER95–729–000]

Take notice that on March 10, 1995, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entity:

**Power Exchange Corporation**

A copy of this filing has been served on the above listed entity and the Arizona Corporation Commission.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**3. New England Power Co.**

[Docket No. ER95–730–000]

Take notice that on March 13, 1995, New England Power Company, tendered for filing a transmission contract for service to the Enron Power Marketing, Inc.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**4. Central Illinois Power Service Co.**

[Docket No. ER95–731–000]

Take notice that on March 13, 1995, Central Illinois Power Service Company (CIPS), submitted two Service Agreements, dated February 1, 1995 and February 22, 1995, establishing Electric Clearinghouse, Inc. and Wisconsin Electric Power Company, respectively, as customers under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of March 1, 1995, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Electric Clearinghouse, Inc. and Wisconsin Electric Power Company and the Illinois Commerce Commission.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**5. Central Hudson Gas & Electric Corp.**

[Docket No. ER95–733–000]

Take notice that on March 13, 1995, Central Hudson Gas & Electric Corporation (Central Hudson), tendered for filing a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated February 28, 1995 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $3,340.42 to $3,228.08 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, a decrease in the monthly Transmission Charge from $5,605.21 to $4,235.78 in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from $4,769.50 to $4,931.66 in accordance with Article IV.2 of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice requirement of Section 35.3 of the Commission's Regulations to permit this proposed increase to become effective January 1, 1995.

Copies of filing by Central Hudson were served upon: New York State Electric and Gas Corporation, P. O. Box 3607, Binghamton, NY 13902–3607.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**6. Central Maine Power Co.**

[Docket No. ER95–735–000]

Take notice that on March 13, 1995, Central Maine Power Company (CMP), tendered for filing a Power Sales Agreement for firm requirements wholesale power service to Houlton Water Company, dated December 22, 1994.

CMP has served a copy of the filing on the affected customer and on the Maine Public Utilities Commission.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**7. Wisconsin Power and Light Co.**

[Docket No. ER95–736–000]

Take notice that on March 14, 1995, Wisconsin Power and Light Company (WP&L), submitted an abbreviated rate filing to amend WP&L's rates for coordination sales, as permitted by the Commission's ''Policy Statement and Interim Rule Regarding Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates'' (Interim Rule). WP&L proposes to include the incremental cost of sulfur dioxide emission allowances in coordination rates for those rates which already provide for the recovery of other variable costs on an incremental basis.

As contemplated by the Interim Rule, WP&L requests an effective date of January 1, 1995 and, accordingly, requests waiver of the Commission's notice requirements. WP&L agrees that revenues collected with respect to allowance-related charges, assessed between January 1, 1995 and the date the Commission issues an order accepting this filing without investigation or hearing, will be subject to refund.

Copies of this filing have been served upon all of WP&L's coordination sales service customers and the Public Service Commission of Wisconsin.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**8. Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc.**

[Docket No. ER95–740–000]

Take notice that on March 10, 1995, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. (Montana-Dakota), tendered for filing pursuant to § 205 of the Federal Power Act and Part 35 of the Commission's

regulations, Supplement No. 2 to Joint Transmission Facility Agreement between Montana-Dakota and Mid-Yellowstone Electric Cooperative, Inc. (Mid Yellowstone).

Montana-Dakota asserts that the filing has been served on Mid-Yellowstone and on interested state regulatory commissions.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**9. Vermont Electric Power Co., Inc.**

[Docket No. ER95–741–000]

Take notice that on March 14, 1995 Vermont Electric Power Company, Inc. (VELCO), tendered for filing a Supplement (the Supplement) to its 1991 Transmission Agreement, Rate Schedule No. 246. The Supplement defines interface and makes provision for access to uncommitted transmission capacity on limited interface available to all VTPs on a nondiscriminatory basis.

VELCO requests that the rate change become effective on May 1, 1995. VELCO states that it has served copies of its filing on the effected customers and the Vermont Department of Public Service.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**10. Boston Edison Co.**

[Docket No. ER95–742–000]

Take notice that on March 15, 1995, Boston Edison Company (BECo) tendered for filing a Service Agreement and Appendix A for Citizens Power & Light Corporation for the sale and/or exchange of power from time to time pursuant to BECo's Electric Tariff, Original volume No. 6. BECo requests that this Service Agreement and Appendix A become effective on February 24, 1995.

*Comment date:* April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

**11. Boston Edison Co.**

[Docket No. ER95–743–000]

Take notice that on March 15, 1995, Boston Edison Company (BECo) tendered for filing a Service Agreement and Appendix A for InterCoast Marketing Company for the sale and/or exchange of power from time to time pursuant to BECo's Elecric Tariff, Origional Volume No. 6. BECo requests that this Service Agreement and Appendix A become effective on February 24, 1995.

*Comment date:* April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

**12. Boston Edison Co.**

[Docket No. ER95–745–000]

Take notice that on March 15, 1995, Boston Edison Company (BECo) on March 15, 1995, tendered for filing a Service Agreement and Appendix A for Long Island Lighting Company for the sale and/or exchange of power from time to time pursuant to BECo's Electric Tariff, Original Volume No. 6. BECo requests that this Service Agreement and Appendix A become effective on February 24, 1995.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**13. Montaup Electric Co.**

[Docket No. ER95–746–000]

Take notice that on March 15, 1995, Montaup Electric Company filed an executed service agreement between itself and Rainbow Energy Marketing Corporation for transmission service under Montaup's FERC Electric Tariff, Original Volume No. II. The service agreement provides that it will become effective as of April 15, 1995. Montaup requests waiver of the 60-day notice requirement so that the agreement may become effective on that date.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**14. Northeast Utilities Service Co.**

[Docket No. ER95–752–000]

Take notice that on March 16, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing, a Service Agreement with Electric Clearinghouse Inc. (ECI) under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed ECI.

NUSCO requests that the Service Agreement become effective on March 1, 1995.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**15. Atlantic City Electric Co.**

[Docket No. ER95–753–000]

Take notice that on March 16, 1995, Atlantic City Electric Company (ACE) tendered for filing an amendment to its Interconnection Agreement with the City of Vineland, New Jersey (Vineland). ACE requests that the amendment be accepted to become effective as of March 17, 1995.

A copy of the filing has been served on Vineland and the New Jersey Board of Regulatory Commissioners.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**16. New York State Electric & Gas Corp.**

[Docket No. ER95–754–000

Take notice that on March 16, 1995, New York State Electric & Gas Corporation (NYSEG) tendered for filing as an initial rate schedule, an agreement with Green Mountain Power Corporation (GMPC). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to GMPC and GMPC will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on March 17, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and GMPC.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**17. Texaco Refining and Marketing Inc.**

[Docket No. QF95–19–000]

On January 17, 1995, and March 21, 1995, Texaco Refining and Marketing Inc. (Texaco) tendered for filing two supplements to its filing in this docket.

These supplements pertain to ownership, technical and operational aspects relating to the facility. No determination has been made that the submittal constitutes a complete filing.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. 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, N.E., Washington, D.C. 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 the comment date. 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. 95–8035 Filed 3–31–95; 8:45 am]

BILLING CODE 6717–01–P

## Federal Energy Regulatory Commission

**[Project No. 9948–000]**

## Public Utility District No. 1 of Jefferson County, Washington, and City of Tacoma, Washington; Notice of Intent To Prepare An Environmental Impact Statement and Conduct Public Scoping Meetings

March 28, 1995.

The Federal Energy Regulatory Commission (Commission) has received an application for license to construct the proposed Elkhorn Hydroelectric Project No. 9948. The project would be located in the Olympic National Forest on the Dosewallips River approximately 6 miles west of the City of Brinnon, Jefferson County, Washington.

The Commission's staff has determined that licensing this project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an Environmental Impact Statement (EIS) for the Elkhorn Hydroelectric Project in accordance with the National Environmental Policy Act.

The EIS will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review to all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

### Scoping Meetings

Two scoping meetings will be conducted. A scoping meeting oriented toward the public will be conducted on May 3, 1995, from 7:00 p.m. to 10 p.m., at the Brinnon Elementary School, 46 Schoolhouse Road, Brinnon, Washington. The school is located just off the Dosewallips River Road near U.S. Highway 101. A scoping meeting oriented toward the resource agencies will be conducted on May 4, 1995, from 10:00 a.m. to 12:30 p.m., in the Willaby Room, 1835 Black Lake Boulevard, at the Olympia National Forest Headquarters, Olympia, Washington. The headquarters building is located just off U.S. Highway 101 at the Black Lake Boulevard exit.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

To help focus discussion at the meetings, scoping document 1 outlining subject areas to be addressed in the EIS will be mailed to agencies and interested individuals on the Commission's mailing list. Copies of the scoping document will also be available at the scoping meetings.

### Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) determine the relative depth of analysis for issues to be addressed in the EIS; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit all available information from the meeting participants, especially quantified data on site-specific and cumulative impacts on the resources at issue; and (5) listen to statements from experts and the public on issues that should be analyzed in the EIS.

### Procedures

The meetings will be recorded by a court reporter and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings on the Elkhorn Hydroelectric Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EIS.

Participants wishing to make oral comments at the public meetings are asked to keep them to five minutes to allow everyone the opportunity to speak.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, until June 5, 1995.

All written correspondence should clearly show the following caption on the first page: Elkhorn Hydroelectric Project No. 9948.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list.

Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

If you have any questions please contact Thomas Dean at (202) 219–2778.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–8034 Filed 3–31–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP95–265–000, et al.]**

## ANR Pipeline Company, et al.; Natural Gas Certificate Filings

March 24, 1995.

**Take notice that the following filings have been made with the Commission:**

### 1. ANR Pipeline Co.

[Docket No. CP95–265–000]

Take notice that on March 22, 1995, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP95–265–000 a request pursuant to Sections 157.205 and 157.212(a) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212(a)) for authorization to construct and operate an interconnection which will allow a bi-directional flow of natural gas between ANR and the Egan Hub Partners, L.P. (Egan), in Acadia Parish, Louisiana, under the blanket certificate issued in Docket No. CP82–480–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The interconnection (''Egan Interconnection'') will be located in Section 37, T9S, R2W, Acadia Parish, Louisiana. The proposed Egan Interconnection will consist of two 12-inch hot taps into ANR's existing 26-inch mainlines; associated valves, controllers, and flanges; and

approximately ten feet of 12-inch pipeline to tie into Egan's proposed facilities. ANR states that the proposed interconnection will allow Egan to transport natural gas from Egan's proposed natural gas storage facilities located at or near the Evangeline Field, Jennings Salt Dome, Acadia Parish, Louisiana. ANR states that, on February 3, 1994, Egan notified the Commission of its intention to construct facilities, relating to its proposed storage facility, pursuant to Section 311(a)(2) of the Natural Gas Policy Act.

The proposed interconnection will have a maximum capacity of 300 Mmcf/d. ANR states that it has been fully reimbursed for the costs of the facilities at approximately $144,000. ANR asserts that the addition of the interconnection will have no adverse impact on the peak day and annual entitlements of any of ANR's existing customers.

*Comment date:* May 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

**2. Koch Gateway Pipeline Co.**

[Docket No. CP95–269–000]

Take notice that on March 17, 1995, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP95–269–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to modify an existing meter station located in Anderson County, Texas, to permit the delivery of natural gas instead of receipt, under Koch's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch proposes to reverse the flow at the meter station in order to serve Four Square Gas Company (Four Square) on behalf of DeSoto Pipeline Company (DeSoto). It is stated that Koch is authorized to provide a transportation service for DeSoto under the terms of an interruptible transportation agreement dated October 1, 1994, and pursuant to Koch's Rate Schedule ITS. It is asserted that the deliveries made at the revised delivery point would be within DeSoto's certificated entitlement from Koch. It is further asserted that the deliveries would have no impact on Koch's curtailment plan. Koch states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers and that its tariff does not prohibit the proposed modification of facilities. The cost of the modification is estimated at $5,200.

*Comment date:* May 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

**3. Northern Natural Gas Co.**

[Docket No. CP95–270–000]

Take notice that on March 17, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP95–270–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon certain compression, dehydration, and pipeline facilities, all located within Reeves, Pecos, and Ward Counties, Texas by sale to Mobil Producing Texas & New Mexico Inc. (Mobil), all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to sell approximately 39 miles of pipeline with diameters ranging between 8 inches and 24 inches, 3 lateral compressor stations, and 2 dehydration plants to Mobil, for $675,000. This sale would be made in accordance with the provisions of an Asset Purchase Agreement with Mobil dated January 31, 1995. Northern mentions that these facilities were constructed as gas supply facilities under authority granted in Docket Nos. CP67–10, CP68–122, CP74–24, CP76–477, CP81–33–001, CP81–509, and CP82–401.

Northern states that Mobil will be filing a petition for a declaratory order seeking a determination that the conveyed facilities are gathering facilities not subject to the Commission's jurisdiction pursuant to NGA Section 1(b).

*Comment date:* April 14, 1995, in accordance with Standard Paragraph F at the end of this notice.

**4. Mobil Natural Gas Inc.**

[Docket No. CP95–272–000]

Take notice that on March 17, 1995, Mobil Natural Gas Inc. (MNGI), 12450 Greenspoint Drive, Houston, Texas 77060–1991, filed a petition for a declaratory order in Docket No. CP95–272–000, requesting that the Commission declare that the facilities to be acquired from Northern Natural Gas Company are gathering facilities exempt from Commission jurisdiction under Section 1 (b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

MNGI states that it will purchase compression, purification, and pipeline facilities located in Reeves, Pecos, and Ward Counties, Texas. MNGI mentions that these facilities include approximately 39 miles of 8-inch to 24-inch pipeline and appurtenances.

In support of its claim that the primary function of the proposed facilities is gathering, MNGI states the following: (1) all of the facilities are located behind Mobil Corporation's Waha and Coyanosa gas processing plants, (2) these facilities will be used to improve the delivery of locally produced gas to these plants, (3) none of the gas that would flow through these facilities would have been treated or processed, (4) these pipelines are currently being operated at field gathering pressures of 235 pounds per square inch gauge (psig) or less and would be operated below 500 psig at maximum flow rate, (5) the 17 miles of 24-inch Reeves pipeline could be deemed gathering because it is a lateral line constructed solely to connect a gathering system to a mainline.

*Comment date:* April 14, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

**5. Texas Gas Transmission Corp.**

[Docket No. CP95–275–000]

Take notice that on March 20, 1995, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP95–275–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by transfer approximately 45,361 feet of pipeline and associated appurtenances located in Panola County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas proposes to abandon approximately 144 feet of 8⅝-inch pipeline and approximately 45,217 feet of 20-inch pipeline, along with associated appurtenances, originating at the Union Pacific Resources Company (UPRC) operated Carthage Compressor Station and extending to the UPRC operated East Texas Plant, located in Panola County, Texas (20-Inch Pipeline).

Texas Gas states that as a result of changes occurring in Texas Gas's supply arrangements, Texas Gas entered into a lease arrangement in 1972 with Champlin Petroleum Company (Champlin), UPRC's predecessor in interest, whereby Champlin, and ultimately UPRC, used the subject line to move gas received from various producers between UPRC's East Texas Plant and its Carthage Compressor

Station for processing and redelivery to various purchasers.

Texas Gas states that recently, Texas Gas and UPRC have negotiated an agreement to terminate the above-described lease arrangement and, upon receipt of regulatory approval, transfer ownership of the 20–Inch Pipeline from Texas Gas to the UPRC operated East Texas Gas Systems (the Carthage Hub) located at the tailgate of the UPRC East Texas Plant, contingent upon the Carthage Hub receiving a declaratory order from the Commission that such facilities, upon transfer, will constitute nonjurisdictional gathering facilities. Texas Gas states that an application requesting such a declaratory order is to be filed in the near future by the Carthage Hub, a Texas general partnership and an intrastate pipeline.

*Comment date:* April 14, 1995, in accordance with Standard Paragraph F at the end of this notice.

**6. Columbia Gas Transmission Corp.**

[Docket No. CP95–277–000]

Take notice that on March 22, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–277–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate eight new delivery points in West Virginia for its firm transportation customer, Mountaineer Gas Company (MGC), under the blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7(c) 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.

Columbia proposes to construct and operate the new delivery points in Jackson County, Clay County, Kanawha County, Wayne County, and Lincoln County, West Virginia. Columbia states the facilities will be located on Columbia's existing right-of-way which will interconnect with meters MGC will install on the right-of-way to provide service to eight residential customers. Columbia states the firm transportation will be in accordance with Part 284 of the Commission's regulations and Columbia's Rate Schedules FTS and SST.

Columbia estimates the design day quantity will be 12.0 Dth, and the annual quantity will be 1,200 Dth. Columbia states that the quantities to be provided through the new delivery points will be within Columbia authorized level of service, and therefore, there will be no impact on Columbia's existing design day and annual obligations to its customers as a result of this request. Columbia estimates that the cost to install the new taps will be approximately $150 per tap which will be treated as an O&M Expense.

Columbia says it will comply with all of the environmental requirements of Section 157.206(d) of the Commission's regulations prior to the construction of any facilities. 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.

*Comment date:* May 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or 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 applicant to appear or be represented at the hearing.

G. 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. 95–8036 Filed 3–31–95; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. EL95–36–000]**

## Jersey Central Power & Light Company; Notice of Filing

March 28, 1995.

Take notice that on March 23, 1995, Jersey Central Power & Light Company (Jersey Central), filed a Petition for Declaratory Order requesting that the Commission declare invalid the New Jersey PURPA procedure pursuant to which Jersey Central contracted to purchase capacity and energy from the Freehold Cogeneration Associates, L.P. (Freehold) project and, further, declare that the contract is unlawful and void. The project is proposed as a 100 MW gas-fired cogeneration facility to be located in Freehold Township, New Jersey. The Nestle Beverage Company would be the steam host.

Copies of the Petition have been served on Freehold, on C.E. Freehold I, Inc., a general partner, on the New Jersey Board of Public Utilities, and on

the New Jersey Division of Ratepayer Advocate.

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 April 21, 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. 95–8094 Filed 3–31–95; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5180–1]**

### 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 May 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** For further information or a copy call Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR # 1729.01.

**SUPPLEMENTARY INFORMATION:**

### Office of Prevention, Pesticides and Toxic Substances

*Title:* Disposal of Polychlorinated Biphenyls; Proposed Amendments; Related Reporting & Recordkeeping Requirements. (ICR No: 1729.01). This is a request for the approval of burden hours for requirements under section 6(e) of the Toxic Substances Control Act (TSCA). This is a new collection.

*Abstract:* EPA is charged under section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), to regulate the making, disposal, manufacturing, processing, distribution in commerce, and use of PCBs. Since 1978, EPA has promulgated numerous rules addressing all aspects of the life cycle of PCBs as required by the statute. Under the current rulemaking, EPA proposes to amend the PCB regulations to: (1) Provide flexibility in disposal technologies and decontamination procedures; (2) ease the procedures for obtaining EPA approvals; (3) clarify existing regulations; (4) modify the requirements for the use/maintenance, distribution in commerce, and disposal of PCB equipment; and (5) address issues of notification and manifesting of PCB wastes and changes in the operation of commercial storage facilities.

Information required by this amendment includes both reporting and recordkeeping. Reporting includes notifications: to obtain an identification number, to register PCB transformers, to engage in research and development activities, to seek approval of PCB disposal activities, or to exceed the current 1-year storage limitation. Recordkeeping activities include monitoring and recording the transfer, storage and disposal of PCBs/PCB equipment; the processing and distribution in commerce of PCBs; and the decontamination of PCB items.

EPA uses this information to ensure PCBs are managed in an environmentally safe manner and that activities are being conducted in compliance with the PCB regulations.

*Burden Statement:* The public burden for this collection of information is estimated to average 82 hours per respondent to provide data on the manufacture, processing, distribution in commerce, use and disposal of PCBs. Less than 2 percent of the total burden is recordkeeping. These reporting and recordkeeping requirements are needed by EPA to monitor and control the life cycle of PCBs.

*Respondents:* Owners or operators of public warehousing and storage; electric services; sanitary services (incinerators, landfills); steam supply (high-efficiency boilers); administration of environmental quality programs.

*Estimated No. of Respondents:* 100,000.

*Estimated No. of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 8,200,000 hours.

*Frequency of Collection:* On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, (please refer to EPA ICR # 1729.01) to:

Sandy Farmer, EPA ICR # 1729.01, U.S. Environmental Protection Agency, Information Policy Branch–2136, 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: March 27, 1995.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 95–8028 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–F

**[FRL–5182–7]**

### Science Advisory Board; Notification of Three Public Advisory Committee Meeting(s) and Cancellation of One Previously Announced Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that three committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office.

#### 1. Drinking Water Committee

The Drinking Water Committee (DWC) of the Science Advisory Board (SAB) will meet from Thursday, April 20, 1995 through Friday, April 21, 1995 in Rooms 130/138 at the U.S. Environmental Protection Agency's Andrew W. Breidenbach Environmental Research Center, 26 West Martin Luther King Drive, Cincinnati, Ohio, 45268, Telephone: (513) 569–7531. The meeting will convene at 9:00 a.m. and continue until 6:00 p.m. on Thursday, April 20. On Friday, April 21, 1995, the meeting will begin at 8:00 a.m. and adjourn no later than 4:00 p.m.

The purpose of the meeting is to review the Environmental Protection Agency's Five-Year Research Plan for Disinfection Byproducts. Presentations will be made by representatives from the agency's Office of Water and the Office of Research and Development. Background documents to be provided

for this review are available from the program office and not the Science Advisory Board. These documents include:

(a) Draft Report on EPA's 5 year research plan to support DBP related rules;

(b) **Federal Register** Notices of proposed D/DBP rule, Enhanced Surface Water Treatment Rule (ESTWR), and Information Collection Rule (ICR);

(c) Workshop Report and Recommendations for Conducting Epidemiologic Research on Cancer and Exposure to Chlorinated Drinking Water; and

(d) Report of the Panel on Reproductive Effects of Disinfection Byproducts in Drinking Water.

In addition, the Drinking Water Committee will be briefed by the American Water Works Association Research Foundation on their ''Report from Expert Workshop on Microbial and Disinfection By-Product Research Needs''.

The draft charge to the Drinking Water Committee is as follows:

(a) Has EPA identified the correct issues that need to be addressed to support the development of the Enhanced Surface Water Treatment Rule and Stage 2 Disinfectants/Disinfectant Byproducts rule?

(b) Do the research topic areas underway or envisioned under the five year research plan appear to adequately address the issues? Should any other research topic area be funded in lieu of that which is ongoing or planned?

(c) Has EPA given appropriate priorities to the order by which research is to be conducted?

Single copies of the U.S. EPA review materials provided to the Committee may be obtained from Mr. Stig Regli, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4603), 401 M Street, S.W., Washington, D.C. 20460; Telephone: (202) 260–7379. Single copies of the American Water Works Association Research Foundation report may be obtained from, Mr. Richard J. Karlin, Deputy Executive Director, American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, Colorado, 80235–3098; Telephone: (303) 347–6100. There may be a fee for this document.

Copies of these documents are NOT available from the Science Advisory Board Staff. Members of the public desiring additional information about the meeting, including an agenda, should contact Mr. Thomas O. Miller, Designated Federal Official, Drinking Water Committee, Science Advisory Board (1400F), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–2563/6552, fax at (202) 260–7118, or via The INTERNET at: Miller.Tom@EPAMAIL.EPA.GOV.

Members of the public wishing to make an oral presentation at the meeting must contact Mr. Miller no later than noon, Friday, April 14, 1995. The request should identify the name of the individual who will make the presentation, requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalk board, etc.), and an outline of the issues to be addressed. At least 35 copies of the presentation and 35 copies of the visual aids used at the meeting are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. See below for additional information on providing comments to the SAB.

**2. Hazardous Air Pollutant Monitoring Subcommittee**

The Hazardous Air Pollutant Monitoring Subcommittee of the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), will meet April 24–25, 1995 at the Environmental Protection Agency, Environmental Research Center, Conference Room M–130, Corner of Highways 54 and Alexander Drive, Research Triangle Park, NC. The meeting will begin each day at 9:00 a.m. and end no later than 5:00 p.m.

The Subcommittee will review the EPA Office of Research and Development's Proposed Program on Enhanced Monitoring. Copies of the documents to be reviewed are *not* available from the SAB. The March 2, 1995 memorandum containing the full charge and the review documents can be obtained from Dr. Rodney Midgett, Atmospheric Research and Exposure Assessment Laboratory, Environmental Research Center, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Telephone (919) 541–2196. An abbreviated version of the three page tentative charge to this subcommittee follows.

(a) The ''Ambient Air Monitoring Reference and Equivalent Methods'' requirements are contained in 40 CFR, Part 53. The technical framework of the proposed Continuous Emissions Monitoring (CEM) verification may require more flexibility than is currently allowed under 40CFR53. In reviewing the proposed program on enhanced monitoring in light of 50CFR53, what would increase general applicability, modify technical concepts, or otherwise improve the documents?

(b) The field component of the CEM verification program should be conducted at a site which is representative of the industry conditions and over a period of time which adequately tests for process changes and instrument performance. The German TUV field verification program appears to accomplish this. EPA might arrive at a CEM verification program that combines the best features of the 40CFR53 equivalency program and the TUV field verification program. What variables need to be considered in developing the optimal CEM verification program?

(c) Method 301 of Title 40 CFR, Part 63 is a protocol for the ''Field Validation of Pollutant Measurement Methods from Various Waste Media''. Method 301 was written specifically for manual test methods where a discreet sample is collected, usually for analysis at a later time. Therefore, as currently written, the Method 301 Procedures are not applicable for use with CEM data. Thus, many of the concepts of Method 301 need to be modified so that a relationship can be established between the reference test method and the CEM results. The SAB is asked to comment on the nature of modifications that would be reasonable to use.

Any member of the public wishing further information, such as a proposed agenda should contact Mrs. Dorothy Clark, Staff Secretary, Science Advisory Board (1400F), U.S. EPA, Washington, DC 20460, telephone (202) 260–6552 or fax (202) 260–7118. Written comments of any length (at least 35 copies) may be provided up until the meeting. Members of the public who wish to make a brief oral presentation should contact the Designated Federal Official, Mrs. Kathleen Conway by phone (202) 260–2558, or internet CONWAY.KATHLEEN @epamail.epa.gov no later than noon (eastern time) Wednesday April 19 in order to have time reserved on the agenda.

**3. Innovative Technology Subcommittee**

The Innovative Technology Subcommittee of the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), will meet May 2–3, 1995 at the One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC. This meeting will also begin each day at 9:00 a.m. and end no later then 5:00 p.m.

The Subcommittee will discuss the Office of Research and Development's Environmental Technology Innovation and Commercialization Enhancement Program (EnTICE), a technology verification program. Copies of the March 13 draft charge for the review, plus the white paper and attachments describing optional models on which

program development could be based are available from Ms. Crystal Robinson, Office of Environmental Engineering and Technology Demonstration (8301), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C., 20460. Telephone (202) 260–4073.

The draft charge is three pages long. Some background and the primary issues from the charge follow.

(a) EPA (ORD) is formulating a program to verify the cost and performance of innovative environmental technologies. The purpose is to bolster the credibility of deserving technologies to help them enter the marketplace. Credible 3rd party developed and EPA assured data and information is expected to inform the marketplace and the permitting arena so that decision-makers can choose innovative technologies with more confidence.

(b) EPA is interested in the views and advice of the Environmental Engineering Committee in all aspects of the program as planned currently.

(1) Is it practical to target each center to be self-supporting in approximately 3 years? Can industry bear the expense?

(2) How important is it that the verifications carry EPA's ''seal of approval''? Would verifications that don't carry EPA's seal but just that of a 3rd party center have sufficient credibility to open doors in the marketplace and the permitting arena? How important is EPA's oversight in ensuring consistency and rigor across 3rd party centers?

Any member of the public wishing further information, such as a proposed agenda should contact Mrs. Dorothy Clark, Staff Secretary, Science Advisory Board (1400F), U.S. EPA, Washington, DC 20460, telephone (202) 260–6552 or fax (202) 260–7118. Written comments of any length (at least 35 copies) may be provided up until the meeting. Members of the public who wish to make a brief oral presentation should contact the Designated Federal Official, Mrs. Kathleen Conway by phone (202) 260–2558, or internet CONWAY.KATHLEEN@epamail.epa.gov no later than noon (eastern time) Wednesday April 26 in order to have time reserved on the agenda.

### 4. Cancellation of the Environmental Economics Advisory Committee Meeting

The meeting of the Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board which was scheduled to meet on April 27, 1995 at the Holiday Inn Georgetown, 2101 Wisconsin Avenue NW, Washington D.C. 20007, has been cancelled. This meeting had been announced in the **Federal Register** on March 27, 1995. This meeting may be rescheduled at a later date. For further information, please contact Dr. Edward Bender, Designated Federal Official, Environmental Economics Advisory Committee, by telephone at (202) 260–2562, via Internet to bender.edward@epamail.epa.gov, or by facsimile to (202) 260–7118.

### Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: March 28, 1995.

**A. Robert Flaak,**

*Acting Staff Director, Science Advisory Board.*

[FR Doc. 95–8086 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

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**[FRL–5184–4]**

## Voluntary Environmental Self-Policing and Self-Disclosure Interim Policy Statement

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

**ACTION:** Interim policy statement and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) announces and requests comment on an interim policy to provide incentives for regulated entities that conduct voluntary compliance evaluations and also disclose and correct violations. These incentives include eliminating or substantially reducing the gravity component of civil penalties and not referring cases for criminal prosecution where specified conditions are met. The policy also states that EPA will not request voluntary audit reports to trigger enforcement investigations. This interim policy was developed in close consultation with EPA's regional offices and the Department of Justice, and will be applied uniformly by the Agency's enforcement programs.

**DATES:** This interim policy statement is effective as interim guidance 15 days after publication, in order to give the Agency time to coordinate implementation of the policy throughout EPA Headquarters and the Regions. EPA urges interested parties to comment on this interim policy in writing. Comments must be received by EPA at the address below by June 2, 1995.

**ADDRESSES:** Submit three copies of comments to the U.S. EPA Air Docket, Mail Code 6102, 401 M Street, SW, Washington, D.C. 20460, attention: Docket #C–94–01.

**FOR FURTHER INFORMATION CONTACT:** Additional documentation relating to the development of this interim policy is contained in the environmental auditing public docket. Documents from the docket may be requested by calling (202) 260–7548, requesting an index to docket #C–94–01, and faxing document requests to (202) 260–4400. Hours of operation are 8 a.m. to 5:30 p.m., Monday through Friday, except legal holidays. Additional contacts are Geoff Garver or Brian Riedel, at (202) 564–4187.

**SUPPLEMENTARY INFORMATION:**

### I. Background

#### *A. Introduction*

One of the Environmental Protection Agency's most important responsibilities is obtaining compliance with federal laws that protect public health and safeguard the environment. That goal can be achieved only with the voluntary cooperation of thousands of businesses and other regulated entities subject to these requirements. Today, EPA is announcing incentives for those who take responsibility for voluntarily evaluating, disclosing and correcting violations. These incentives, developed after nine months of public meetings and empirical analysis, are set forth in detail below and take effect in 15 days. At the same time, EPA expects to continue a dialogue with stakeholders and consider further refinements to this interim policy. The incentives that EPA is offering fall into three distinct categories.

First, the Agency will completely eliminate gravity-based (or ''punitive'') penalties for companies or public agencies that voluntarily identify, disclose and correct violations according to the conditions outlined in this policy. EPA will also reduce punitive penalties by up to 75% for

companies that meet most, but not all, of these conditions. Second, EPA will not recommend to the Department of Justice that criminal charges be brought against a company acting in good faith to identify, disclose, and correct violations, so long as no serious actual harm has occurred. Finally, the Agency will not request voluntary environmental audits to trigger enforcement investigations.

The incentives offered in this policy have been structured above all to protect human health and the environment. For example, even where the conditions for mitigated enforcement are met, EPA will reserve the right to collect full civil penalties for criminal conduct, violations that present an imminent and substantial endangerment or result in serious actual harm, or repeat violations. Sources will not be allowed to gain an economic advantage over their competitors by delaying their investment in compliance. Nor will EPA hesitate to bring a criminal action against individuals responsible for criminal conduct.

EPA is considering additional incentives for voluntary compliance beyond the benefits offered in the policy today. On April 7, 1995, the Agency will announce 12 Environmental Leadership Program (ELP) pilot projects with companies and public agencies to test criteria for auditing and certification of voluntary compliance programs. If successful, standards developed through Environmental Leadership could lead to reduced inspections and public recognition for companies or agencies with state-of-the-art compliance programs. In keeping with the President's announcement on March 16, 1995, EPA also will shortly be announcing additional compliance incentives for small businesses.

The Agency is especially interested in comments relating to whether this interim policy appropriately defines the criteria for determining whether a self-audit, self-evaluation or disclosure is voluntary; whether the interim policy adequately preserves the Agency's authority to assess a gravity penalty component in appropriate cases; and whether, and according to what criteria, the Agency should consider giving credit against the economic benefit component of a penalty for state-of-the-art environmental management systems.

*B. Public Process*

In May 1994, the Administrator asked the Office of Enforcement and Compliance Assurance to determine whether additional incentives are needed to encourage voluntary disclosure and correction of violations uncovered during environmental audits and self-evaluations.

In developing this interim policy, the Agency held a major two-day public meeting in July 1994 announced in the **Federal Register** on June 20, 1994 (59 FR 31914); published a Restatement of Policies Related to Environmental Auditing in the **Federal Register** on July 28, 1994 (59 FR 38455); considered over 80 written comments submitted to the environmental auditing policy docket; held a focus group meeting in San Francisco on January 19, 1995 with key stakeholders from industry, trade groups, State environmental commissions, State attorneys general offices, district attorneys' offices, environmental and public interest groups, and professional environmental auditing groups; and held a public comment session in San Francisco on January 20, 1995.

In addition to considering opinion from stakeholders, EPA conducted its own analysis of relevant facts. For example, the Agency considered EPA and other Federal policies relating to environmental auditing, self-disclosure, and correction, as well as incentives suggested by State and local policies and legislation, and by applications submitted for the ELP pilot program. The Agency also considered relevant surveys on auditing practices and incentives.

*C. Purpose*

This interim policy is intended to promote environmental compliance by providing greater certainty as to EPA's enforcement response to voluntary self-evaluations, and voluntary disclosure and prompt correction of violations. The policy further provides guidance for States and local authorities in encouraging this behavior among regulated entities.

Federal laws and regulations set minimum standards for protecting human health and achieving environmental protection goals such as clean air and clean water. EPA will continue to uphold these laws through vigorous enforcement actions that appropriately penalize violators. Penalties help ensure a level playing field by ensuring that violators do not obtain an unfair economic advantage over their competitors who made the necessary investment in compliance. Penalties also promote protection of the environment and public health by encouraging adoption of pollution prevention and recycling practices that limit exposure to liability for pollutant discharges and deterring future violations by the violator and others.

At the same time, the Agency recognizes that we cannot achieve maximum compliance without the cooperation of a regulated community willing to act responsibly by detecting, disclosing, and correcting violations. Already, regulated entities have many compelling incentives to implement environmental management/auditing systems, as noted in EPA's 1986 auditing policy. Indeed, recent surveys show that the vast majority of large companies engage in environmental auditing and/or have environmental management systems in place. Nonetheless, EPA has concluded that the additional incentives in this interim policy will further promote the regulated community's commitment to adopting systems for maximizing compliance.

*D. Principles for Voluntary Compliance*

The interim policy that EPA is announcing today is based on seven principles:

1. Self-policing by regulated entities can play a crucial role in finding, fixing and preventing violations.

2. Violations discovered through self-policing should be disclosed and promptly corrected.

3. Regulated entities that self-police and that voluntarily disclose and self-correct violations in accordance with this policy should be assessed penalties that are consistently and predictably lower than penalties for those who do not.

4. Regulated entities that self-police and voluntarily disclose and self-correct violations in accordance with this policy should also not be recommended for criminal prosecution.

5. Providing predictable incentives for voluntary disclosure and correction of violations identified through self-policing offers a positive alternative to across-the-board privileges and immunities that could be used to shield criminal misconduct, drive up litigation costs and create an atmosphere of distrust between regulators, industry and local communities.

6. EPA should not seek voluntary environmental audit information to trigger an investigation of a civil or criminal violation of environmental laws.

7. To preserve a level playing field, EPA should recover any economic benefit realized from violations of environmental law.

*E. Relationship to Emerging Standards*

EPA also recognizes the development of and growing reliance on international voluntary environmental management standards in the U.S. and other

countries. These standards, if properly crafted and implemented, can provide a powerful tool for organizations to improve their overall compliance with environmental requirements and move beyond compliance through innovative approaches to pollution prevention. In addition to issuing this interim policy, EPA will continue to pursue a dialogue with interested parties and to pilot policy approaches through programs such as the ELP to determine how EPA can make use of and encourage these standards.

**II. Interim Policy**

*A. Definitions*

For purposes of this interim policy, the following definitions apply:

''Environmental auditing'' has the definition given to it in EPA's 1986 policy on environmental auditing, i.e. ''a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements.''

''Environmental audit report'' means all documentation of information relating to an environmental audit, but not including the factual information underlying or testimonial evidence relating to such information.

''Regulated entity'' means any entity, including a federal, state, and municipal facility, regulated under the federal environmental laws that EPA administers.

''Self-evaluation'' means an assessment, not necessarily meeting all the criteria of a full environmental audit, by a regulated entity of its compliance with one or more environmental requirements.

''Voluntary'' means not required by statute, regulation, permit, order, or agreement.

*B. Conditions*

The conditions for reducing civil penalties and not making criminal referrals in accordance with Sections II.C. and II.D. of this interim policy are as follows:

1. *Voluntary self-policing.* The regulated entity discovers a violation through a voluntary environmental audit or voluntary self-evaluation appropriate to the size and nature of the regulated entity; and

2. *Voluntary disclosure.* The regulated entity fully and voluntarily discloses the violation in writing to all appropriate federal, state and local agencies as soon as it is discovered (including a reasonable time to determine that a violation exists), and prior to (1) the commencement of a federal, state or local agency inspection, investigation or information request; (2) notice of a citizen suit; (3) legal complaint by a third party; or (4) the regulated entity's knowledge that the discovery of the violation by a regulatory agency or third party was imminent; and

3. *Prompt correction.* The regulated entity corrects the violation either within 60 days of discovering the violation or, if more time is needed, as expeditiously as practicable; and

4. *Remediation of imminent and substantial endangerment.* The regulated entity expeditiously remedies any condition that has created or may create an imminent and substantial endangerment to human health or the environment; and

5. *Remediation of harm and prevention of repeat violations.* The regulated entity implements appropriate measures to remedy any environmental harm due to the violation and to prevent a recurrence of the violation; and

6. *No lack of appropriate preventive measures.* The violation does not indicate that the regulated entity has failed to take appropriate steps to avoid repeat or recurring violations; and

7. *Cooperation.* The regulated entity cooperates as required by EPA and provides such information as is reasonably necessary and required by EPA to determine applicability of this policy. Cooperation may include providing all requested documents and access to employees and assistance in any further investigations into the violation.

Where appropriate, EPA may require that to satisfy any of these conditions, a regulated entity must enter into a written agreement, administrative consent order or judicial consent decree, particularly where compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required.

*C. Reduce Civil Penalties for Voluntarily Disclosed and Promptly Corrected Violations*

1. Incentive

Regulated entities will be eligible for the following reductions in civil penalties:

a. EPA will eliminate all of the gravity component of the penalty for violations by regulated entities that meet conditions 1 through 7 outlined in Section II.B., except for violations involving (i) criminal conduct by the regulated entity or any of its employees, or (ii) an imminent and substantial endangerment, or serious actual harm, to human health or the environment.

b. EPA may mitigate up to 75% of the unadjusted gravity component of the penalty, taking into account any of conditions 1–7 in Section II.B. that are met, in the following cases:

(i) cases in which most but not all of the conditions in Section II.B. are met; or

(ii) cases involving an imminent and substantial endangerment, but not serious actual harm, in which all the conditions in Section II.B. are met; or

(iii) cases involving the disclosure of criminal conduct in which all the conditions in Section II.B. are met.

c. EPA will retain its full discretion to recover any economic benefit gained as a result of noncompliance to preserve a ''level playing field'' in which violators do not gain a competitive advantage through noncompliance. However, EPA may forgive the entire penalty for violations which meet conditions 1 through 7 outlined in Section II.B. and, in EPA's discretion, do not merit any penalty due to the insignificant amount of any economic benefit.

2. Discussion

a. Providing a clear and significant reduction in civil penalties for companies that assume responsibility for finding, disclosing and correcting violations will create a strong incentive for regulated entities to prevent or fix violations before EPA expends enforcement resources. The policy states clearly the conditions under which EPA will forgive all or part of the gravity component of a penalty for voluntary disclosure and correction;

b. The policy appropriately preserves the concept of recovering economic benefit, except where it is insignificant, as recommended by a broad spectrum of commenters, including industry commenters;

c. Retaining EPA's discretion to collect the gravity component of the penalty in appropriate cases, such as where a violation involves criminal conduct, or imminent and substantial endangerment, will help to deter the most egregious environmental violations. At the same time, by preserving flexibility to reduce the gravity element by up to 75% for good faith efforts to disclose and promptly comply even in those cases, the policy will retain an appropriate compliance incentive.

*D. Limit Criminal Referrals for Voluntary Disclosure and Correction of Violations*

1. Incentive

EPA will not recommend to the Department of Justice that criminal

charges be brought against a regulated entity where EPA determines that conditions 1–7 in Section II.B. above for reduction of civil penalties are met, and the violation does not demonstrate or involve (1) a prevalent corporate management philosophy or practice that concealed or condoned environmental violations; (2) high-level corporate officials' or managers' conscious involvement in or willful blindness to the violation; or (3) serious actual harm to human health or the environment. This policy does not apply to criminal acts of individual managers or employees. Where EPA determines pursuant to this Section that a criminal referral to the Department of Justice is unwarranted, EPA may nonetheless proceed with civil enforcement in accordance with Section II.C. of this policy or other applicable enforcement response and penalty policies.

2. Discussion

The policy will promote candid and thorough self-policing by providing greater certainty as to how EPA will exercise its criminal investigative discretion to encourage voluntary disclosure and prompt correction by regulated entities.

*E. Eliminate Routine Requests for Audit Reports in Pre-Enforcement Proceedings*

1. Incentive

EPA will not request a voluntary environmental audit report to trigger a civil or criminal investigation. For example, EPA will not request an audit in routine inspections. Once the Agency has reason to believe a violation has been committed, EPA may seek through an investigation or enforcement action any information relevant to identifying violations or determining liability or extent of harm.

2. Discussion

a. This policy makes clear that EPA will not routinely request audit reports. At the same time, the policy in no way limits the right of regulated entities to claim common law privileges (e.g., attorney-client and work product) as appropriate. EPA believes that this clarification, along with the other incentives in this interim policy, should greatly reduce any perception that environmental audits may be used unfairly in environmental enforcement.

b. With respect to federal facilities, although federal facility environmental audit reports may be accessible to the public under the Freedom of Information Act (FOIA) in certain circumstances, EPA cannot utilize FOIA to request information from other federal agencies. Thus, EPA will apply this policy on requests for audit reports to federal (and state and municipal) facilities the same as it does for other regulated entities.

*F. Applicability*

This interim policy applies to violations under all of the federal environmental statutes that EPA administers and supersedes (unless otherwise noted) any conflicting or inconsistent provisions in the media-specific penalty or enforcement response policies and EPA's 1986 Environmental Auditing Policy Statement. Existing enforcement policies will continue to apply in conjunction with this interim policy, except where inconsistent with this policy. In addition, where appropriate, EPA's Supplemental Environmental Project Policy may at EPA's discretion be applied in conjunction with this policy.

## III. Favor These Incentives Over Broad Privileges and Immunities

This interim policy offers a positive alternative to across-the-board privileges and immunities that could be used to shield criminal misconduct, drive up litigation costs and create an atmosphere of distrust between regulators, industry and local communities.

*A. Discussion*

1. Penalty immunity provisions for voluntary disclosures of violations can give lawbreakers an economic advantage over their law-abiding competitors. It makes sense to give substantial penalty reductions for those who come forward with their violations and promptly correct them, but to maintain a level playing field, the federal and state governments must be able to recoup the economic benefit of violations.

2. A principal rationale for environmental audit privileges and penalty immunities for voluntary disclosures is to reduce the exposure of regulated entities that conduct self-evaluations *and act on the findings by immediately correcting violations*. EPA has addressed this concern with the incentives for disclosure and correction outlined above.

3. Privilege runs counter to efforts to open up environmental decisionmaking and encourage public participation in matters that affect people's homes, workplaces and communities.

4. An environmental audit privilege could be misused to shield bad actors or to frustrate access to crucial factual information.

5. Environmental audit privileges and penalty immunities could encourage increased litigation as opposing lawyers battle over what is privileged or immune from penalties and what is not. Litigation over the scope of the privileges and immunities could burden our already taxed judicial system, drain government and private resources, and in some cases prevent quick action to address environmental emergencies.

6. The Supreme Court has noted, ''privileges are not lightly created nor expansively construed for they are in derogation of the search for the truth.'' *United States* v. *Nixon*, 418 U.S. 683, 710 (1974). Moreover, the self-evaluation privilege has regularly and uniformly been rejected by the courts in cases where documents were sought by a governmental agency.

## IV. Consequences for States

EPA recognizes that states are important partners in federal enforcement, and that it is desirable to create a climate in which states can be innovative. At the same time, EPA is required to establish a certain minimum consistency in federal enforcement, so that the sanctions a business faces for violating federal law do not depend on where the business is located.

Accordingly, to maintain national consistency:

A. EPA will scrutinize enforcement more closely in states with audit privilege and/or penalty immunity laws and may find it necessary to increase federal enforcement where environmental self-evaluation privileges or penalty immunities prevent a state from obtaining:

1. information needed to establish criminal liability;

2. facts needed to establish the nature and extent of a violation;

3. appropriate penalties for imminent and substantial endangerment or serious harm to human health or the environment, or from recovering economic benefit;

4. appropriate sanctions or penalties for criminal conduct and repeat violations; or

5. prompt correction of violations, and expeditious remediation of those that involve imminent and substantial endangerment to human health or the environment.

B. EPA will bring to the state's attention any provisions of state audit privilege and/or penalty immunity statutes that raise any of the concerns outlined above, and will work with the state to address those concerns and ensure that federal requirements are satisfied.

### V. Limitations on Applicability of This Policy

This interim policy sets forth internal guidelines which amend EPA's penalty policies in situations involving voluntary self-policing, disclosure and correction. In conjunction with the applicable penalty policy, these guidelines will aid EPA personnel in proposing appropriate penalties or negotiating settlements in administrative and judicial enforcement actions. The interim policy also serves to structure the Agency's enforcement authority and states the Agency's view as to the proper allocation of its enforcement resources. Deviations from these guidelines, where merited, are authorized so long as the reasons for the deviations are documented.

This interim policy is not final agency action, but is intended solely as guidance. It is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this interim policy or to act at variance with the guidance based on analysis of case-specific facts and circumstances. Application of this policy to the facts of any individual case is at the sole discretion of EPA and is not subject to review by any court. In addition, the policy has no effect on the calculation of any cleanup costs, remedial costs, natural resources damages or emergency response costs associated with a violation. EPA reserves the right to change this interim policy at any time without public notice.

Dated: March 30, 1995.

**Steven A. Herman,**

*Assistant Administrator for Enforcement and Compliance Assurance.*

[FR Doc. 95–8218 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Information Collection Submitted to OMB for Review

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Extension of comment period on proposed revisions to Country Exposure Report (FFIEC 009).

**SUMMARY:** On March 16, 1995, the FDIC requested comment on proposed revisions to the Country Exposure Report (FFIEC 009). The Federal Financial Institutions Examination Council (FFIEC) proposed to implement the report as of March 31, 1995. However, the FFIEC has asked that the comment period be extended to give the public additional time to provide comment. In addition, the implementation date of the proposed revisions to the reporting form will be delayed until not earlier than September 30, 1995, to provide institutions with additional time to modify their systems and to resolve conceptual issues related to the report.

**DATES:** Comments must be received by April 21, 1995.

**OMB REVIEWER:** Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0017, Washington, DC 20503.

**FDIC CONTACT:** Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

**ADDRESSES:** A copy of the submission may be obtained by calling or writing the FDIC contact identified above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact.

**SUPPLEMENTARY INFORMATION:** On March 16, 1995 (60 FR 14285), the FDIC invited comment on proposed revisions to the Country Exposure Report (FFIEC 009). The FFIEC has received a request to extend the comment period and delay the implementation date of the proposed revisions. In view of the significance of the new items that are proposed in the report, the FDIC is extending the comment period to April 21, 1995, and delaying the proposed implementation date to not earlier than September 30, 1995.

Dated: March 29, 1995.

Federal Deposit Insurance Corporation.

**Steven F. Hanft,**

*Assistant Executive Secretary (Administration).*

[FR Doc. 95–8106 Filed 3–31–95; 8:45 am]

BILLING CODE 6714–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

*Name of SEP:* National Institute of Dental Research Special Emphasis Panel—Minority Oral Health Study.

*Dates:* May 2–3, 1995.

*Time:* 9:00 a.m.

*Place:* Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Dr. Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

**Purpose/Agenda**

To evaluate and review grant applications and/or contract proposals.

*Name of SEP:* National Institute of Dental Research Special Emphasis Panel—Research on Pulp Biology.

*Dates:* June 1–2, 1995.

*Time:* 9:00 a.m.

*Place:* Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Dr. Philip Washko, Scientific Review Administration, 4500 Center Drive, Natcher Building, room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

**Purpose/Agenda**

To evaluate and review grant applications and/or contract proposals.

*Name of SEP:* National Institute of Dental Research Special Emphasis Panel—Dentist Scientist Award.

*Dates:* June 5–6, 1995.

*Time:* 9:00 a.m.

*Place:* Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Dr. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

**Purpose/Agenda**

To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: March 28, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–8119 Filed 3–31–95; 8:45 am]

BILLING CODE 4140–01–M

### National Institute of Mental Health; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of one meeting of the

National Institute of Mental Health which was published in the **Federal Register** on March 3, 1995 (60 FR 11976): the Extramural Science Advisory Board, April 24–25, 1995, Conference Room 10, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

The meeting was cancelled due to prior commitments of several members.

Dated: March 28, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–8120 Filed 3–31–95; 8:45 am]

BILLING CODE 4140–01–M

## Ad Hoc Review Committee for the Recombinant DNA Advisory Committee; Notice of Meeting

Notice is hereby given of a meeting of the Ad Hoc Review Committee for the Recombinant DNA Advisory Committee on May 1, 1995, at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m. The meeting will be open to the public to discuss three major topics for review: (1) Domain and mandate of the Recombinant DNA Advisory Committee; (2) composition of the Recombinant DNA Advisory Committee; and (3) Recombinant DNA Advisory Committee's review of human gene transfer protocols. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Suite 323, National Institutes of Health, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: March 28, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–8121 Filed 3–31–95; 8:45 am]

BILLING CODE 4140–01–M

## Division of Research Grants; Notice of Meeting of the Division of Research Grants Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Division of Research Grants Advisory Committee, May 8–9, 1995, Building 31C, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. on May 8 to adjournment on May 9. The topics for the meeting will include, among others, the recommendations of the Clinical Research Study Group and the Survey of Science Workshop. Attendance by the public will be limited to space available.

The Office of Committee Management, Division of Research Grants, Westwood Building, Room 433, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 594–7265, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Westwood Building, Room 449, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 594–7248, will provide substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary at least two weeks in advance of the meeting.

Dated: March 28, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–8122 Filed 3–31–95; 8:45 am]

BILLING CODE 4140–01–M

## Substance Abuse and Mental Health Services Administration

## Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS. (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

**SUPPLEMENTARY INFORMATION:**

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance

testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACCU-LAB, Inc., 405 Alderson St., Schofield, WI 54476, 800–627–8200, (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.).

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300.

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745.

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866.

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016.

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810.

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020.

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917.

CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.).

CORNING Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 800–526–0947, (formerly: Damon Clinical Laboratories, Damon/MetPath).

CORNING MetPath Clinical Laboratories, 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888, (formerly: MetPath, Inc.).

CORNING MetPath Clinical Laboratories, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000 (formerly: MetPath, Inc.).

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science).

CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT)).

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093.

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171.

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468.

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267.

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300, (formerly: Harrison & Associates Forensic Laboratories).

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, 800–444–0106 ext. 650, (formerly: HealthCare/Preferred Laboratories).

Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., NE., Suite 107, Palm Bay, FL 32905, 407–726–9920.

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051.

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961.

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835.

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515.

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213.

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227.

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466.

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587.

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199.

MetPath Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–931–7200 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon).

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512).

National Health Laboratories Incorporated, 2540 Empire Dr., Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627/Inside NC: 800–642–0894.

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522.

National Health Laboratories Incorporated, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100.

National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250.

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361.

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134.

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400.

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352.
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177.
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory).
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627, (formerly: Physicians Reference Laboratory Toxicology Laboratory).
Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272.
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378.
Regional Toxicology Services, 15305 N.E. 40th St., Redmond, WA 98052, 206–882–3400.
Roche Biomedical Laboratories, Inc., 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286.
Roche Biomedical Laboratories, Inc., 69 First Ave., Raritan, NJ 08869, 800–437–4986.
Roche CompuChem Laboratories, Inc., A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984, (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory).
Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263, (Formerly: CompuChem Laboratories, Inc.—Special Division).
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130.
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788.
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800.
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472.
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520.
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904–787–9006, (formerly: Doctors & Physicians Laboratory).
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404–934–9205, (formerly: SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories).
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447, (formerly: SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories).
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176.
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507.
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.).
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191, (formerly: MetWest-BPL Toxicology Laboratory).

No laboratories withdrew from the Program in March.

**Richard Kopanda,**

*Acting Executive Officer Substance Abuse and Mental Health Services Administration.*

[FR Doc. 95–8015 Filed 3–31–95; 8:45 am]

BILLING CODE 4160–20–U

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[PRT–800377]**

### Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

*Applicant:* Loreen Allphin, Biology Department, University of Utah, Salt Lake City, Utah.

The applicant requests a permit to include collect fruits of the Sentry milk-vetch (*Astragalus cremnophalax var. cremnophalax*) and Mancos milk-vetch (*Astragalus humillimus*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

**ADDRESSES:** Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days from the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

**James A. Young,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 95–8073 Filed 3–31–95; 8:45 am]

BILLING CODE 4310–55–M

**[PRT–800458]**

### Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

*Applicant:* Mark D. Hovorka, Department of Biology, York University, North York, Ontario, Canada.

The applicant requests a permit to include take of the lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

**ADDRESSES:** Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days from the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above

office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

**James A. Young,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 95–8074 Filed 3–31–95; 8:45 am]

**BILLING CODE 4310–55–M**

**[PRT–798107]**

## Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*

*Applicant:* Kenneth J. Kingsley, SWCA, Inc., Tucson, Arizona.

The applicant request a permit amendment to include collection of vouchers specimens of Arizona hedgehog cactus (*Echinocereus triglochidiatus arizonicus*) from previously unknown populations for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

**ADDRESSES:** Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.).

**James A. Young,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 95–8076 Filed 3–31–95; 8:45 am]

**BILLING CODE 4310–55–M**

## Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of One Single Family Residence on Lot 14, Block J, 9608 Leaning Rock Circle, Long Canyon, Austin, Travis County, Texas

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

**ACTION:** Notice—Correction.

**SUMMARY:** Larry W. James (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–798674. The applicant has requested that the **Federal Register** notice published on March 16, 1995, be corrected to reflect the correct address. The construction of the one single-family residence will now occur at 9608 Leaning Rock Circle, Lot 14, Block J, Long Canyon, Austin, Travis County, Texas.

**DATES:** Written comments on the application and EA/HCP should be received at the Ecological Services Field Office, Austin, Texas, by no later than April 17, 1995.

**James A. Young,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 95–8075 Filed 3–31–95; 8:45 am]

**BILLING CODE 4310–55–M**

## Minerals Management Service

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the information collection requirements and related explanatory material may be obtained by contacting Dennis Jones at 303–231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project (1010–0090), Washington, DC 20503, telephone 202–395–7340.

*Title:* Royalty Rate Reduction Program for Federal Stripper Oil Properties.

*OMB Approval Number:* 1010–0090.

*Abstract:* To encourage continued production, provide an incentive for enhanced oil recovery projects, discourage abandonment of properties producing less than 15 barrels of oil each well day, and to reduce operator's expenses, the Bureau of Land Management (BLM) has amended regulations at 43 CFR 3103.4–1 to establish the conditions under which an operator of stripper oil property can obtain a reduced royalty rate. Operators are required to provide the royalty rate for each property to the Minerals Management Service, Royalty Management Program (RMP) to ensure that the correct rate is used in RMP financial and production auditing systems.

*Bureau Form Numbers:* MMS–4377.

*Frequency:* Annually.

*Description of Respondents:* Operators of stripper oil properties on Federal lands.

*Estimated Completion Time:* 30 minutes.

*Annual Responses:* 800.

*Annual Burden Hours:* 1,000.

*Bureau Clearance Officer:* Arthur Quintana, (703) 787–1101.

Dated: February 2, 1995.

**Donald T. Sant,**

*Acting Associate Director for Royalty Management.*

[FR Doc. 95–7997 Filed 3–31–95; 8:45 am]

**BILLING CODE 4310–MR–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. TA–201–64]**

## Fresh Winter Tomatoes

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of an investigation under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252) (the Act).

**SUMMARY:** Following receipt of a petition filed on March 29, 1995, on behalf of the Florida Tomato Exchange, Orlando, FL, and the constituent members thereof, (petitioner) the United States International Trade Commission instituted investigation No. TA–201–64 under section 202(b) of the Trade Act of 1974 to determine whether fresh winter tomatoes, provided for in subheadings 0702.00.20 and 0702.00.60 of the Harmonized Tariff Schedule of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.[1]

Further, the petitioner, having indicated that the subject tomatoes are perishable agricultural products that have been the subject of Commission monitoring under section 332(g) of the

[1] For purposes of this investigation, ''fresh winter tomatoes'' is defined as fresh or chilled tomatoes (including but not limited to the varieties known scientifically as *Lycopersicon esculentum and Lycopersicon pyriforme),* excluding cherry tomatoes *(Lycopersicon cerasiforme),* if entered during the period from January 1 through April 30, inclusive, in any year.

Tariff Act of 1930 for more than 90 days, has requested, pursuant to section 202(d) of the Act (19 U.S.C. 2252(d)), that provisional relief be provided through April 30, 1995. Accordingly, as provided for in section 202(d)(1)(C), the Commission will determine, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the above-described tomatoes are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article, and whether either (1) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product, or (2) the serious injury cannot be timely prevented through investigation under section 202(b) and action under section 203. If the Commission makes an affirmative preliminary determination under section 202(d)(1)(C), section 202(d)(1)(E) requires that it find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury.

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 206, subparts A and B (19 CFR part 206).

**EFFECTIVE DATE:** March 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., 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:**

*Participation in the investigation and 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**. Persons wishing to participate in the phase of this investigation regarding provisional relief must file an entry of appearance with the Secretary not later than two (2) days after publication of this notice in the **Federal Register**. The Secretary will prepare a 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.

*Conference on provisional relief and hearings on injury and remedy.*—A staff conference on the question of provisional relief will be held beginning at 9:30 a.m. on April 10, 1995, at the U.S. International Trade Commission Building. A subsequent hearing on injury will be held beginning at 9:30 a.m. on July 6, 1995. In the event that the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, a hearing on the question of remedy will be held beginning at 9:30 a.m. on August 17, 1995. Requests to appear at the conference on provisional relief should be filed in writing with the Secretary to the Commission as far in advance of the conference date as is practicable. Requests to appear at the hearings on injury and remedy should be filed on or before June 19, 1995, and August 11, 1995, respectively.

With regard to the hearing on injury, all persons desiring to appear at the hearings and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 22, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules.

*Written submissions.*—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing preconference briefs on provisional relief is April 6, 1995; the deadline for filing prehearing briefs on injury is June 29, 1995, and that for filing prehearing briefs on remedy, including any commitments pursuant to 19 U.S.C. § 2252(a)(6)(B), is August 10, 1995. The deadline for filing posthearing briefs on injury is July 12, 1995, and that for filing posthearing briefs on remedy is August 24, 1995. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of provisional relief on or before April 6, 1995, pertinent to the consideration of injury on or before July 12, 1995, and pertinent to the consideration of remedy on or before August 24, 1995. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of section 201.6 of the rules.

In accordance with section 201.16(c) of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Limited disclosure of CBI under an administrative protective order (APO) and CBI service list.*—Except as provided below, the Secretary, pursuant to section 206.17(a) of the Commission's rules, will make CBI gathered in this 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**. Authorized applicants may have access to such information nothwithstanding any prior action taken in connection with the phase of this investigation regarding provisional relief. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Persons wishing to obtain confidential business information (CBI) gathered in connection with the provisional relief phase must file an application for APO with the Secretary not later than two (2) days after publication of this notice in the **Federal Register**.

**Authority:** This investigation is being conducted under the authority of section 202 of the Trade Act of 1974. This notice is published pursuant to section 206.3 of the Commission's rules.

Issued: March 30, 1995.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–8223 Filed 3–31–95; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are

grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7304 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

*Extension of a currently approved collection.*

(1) Supplementary Homicide Report.
(2) I–704. Federal Bureau of Investigation, United States Department of Justice.
(3) Primary=State, Local, or Tribal Government. Others=None. This document is needed to collect Age, Sex, Race, ethnic origin and relationship of murder victims; the weapon and motive. Summary statistics are published in the annual report ''Crime in the United States.''
(4) 23,616 annual respondents at 10 minutes per response.
(5) 3,936 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 28, 1995.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 95–8051 Filed 3–31–95; 8:45 am]

BILLING CODE 4410–02–M

## Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

**New Collection**

(1) Request for Payment (COPS Revised H–3).
(2) COPS–006 Office of Community Oriented Policing Services, Office of the Associate Attorney General, United States Department of Justice.
(3) Primary=State, Local, or Tribal Government. The Request for Payment form is to be used by COPS grantees in seeking an advance or reimbursement from their grant for the hiring of new police officers.
(4) 48,000 annual respondents at .6 hours per response.
(5) 38,400 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 28, 1995.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 95–8049 Filed 3–31–95; 8:45 am]

BILLING CODE 4410–21–M

## Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your

intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a currently approved collection.

(1) Number of Full-Time Law Enforcement Employees as of October 31.
(2) 1–711a (City=Green,) 1–711b (County=Blue), 1–711c (Red=Population Centers over 100,000). Federal Bureau of Investigation, United States Department of Justice.
(3) Primary=State, Local, or Tribal Government. Others=None. This document is needed to determine the number of civilian and sworn full-time law enforcement employees in the United States. Summary statistics are published annual in ''Crime in the United States.''
(4) 192,000 annual respondents at 10 minutes per response.
(5) 32,000 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 28, 1995.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 95–8050 Filed 3–31–95; 8:45 am]

**BILLING CODE 4410–02–M**

## Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;
(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) who will be asked or required to respond, as well as a brief abstract;
(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) an estimate of the total public burden (in hours) associated with the collection; and,
(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 AND to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer AND the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, AND to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

**New Collection**

(1) DNA Testing and Typing Capacity Survey: Included in the Solicitation for the Forensic DNA Laboratory Program.
(2) None. National Institute of Justice, United States Department of Justice.
(3) Primary=State, Local, or Tribal Government. This survey will be distributed to state and local governments as part of the solicitation for proposals to develop or improve the capability to analyze DNA in forensic laboratories.
(4) 203 annual respondents at 4 hours per response.
(5) 812 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 28, 1995.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 95–8048 Filed 3–31–95; 8:45 am]

**BILLING CODE 4410–21–M**

## Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the term(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

*Extension of currently approved collection.*

(1) Monthly Return of Arson Offenses Known to Law Enforcement.
(2) I–725. Federal Bureau of Investigation, United States Department of Justice.
(3) Primary=State, Local, or Tribal Government. Others=None. This document is needed to collect information on arson offenses known to law enforcement agencies. Summary statistics are published annually in ''Crime in the United States''.
(4) 192,000 annual respondents at 10 minutes per response.
(5) 32,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 28, 1995.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 95–8052 Filed 3–31–95; 8:45 am]

BILLING CODE 4410–02–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 certification.

**SUMMARY:** The Department of Justice has certified 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).

**EFFECTIVE DATE:** March 29, 1995.

**ADDRESSES:** Inquiries may be addressed to: John Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738.

**FOR FURTHER INFORMATION CONTACT:** John Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 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 (TDD)

**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 CFR 36.601 through 36.608. 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.

On January 12, 1995, the Department published a notice in the **Federal Register** (60 FR 2986) announcing its preliminary determination of equivalency and requesting public comments thereon. The period for submission of written comments ended on March 13, 1995. In addition, the Department held public hearings in Seattle, Washington on January 27, 1995, and in Washington, DC on March 27, 1995.

The Department received six written comments and 17 persons testified at the hearings. Comments and testimony were submitted by building officials, disability-rights advocates, design professionals, and interested individuals, including individuals with disabilities. The Department has read and analyzed each comment, as well as the testimony submitted at the hearings, and has consulted with the Access Board.

The vast majority of comments supported certification of the Washington code. One individual commented that he did not believe the Washington code was equivalent regarding regulation of maximum activating force for door and window hardware. However, close examination of the ADA Standards for Accessible Design reveals that they do not address maximum activating force for such elements. Therefore, the Washington code is, in fact, equivalent in this respect. All the remaining comments supported equivalency and certification.

Based on these comments, the Department has determined that the Washington code is equivalent to the new construction and alterations requirements of title III of the ADA. Therefore, the Department has informed the submitting official of its decision to certify the Washington code and has issued a seal of certification.

### Limitations of Certification

The certification determination is limited to the version of the Washington code, including the amendments and interpretations, that has been submitted to the Department. The certification does not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

The certification does 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 does the certification apply to the Appendix provisions of the Washington code, which are advisory only. Finally the certification does 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.

Dated: March 29, 1995.

**Deval L. Patrick,**

*Assistant Attorney General, Civil Rights Division.*

[FR Doc. 95–8104 Filed 3–31–95; 8:45 am]

BILLING CODE 4410–01–M

## POSTAL RATE COMMISSION

**[Docket No. MC95–1 and Order No. 1049]**

## Mail Classification Schedule, 1995 Classification Reform I; Notice and Order on Filing of Major Revisions to the Domestic Mail Classification Schedule (With Related Postal Rate Changes)

(Issued March 28, 1995)

Notice is hereby given that on March 24, 1995, the United States Postal Service filed a request with the Postal Rate Commission pursuant to section 3623 of the Postal Reorganization Act [39 U.S.C. 3623] for a recommended decision on proposed changes in the domestic mail classification schedule (DMCS). The proposed revisions also entail changes in rates. The Request includes several attachments and is supported by the testimony of 22 witnesses. It is on file in the Commission's docket room and is available for public inspection during regular business hours.

*Nature and extent of proposed changes.* The Service indicates that this proposal is the initial phase of a fundamental structural reform of the longstanding approach to mail classification. It asserts that an extensive review has shown that this type of reform is needed if it is to continue to meet its statutory obligations. Request at 1–2. In particular, the Service maintains that the requested amendments to the DMCS and its attendant rate schedules will further the general policies of efficient postal operations and reasonable rates enunciated in the Postal Reorganization Act, and conform to the criteria of 39 U.S.C. §§ 3622(b) and 3623(c). Id. at 9.

Mail users most directly affected by the revisions included in this phase of the proposed reform are current users of First-Class Mail, regular-rate second- and third-class mail. Also, the DMCS provisions relating to Express Mail and fourth class have been revised. Classification reforms affecting senders of nonprofit mail, parcels and Priority Mail are expected to be filed with the Commission at a later, unspecified time. Id. at 3–4. The proposed revisions entail numerous rate changes; however, the first ounce of First-Class Mail remains unchanged at 32 cents.

Service levels proposed as the basic criterion for mail classification. The Service proposes using the customer's choice of service level as the basic criterion for defining the classes of mail. These service levels, plus an independent grouping for periodicals, would supplant the existing classes of mail, as follows: Expedited Mail for Express Mail; Standard Mail for third- and fourth-class mail; and a Periodicals class for second class. First-Class Mail would continue to be known by that name, but would have two distinct subclasses, as noted below.

Mail preparation proposed as the criteria for subclasses. The Service proposes defining subclasses within the proposed new classes of mail on the basis of the type of mail preparation performed by the customer. Two types of preparation would be recognized under the new structure: that which facilitates the use of advanced technology to accept, process and deliver the mail, and that which allows what the Service refers to as ''the bulk bypass'' of postal operations. Under these criteria, Automation and Retail subclasses of First-Class Mail replace the current regular First-Class Mail and First-Class postal and post cards subclasses. Similarly, Regular, Automation, and Enhanced Carrier Route subclasses of Standard Mail replace the regular-rate bulk third-class mail subclass. Regular and Publications Service subclasses within the new Periodicals class replace the regular-rate second-class mail subclass. Expedited Mail, like the corresponding Express Mail it replaces, is not divided into subclasses.

Principles underlying classification reform proposals. The Service says it has developed seven guiding principles for use in designing specific classification reform proposals. These are: the creation of homogeneous cost- and market-based subclasses; the application of pricing in a more effective manner; the encouragement of low-cost mailstreams; the modernization and standardization of mail entry requirements; the reduction of the impact of mail content in classification; the elimination of unnecessary classifications; and the addition of classifications only where significant market or operational needs exist. Id. at 3.

Effect on postal costs, volumes and revenues; ''contribution neutrality.'' The Service maintains that the proposed rates are designed to recover approximately the same FY 1995 institutional cost contribution from the reformed subclasses as was projected in the Commission's Docket No. R94–1 Opinion and Recommended Decision for their predecessor subclasses for FY 1995. It says that this ''contribution neutral'' approach was selected because this Request was not intended to be a revenue case, nor an opportunity to challenge, change or improve on the Commission's conclusions drawn from the record in Docket No. R94–1. The Service asserts that the rate changes included in this Request are solely for the purpose of applying the pricing factors of the Postal Reorganization Act to the reformed subclasses; it is not seeking to increase or decrease institutional cost contributions beyond the levels recommended by the Commission and approved by the Governors in Docket No. R94–1.

The Service notes that with two exceptions, it has made no methodological changes or departures from the Docket No. R94–1 Recommended Decision in this Request. The exceptions relate to estimates of the costs, volumes and revenues for the new subclasses and the city carrier single subclass stop issue. Id. at 6. With respect to the latter, the Service says that it has included only volume variable city carrier street time costs in the attributable cost base; it has included the remaining costs attributed in the Commission's Docket No. R94–1 Recommended Decision for each relevant existing subclass in the net revenue target for the pertinent group of reform subclasses. Id. The Service also notes that adjustments to the Docket No. R94–1 forecasts for First- and third-class prebarcoded flats have been adjusted, and the base for the prebarcode portion of First-Class letters and cards has been recast to incorporate additional information from mailing statements. Id.

*Organizational and editorial changes in the DMCS.* The Service also proposes conforming organizational changes in the DMCS. Pursuant to these changes, single-piece third-class mail and nonprofit third-class mail would be included in Standard Mail, as would Fourth-class Parcel Post, Bulk Parcel Post, Bound Printed Matter, Special and Library rate subclasses. The current second-class preferred rate classifications for Within County, Nonprofit, Classroom and Science of Agriculture publications would be included in the new Periodicals class. Priority Mail would remain a subclass in First-Class Mail. The Service maintains that no rate changes or substantive classification changes are requested for these existing classifications. The Postal Service also proposes a number of editorial changes to the Special Service Rate and Classification schedules to reflect changes in the names and organization of the restructured classes and subclasses. The Service also proposes consolidating and updating the General Definitions and General Terms and Conditions of the DMCS. *See generally* Request at 7–8.

In conjunction with the proposed classification reform and DMCS reorganization, the Service requests the Commission to recommend editorial changes included in the DMCS provisions and in the Rate Schedules set forth, respectively, as Attachments A and B of its Request. The rate schedules are also reproduced as an attachment to this order. The Service says these changes, designed to streamline and standardize the DMCS, include: renumbering to eliminate the current four-decimal place section numbering structure; standardization of the organizational structure so that related provisions are in the same numbered sections in each classification schedule; inclusion in the text of the reformed subclasses provisions not set forth in footnotes to the rate schedules; consolidation of small sections; elimination of redundant and obsolete material; and use of headings for all sections. Id. at 8–9.

*Public hearings; intervention.* The Commission intends to hold public hearings on the Service's proposed changes. Involvement in these hearings generally takes the form of either full intervention or limited participation. *See* Commission rules 20 and 20a [39 CFR § 3001.20 and 20a]. Commenter status is available for persons wishing to express their views informally, without incurring the obligations that attach to the two other forms of participation. *See* Commission rule 20b [39 CFR § 3001.20b]. Those wishing to be heard in this matter as either a full intervenor or limited participant are directed to file a written notice of intervention identifying the status they intend to assume and affirmatively stating how actively they expect to participate. Limited participants are advised to review recent revisions to Commission rules of practice clarifying their obligation to respond to discovery requests under certain circumstances.

Notices should be sent to the attention of Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW., Washington, DC 20268–0001, on or before April 24, 1995. Commenter status does not require a notice of intervention.

*Representation of the general public.* In conformance with section 3624(a) of title 39, the Commission designates W. Gail Willette, Director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Willette will direct the activities of Commission personnel assigned to assist her and, when requested, will supply their names for the record. Neither Ms. Willette nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and contemporaneous with, service on the Commission of the 24 copies required by section 10(c) of the rules of practice [39 CFR § 30001.10(c)].

*Special rules of practice.* This proceeding will be conducted pursuant to special evidentiary rules of practice set forth as Attachment A. With the exceptions noted below, these special rules are essentially the same as those utilized in Docket No. R94–1. The Presiding Officer may alter these rules for good cause at any subsequent point during this proceeding. Participants are encouraged to carefully review the terms of all the rules, with special attention to the three noted below. Special Rule No. 2C retains the 14-day deadline for filing answers to discovery requests. The Commission notes that this deadline is applicable not only to intervenors and the OCA, but to the Service as well. Special Rule No. 3, relating to service of documents, has been changed to reflect the Commission's recent amendment of rule 12(b). The amendment imposes an affirmative duty upon participants to request service of certain documents. *See* 60 FR 12113 (March 6, 1995).

The text of Special Rule No. 1D relating to designations also has been revised by eliminating a reference that proved confusing in Docket No. R94–1. This revision is not intended to make any substantive change in the rule. In addition to this change, the Commission notes a larger concern based on experience with the rule in Docket No. R94–1. During the course of that proceeding, confusion over the scope and applicability of the designation rule gave rise to extensive counter-designations, motion practice and rulings. This seriously undermined one of the main purposes underlying use of the rule, which is to foster expedition. Absent a better understanding among participants about the purpose of designations and the proffer that must be made to support a motion for their acceptance, the Commission has serious reservations about the rule's continued efficacy. Given this concern, the Commission asks that participants be prepared to address the designation process at the prehearing conference.

*Initial prehearing conference: date, location and agenda.* The Commission will convene a prehearing conference at 9:30 a.m. on Tuesday, April 25, 1995. The conference will be held in the Commission's hearing room at 1333 H Street NW., Suite 300, in Washington, DC. The Commission expects persons attending the meeting to be prepared to discuss procedural and scheduling matters pertinent to the Service's filing, and other issues such as the potential for settlement of any issues or other opportunities for expedition.

In the interest of conducting a comprehensive conference, participants are directed to file a notice of issues they would like to raise for consideration no later than 7 days before the prehearing conference. Suggestions need not be limited to procedural matters, but may include substantive issues to the extent that considering them at this stage may contribute to expedition of the entire proceeding. A final agenda incorporating participants' suggestions will be distributed at the outset of the prehearing conference. The Presiding Officer may schedule additional prehearing conferences if circumstances warrant.

*Other matters.* The Commission intends to complete hearings on the Postal Service's filing and issue its recommended decision and opinion promptly. Although a firm procedural schedule has not been developed at this time, the Commission anticipates conducting hearings during the months of June and September. Parties are advised to plan their business and personal schedules accordingly. The Commission also encourages participants to use informal conferences to resolve as many technical questions about testimony, workpapers and exhibits as possible. In addition, the Commission strongly encourages participants to resolve disputes or concerns between or among themselves, reserving motions invoking the Presiding Officer's involvement (or that of the Commission) for only the most significant issues or intractable disagreements. In furtherance of this policy, the Presiding Officer may require participants to document their attempts at early and informal resolution as a condition of accepting motions for relief.

*Docket room hours of operation.* Documents may be filed with the Commission's docket section Monday through Friday between 8 a.m. to 5 p.m. Questions about docket room operations should be directed to Ms. Peggie Brown at 202–789–6845.

It is ordered:

1. The Commission will sit en banc in this proceeding.

2. Notices of intervention shall be filed no later than April 24, 1995.

3. A prehearing conference will be held on Tuesday, April 25, 1995 at 9:30 a.m. in the Commission's hearing room.

4. Participants are directed to file notices of issues to be addressed at the prehearing conference not later than 7 days prior to the conference.

5. This proceeding will be conducted pursuant to the special rules of practice set out as Attachment A.

6. W. Gail Willette, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public in this proceeding.

7. The Secretary shall cause this Notice and Order to be published in the **Federal Register**.

By the Commission.

**Margaret P. Crenshaw,**

*Secretary.*

## Attachment A—Special Rules of Practice

### 1. Evidence

*A. Case-in-chief*

A participant's case-in-chief shall be in writing and shall include the participant's direct case and rebuttal, if any, to the United States Postal Service's case-in-chief. It may be accompanied by a trial brief or legal memoranda. There will be a stage providing an opportunity to rebut presentations of other participants and for the Postal Service to present surrebuttal evidence.

*B. Exhibits*

Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains or represents. The title may also contain a statement of the purpose for which the exhibit is offered; however, this statement will not be considered part of the evidentiary record. Where one part of a multi-page exhibit is based on another part or on another exhibit, appropriate cross-references should be made. Relevant exposition should be included in the exhibits or provided in accompanying testimony.

*C. Motions to Strike*

Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness. Responses to motions to strike are due within seven days.

*D. Designation of Evidence from other Commission Dockets*

Participants may request that official notice be taken of evidence received in other Commission proceedings. These requests should be made by motion, should explain the purpose of the designation, and should identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. If requests for designations and counter-designations are granted, the moving participant must submit two copies of the approved material to the Secretary of the Commission for inclusion in the record.

Oppositions to motions for designation and/or requests for counter-designations shall be filed within 14 days.

### 2. Discovery

*A. General*

Rules 25, 26 and 27 apply during the discovery stage of this proceeding except when specifically overtaken by these special rules. Questions from each participant should be numbered sequentially, by witness.

The discovery procedures set forth in the rules are not exclusive. Parties are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means.

In the interest of reducing motion practice, parties also are encouraged to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

*B. Objections and Motions to Compel Responses to Discovery*

Upon motion of any participant in the proceeding, the Commission or the presiding officer may compel production of documents or items or compel an answer to an interrogatory or request for admissions if the objection is overruled. Motions to compel should be filed within 14 days of an objection to the discovery request.

Parties who have objected to interrogatories or requests for production of documents or items which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

*C. Answers to Interrogatories*

Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding, and set forth the participant who asked the question and the number and text of the question.

Participants are expected to serve supplemental answers to update or to correct responses whenever necessary, up until the date that answers are accepted into evidence as written cross-examination. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

Participants may submit discovery responses with a declaration of accuracy from the respondent in lieu of a sworn affidavit.

Answers to discovery are to be filed within 14 days of the service of the discovery request. Participants are urged, but not required, to deliver discovery requests by hand to those who are subject to the 14-day deadline.

*D. Follow-up Interrogatories*

Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

*E. Discovery to Obtain Information Available Only from the Postal Service*

Rules 25 through 27 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding with no time limitations. Generally, through actions by the presiding officer, discovery against a party is scheduled to end prior to the receipt into evidence of that party's direct case. An exception to this procedure shall operate when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible up to 20 days prior to the filing date for final rebuttal testimony.

### 3. Service

Interrogatories, objections and answers thereto should be served, in conformance with Rule 12, on the Commission, the OCA (three copies), on the complementary party, and on any

other participant so requesting. Participants will be deemed to have requested service for purposes of these special rules unless they file a document to the contrary with the Commission.

Parties should include informative titles to identify the content of any filing. When possible, the relief requested or the issue addressed should be noted. Transmittal documents should identify the answers or other materials being provided.

**4. Cross-examination**

*A. Written cross-examination*

Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence.

Designations of written cross-examination should be served three or more working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, ''OCA–T1–17 to USPS witness Jones, answered by USPS witness Smith (July 1) as updated (July 21).'' When a participant designates written cross-examination, two copies of the actual documents to be included shall simultaneously be submitted to the Secretary of the Commission.

The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination, alphabetically by participant initially posing the question. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel for a witness may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

*B. Oral cross-examination*

Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Requests for permission to conduct oral cross-examination should be served three or more working days before the announced appearance of a witness and should include (1) specific references to the subject matter to be examined and (2) page references to the relevant direct testimony and exhibits.

Participants intending to use complex numerical hypotheticals or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be provided to counsel for the witness at least two calendar days (including one working day) before the witness's scheduled appearance.

**5. General**

Argument will not be received in evidence. It is the province of the lawyer, not the witness. It should be presented in brief or memoranda. Legal memoranda on matters at issue will be welcome at any stage of the proceeding.

New affirmative matter (not in reply to another party's direct case) should not be included in rebuttal testimony or exhibits.

Cross-examination will be limited to testimony adverse to the participant conducting the cross-examination.

Library references may be submitted when documentation or materials are too voluminous reasonably to be distributed. Each party should sequentially number items submitted as library references and provide each item with an informative title. Parties are to file and serve a separate Notice of Filing of Library Reference(s). Library material is not evidence unless and until it is designated and sponsored by a witness.

**Attachment B**

1. Amend Rate Schedules 500, 501, 502, 503 as follows:

EXPRESS MAIL RATE SCHEDULES 121, 122, AND 123*

[Dollars]

| Schedule 121 | Schedule 122 | Schedule 123 | |
|---|---|---|---|
| Same day airport service | Custom designed | Next day and second day PO to PO | Next day and second day PO to addressee |

[THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THESE SCHEDULES OTHER THAN THE ORGANIZATIONAL CHANGES NOTED ABOVE]

2. Replace Rate Schedule 100 with proposed Rate Schedules 221 and 222.

FIRST-CLASS MAIL RATE SCHEDULE 221 RETAIL SUBCLASS

| | Rate (cents) |
|---|---|
| First Ounce: | |
| Single Piece | 32.0 |
| Presort | 30.0 |
| Additional Ounce | 23.0 |
| Presort Discount for Pieces over 2 Ounces | 4.6 |
| Nonstandard Size Surcharge: | |
| Single Piece | 11.0 |
| Presort | 5.0 |
| Postal and Post Card Discount | 11.0 |

FIRST-CLASS MAIL RATE SCHEDULE 222 AUTOMATION SUBCLASS

| | Rate (cents) |
|---|---|
| First Ounce: | |
| Basic | 27.0 |
| Three-Digit | 25.0 |
| Five-Digit | 23.5 |
| Carrier Route | 23.2 |
| Basic Flats | 29.0 |
| 3/5-Digit Flats | 27.0 |
| Additional Ounce | 23.0 |
| Presort Discount for Pieces over 2 Ounces | 4.6 |
| Nonstandard Size Surcharge | 5.0 |
| Post Card Discount | 9.5 |

3. Amend Rate Schedule 103 as follows:

FIRST-CLASS MAIL RATE SCHEDULE 223 PRIORITY MAIL SUBCLASS*

[THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THIS SCHEDULE OTHER THAN THE ORGANIZATIONAL CHANGES NOTED ABOVE]

4. Amend Rate Schedule 300 as follows:

STANDARD MAIL RATE SCHEDULE 321.1 SINGLE PIECE SUBCLASS

| | Rate (cents) |
|---|---|
| Basic Rate: | |
| One ounce or less. | |
| Not more than two ounces. | |
| Not more than three ounces. | |
| Not more than four ounces. | |
| Not more than five ounces. | |
| Not more than six ounces. | |
| Not more than seven ounces. | |
| Not more than eight ounces. | |
| Not more than nine ounces. | |
| Not more than ten ounces. | |
| Not more than eleven ounces. | |
| Not more than thirteen ounces. | |
| More than thirteen But less than sixteen ounces. | |

STANDARD MAIL RATE SCHEDULE 321.1 SINGLE PIECE SUBCLASS—Continued

| | Rate (cents) |
|---|---|
| [THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THIS SCHEDULE OTHER THAN THE ORGANIZATIONAL CHANGES NOTED WITHIN, INCLUDING THE RELOCATION OF THE FOOTNOTES TO THE CLASSIFICATION SCHEDULE] | |
| Nonstandard Surcharge | |
| Keys and identification devices: | |
| First 2 ounces | |
| Each additional 2 ounces | |

5. Replace Rate Schedule 301 with proposed Rate Schedules 321.2, 321.3 and 321.4.

STANDARD MAIL RATE SCHEDULE 321.2 REGULAR SUBCLASS

| | Rate (cents) |
|---|---|
| Letter Size: | |
| Piece Rate: | |
| Basic | 26.1 |
| 3/5–Digit | 21.9 |
| Destination Entry Discount Per Piece: | |
| BMC | 1.3 |
| SCF | 1.7 |
| Non-Letter Size: | |
| Minimum Per Piece Rate: | |
| Basic | 30.5 |
| 3/5–Digit | 23.7 |
| Destination Entry Discount Per Piece | |
| BMC | 1.3 |
| SCF | 1.7 |
| Pound Rate: | 68.7 |
| Plus Per Piece Rate: | |
| Basic | 16.3 |
| 3/5–Digit | 9.5 |
| Destination Entry Discount Per Pound: | |
| BMC | 6.1 |
| SCF | 8.1 |

STANDARD MAIL RATE SCHEDULE 321.3 AUTOMATION SUBCLASS

| | Rate (cents) |
|---|---|
| Letter Size: | |
| Piece Rate: | |
| Basic Letter | 17.5 |
| 3–Digit Letter | 16.8 |
| 5–Digit Letter | 15.0 |
| Carrier Route Letter | 14.1 |
| Destination Entry Discount Per Piece: | |
| BMC | 1.3 |
| SCF | 1.7 |
| DDU | 2.2 |

STANDARD MAIL RATE SCHEDULE 321.3 AUTOMATION SUBCLASS—Continued

| | Rate (cents) |
|---|---|
| Flat Size: | |
| Minimum Per Piece Rate: | |
| Basic Flat | 23.7 |
| 3/5–Digit Flat | 19.0 |
| Destination Entry Discount Per Piece: | |
| BMC | 1.3 |
| SCF | 1.7 |
| Pound Rate: | 51.0 |
| Plus Per Piece Rate Basic Flat | 13.2 |
| 3/5–Digit Flat | 8.5 |
| Destination Entry Discount Per Pound: | |
| BMC | 6.1 |
| SCF | 8.1 |

STANDARD MAIL RATE SCHEDULE 321.4 ENHANCED CARRIER ROUTE SUBCLASS

| | Rate (cents) |
|---|---|
| Minimum Per Piece Rate: | |
| Basic | 15.5 |
| High Density | 14.8 |
| Saturation | 13.5 |
| Destination Entry Discount Per Piece: | |
| BMC | 1.3 |
| SCF | 1.8 |
| DDU | 2.3 |
| Pound Rate: | 51.0 |
| Plus Per Piece Rate | |
| Basic | 5.0 |
| High Density | 4.3 |
| Saturation | 3.0 |
| Destination Entry Discount Per Pound: | |
| BMC | 6.4 |
| SCF | 8.5 |
| DDU | 11.1 |

6. Amend Rate Schedules 302, 400, 401, 402, 405, and 406 as follows:

Standard Mail Rate Schedule 321.5 Nonprofit Subclass [1]

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Standard Mail Rate Schedules 322.1A, 322.2A Parcel Post and Bulk Parcel Post Subclasses Basic Rates*

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Standard Mail Rate Schedules 322.1B and 322.2B Parcel Post and Bulk Parcel Post Subclasses Destination BMC Rates*

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Standard Mail Rate Schedule 322.3A Bound Printed Matter Subclass Single Piece Rates*

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Standard Mail Rate Schedule 322.3B Bound Printed Matter Subclass Bulk and Carrier Route Presort Rates [1]

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Standard Mail Rate Schedule 323.1 Special Subclass

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Standard Mail Rate Schedule 323.2 Library Subclass

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

7. Replace Rate Schedule 200 with proposed Rate Schedules 421 and 422.

PERIODICALS RATE SCHEDULE 421 REGULAR SUBCLASS

| | Rate (cents) |
|---|---|
| Per Pound: | |
| Nonadvertising portion | 19.4 |
| Advertising portion: | |
| DDU | 21.8 |
| SCF | 23.9 |
| Zone 1 & 2 | 25.9 |
| 3 | 26.8 |
| 4 | 29.4 |
| 5 | 33.2 |
| 6 | 37.2 |
| 7 | 42.0 |
| 8 | 46.2 |
| Science of Agriculture: | |
| DDU, SCF, Zone 1 & 2: The Postal Service does not request any change in these rates | |
| Zone 1 & 2}IN THESE RATES] | |
| Per Piece: Less Nonadvertising Discount of 0.066 Cents for Each 1% of Nonadvertising Content: | |
| Basic | 27.2 |
| 3/5-Digit | 21.7 |
| Carrier Route | 16.6 |
| Discounts: | |
| DDU | 2.1 |
| SCF | 1.1 |
| High Density | 0.7 |
| Saturation | 2.0 |
| Automation Discounts: | |
| From Basic: | |
| Barcoded Letter | 4.6 |
| Barcoded Flat | 3.5 |
| From 3/5-Digit: | |
| Barcoded Letter | 2.9 |
| Barcoded Flat | 2.9 |

PERIODICALS RATE SCHEDULE 422
PUBLICATIONS SERVICE SUBCLASS

| | Rate (cents) |
|---|---|
| Per Pound: | |
| DDU | 10.8 |
| SCF | 12.9 |
| Zone 1 & 2 | 15.0 |
| 3, 4 & 5 | 19.3 |
| 6, 7 & 8 | 31.1 |
| Per Piece: | |
| Basic | 14.7 |
| Carrier Route | 8.3 |
| Discounts: | |
| DDU | 2.1 |
| SCF | 1.1 |

8. Amend Rate Schedules 201, 202, and 203 as follows:

Periodicals Rate Schedule 423.2 Within County

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Periodicals Rate Schedule 423.3 Publications of Authorized Nonprofit Organizations [10]

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Periodicals Rate Schedule 423.4 Classroom Publications [10]

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

9. Amend Rate Schedules SS–4, SS–13 and 1000, by inserting the underlined text and deleting the text set off with brackets, as follows:

SCHEDULE SS–4: CERTIFICATES OF MAILING

| | (Fee in addition to postage) |
|---|---|
| Individual pieces: | |
| Original certificate of mailing for listed pieces of all classes of ordinary mail (per piece) | [THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THESE FEES] |
| Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece) | |
| Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified and COD mail (each copy) | |
| Bulk pieces | |
| Identical pieces of [f]*F*irst-*Class* and [third-]*Single Piece, Regular, Automation, Enhanced Carrier Route, and Nonprofit Standard* [class m]*M*ail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees: | |
| Up to 1,000 pieces (one certificate for total number) | |
| Each additional 1,000 pieces or fraction Duplicate copy | |
| **Schedule SS–13: Parcel Air Lift** | |
| Weight | *Fee* (In addition to [p]*P*arcel [p]*P*ost postage) |
| Up to 2 pounds | [THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THESE FEES] |
| Over 2 up to 3 pounds | |
| Over 3 up to 4 pounds | |
| Over 4 pounds | |
| **Schedule 1000—Fees** | |
| First-Class [p]*P*resorted [m]*M*ailing [f]*F*ee. | [THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THESE FEES] $305.00 [THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THESE FEES] |
| [Second-class]*Periodicals* [mailing] [f]*F*ees:. | |
| A. Original [e]*E*ntry. | |
| B. Additional [e]*E*ntry. | |
| C. Publications Service Entry. | |
| *D.* [Second-class] [r]*R*e-entry [fee]. | |
| E. [Second-class] [r]*R*egistration for [n]*N*ews [a]*A*gents. | |
| [Third-class]*Regular, Automation, Enhanced Carrier Route, and Nonprofit Standard Mail* [b]*B*ulk [m]*M*ailing [f]*F*ee. | |
| [Fourth-class p]*P*arcel [p]*P*ost: [d]*D*estination BMC[/ASF] | |
| [Fourth-class] [s]*S*pecial *Standard* [m]*M*ail [p]*P*resorted [m]*M*ailing [f]*F*ee | |
| Authorization to [u]*U*se [p]*P*ermit [i]*I*mprint | |
| Merchandise [r]*R*eturn (per facility receiving merchandise return labels) | |
| Business [r]*R*eply [m]*M*ail [p]*P*ermit | |

[FR Doc. 95–8107 Filed 3–31–95; 8:45 am]
BILLING CODE 7710–FW–P

**[Docket No. A95–7; Order No. 1050]**

## Toronto, Iowa 52343–0066; (Deb Bartels, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued: March 29, 1995.

Docket Number: A95–7
Name of Affected Post Office: Toronto, Iowa 52343–0066
Name(s) of Petitioner(s): Deb Bartels, et al.
Type of Determination: Closing
Date of Filing of Appeal Papers: March 24, 1995
Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

### The Commission Orders

(a) The Postal Service shall file the record in this appeal by April 10, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

**Margaret P. Crenshaw,**

*Secretary.*

March 24, 1995—Filing of Appeal letter
March 29, 1995—Commission Notice and Order of Filing of Appeal
April 18, 1995—Last day of filing of petitions to intervene [*see* 39 C.F.R. § 3001.111(b)]
April 28, 1995—Petitioners' Participant Statements or Initial Brief [*see* 39 C.F.R. § 3001.115(a) and (b)]
May 18, 1995—Postal Service's Answering Brief [*see* 39 C.F.R. § 3001.115(c)]
June 2, 1995—Petitioners' Reply Brief should Petitioners choose to file one [*see* 39 C.F.R. § 3001.115(d)]
June 9, 1995—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 C.F.R. § 3001.116]
July 22, 1995—Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. § 404(b)(5)]

[FR Doc. 95–8108 Filed 3–31–95; 8:45 am]
BILLING CODE 7710–FW–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–35537; File No. SR–Amex–95–02]**

## Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Minimum Fractional Changes

March 27, 1995.

On January 31, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase from $5 to $10 the price level below which equity securities are traded in sixteenths.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35338 (February 7, 1995), 60 FR 8432 (February 14, 1995). No comments were received on the proposal.

The rule change amends Amex Rule 127 to allow the minimum fractional changes in sixteenths ($.0625) for all securities priced between $.25 and $10. Amex Rule 127 will continue to provide that the minimum fractional change for dealings in securities priced below $.25 will be in thirtyseconds ($.03125), and for securities priced above $10 the minimum fractional change will continue to be in eighths ($.125).[3]

At the time of publication of the Commission release noticing this proposal, the Intermarket Trading System (''ITS'') was not equipped to accommodate trading in sixteenths for stocks priced above $5. However, at the February 1995 meeting of the ITS Operating Committee, the ITS participants approved enhancements to ITS to permit trading in sixteenths for Tape B securities [4] priced under $10. The Amex represents that these system modifications have been made and that the system now is able to accommodate trading all Amex securities priced below $10 in sixteenths.[5]

The Commission finds that the proposed rule change to increase from $5 to $10 the price level below which equity securities are traded in sixteenths is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b) and 11A.[6] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. Additionally, the Commission believes that the proposal is consistent with Section 11A, which requires the Commission to facilitate the establishment of a national market system. Pursuant to Section 11A, a national market system should assure, among other things, fair competition between the exchanges, economically efficient execution of securities transactions and the practicability of brokers executing investors' orders in the best market.

The Commission believes that market quality should be enhanced by applying a minimum fractional change of 1/16, rather than 1/8, to securities selling below $10. The Commission believes that decreasing such trading variations should help to produce more accurate pricing of such securities and can result in tighter quotations. In addition, if the quoted markets are improved by the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240 240.19b–4 (1994).

[3] In 1992, the Commission approved amendments to Amex Rule 127 to provide that securities selling between $.25 and $5 could be traded in sixteenths. *See* Securities Exchange Act Release No. 31118 (August 28, 1992), 57 FR 40484 (September 3, 1992).

[4] The Consolidated Tape, operated by the Consolidated Tape Association (''CTA''), compiles last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. Amex-listed stocks and qualifying regional-listed stocks are reported on CTA Tape B.

[5] The Amex will verify that the other ITS participants have completed any necessary system modifications before trading securities priced between $5 and $10 in sixteenths. *See* letter from Arne G. Michelson, Amex, to ITS Operating Committee, dated March 7, 1995.

[6] 15 U.S.C. 78f(b) and 78k–1 (1988).

reduced minimum tick fluctuations, the change could result in added benefits to the market such as increased liquidity in stocks priced below $10.[7] The Commission believes that decreasing such trading variations should help to produce more accurate pricing of such securities and can result in tighter quotations.

Furthermore, the Amex represents that approximately 60% of all equity securities presently traded on the Amex sell for under $10 per share.[8] The Commission believes that the tighter quotation resulting from trading these securities in sixteenths should provide customers with the most competitive market and the best possible execution of their transactions in securities priced below $10.

In addition, the Commission believes that the proposal should lead to increased competition between the exchanges pursuant to Section 11A of the Act. As noted above, ITS participants will have the capability to trade in sixteenths in Amex-listed securities. By ensuring that all ITS participants can quote in sixteenths, customers should be able to receive a better, more competitive price in securities priced below $10.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–95–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–8089 Filed 3–31–95; 8:45 am]

BILLING CODE 8010–01–M

[7] The rule change is consistent with the recommendation of the Division of Market Regulation (the ''Division'') in its Market 2000 Study, in which the Division noted that the ⅛ minimum variation can cause artificially wide spreads and hinder quote competition by preventing offers to buy or sell at prices inside the prevailing quote. *See* Division of Market Regulation, SEC, *Market 2000: An Examination of Current Equity Market Developments* (January 1994), at 18.

[8] The Amex estimates that the rule change will increase the number of securities traded in sixteenths from 362 securities (approximately 37% of Amex-listed securities) to 589 securities (approximately 60% of Amex-listed securities). These estimates were made by the Exchange as of February 3, 1995.

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1994).

**[Release No. 34–35538; File No. SR–CBOE–95–18]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Fractional Changes for Bids and Offers in Stocks Priced Below $10

March 27, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 1995, 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 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 its rule respecting the permissible fractional changes that may be made for bids and offers in stocks and related instruments that are priced below $10 per share.

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**.

### 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 Section A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule change*

1. Purpose

The proposed rule change increases from $1 to $10 the price level below which stocks or other designated instruments may be traded in sixteenths, *i.e.,* 1/16 of $1 ($.0625). CBOE Rule 30.33, Fractional Changes for Bids and Offers, currently requires bids and offers in stocks (and other instruments that may be traded on the Exchange pursuant to Chapter 30 of the CBOE Rules) with a price of $1 or less to be made at a variation of at least ⅛ of ($.125).[3] Currently, the rule only permits variations of as little as 1/16 of $1 for bids and offers in stocks and other instruments that have a price below $1 but above $.25 per share. Bids and offers in stocks with prices of less than $.25 per share may be varied by as little as 1/32 of $1 per share ($.03125).

The Exchange believes that by increasing the number of stocks and other instruments eligible to be traded in sixteenths, the Exchange will be better able to compete for listings in instruments, such as warrants. In fact, the Exchange's proposal is identical to a proposal of the American Stock Exchange (''Amex''), which recently was approved by the Commission.[4] The Exchange believes that trading in sixteenths will improve the market for securities trading under $10 by promoting greater liquidity and providing for superior executions of retail and professional orders. Also, the proposal is responsible to the recommendations of the Division of Market Regulation in its Market 2000 Study that the exchanges convert to a minimum variation of one-sixteenth as soon as possible.[5]

In 1992, participants of the Intermarket Trading System (ITS'')[6] met to discuss the need to make changes to the ITS to accommodate increased trading of securities priced sixteenths. The Exchange anticipates that further

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] The Commission notes that the CBOE currently does not trade any securities pursuant to Chapter 30 of the CBOE rules except for SuperShares, which are traded in thirtyseconds. Therefore, the Rule change will not impact any transactions presently effected on the Exchange.

[4] See Securities Exchange Act Release No. 35537 (March 27, 1995) (File No. SR–Amex–95–02) (''Amex Order'').

[5] Division of Market Regulation, SEC, Market 2000: An Examination of Current Equity Market Developments (January 1994), at 18 (''Market 2000 Study'').

[6] ITS is a subsystem of the National Market System approved by the Commission pursuant to Section 11A of the Act, 15 U.S.C. § 78k–1 (1988). It facilities intermaket trading in exchange-listed equity securities based on the current quotation information emanating from the linked markets. For a discussion of ITS, see Market 2000 Study, *supra* note 2, at App. II. Participants of ITS include the Amex, Boston Stock Exchange, CBOE, Chicago Stock Exchange, Cincinnati Stock Exchange, New York Stock Exchange, Pacific Stock Exchange, Philadelphia Stock Exchange, and the National Association of Securities Dealers.

consultations will be held between ITS participants to explain to each of them the necessity of making system changes to accommodate the trading through ITS of CBOE instruments priced under $10.[7]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general and with Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation with persons engaged in facilitating and clearing transactions in securities, and to protect investors and public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The 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 Purpose of 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 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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–95–18 and should be submitted by [insert date 21 days from date of publication].

[7] At the February 1995 meeting of the ITS Operating Committee, the ITS participants approved enhancements to ITS to permit trading in sixteenths for Amex-listed securities priced under $10.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the proposed rule change to increase from $1 to $10 the price level below which equity securities may be traded in sixteenths, and at or above which equity securities may be traded in eighths, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b) and 11A.[8] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. Additionally, the Commission believes that the proposal is consistent with Section 11A, which requires the Commission to facilitate the establishment of a national market system. Pursuant to Section 11A, a national market system should assure, among other things, fair competition between the exchanges, economically efficient execution of securities transactions and the practicability of brokers executing investors' orders in the best market.

Although the CBOE currently does not trade any securities that would be affected by the proposal, the rule change to allow trading in sixteenths for securities priced under $10 will make the CBOE's Rule consistent with the recently approved Amex Rule, and will allow the Exchange to trade any future equity listings in sixteenths.

The Commission generally believes that market quality should be enhanced by applying a minimum fractional change of 1/16, rather than 1/8, to securities selling below $10. The Commission believes that decreasing such trading variations should help to produce more accurate pricing of such securities and can result in tighter quotations. In addition, if the quoted markets are improved by the reduced minimum tick fluctuations, the change could result in added benefits to the market such as increased liquidity in stocks priced below $10.[9] The Commission believes that decreasing such trading variations should help to produce more accurate pricing of such securities and can result in tighter quotations.

In addition, the Commission believes that the proposal could lead to increased competition between the exchanges pursuant to Section 11A of the Act. As noted above, ITS participants now have the capability to trade securities priced below $10 in sixteenths.[10] Should the CBOE begin trading equity securities, customers should be able to receive a better, more competitive price in securities priced below $10 if they are quoted in sixteenths.

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 CBOE to permit equities priced below $10 to be traded in sixteenths. Further, the Amex proposal to allow trading in sixteenths for Amex-listed securities priced below $10 was noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it.[11]

*It Is Therefore Ordered,* pursuant to Section 19(b)(2)[12] that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–8090 Filed 3–31–95; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b) and 78k–1 (1988).

[9] The rule change is consistent with the recommendation of the Division of Market Regulation (the ''Division'') in its Market 2000 Study, in which the Division noted that the 1/8 minimum variation can cause artificially wide spreads and hinder prices inside the prevailing quote. *See* Division of Market Regulation, SEC, Market 2000: An Examination of Current Equity Market Developments (January 1994), at 18.

[10] *See* Amex Order, *supra* note 4.

[11] See Securities Exchange Act Release No. 35338 (February 7, 1995), 60 FR 8432 (February 14, 1995) (File No. SR–Amex–95–02).

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

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**[Release No. 34–35544; File No. SR–MSRB–95–02]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business

March 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, notice is hereby

given that on March 23, 1995, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Board. The purpose of the proposed rule change is to provide interpretative guidance concerning rule G–37 on political contributions and prohibitions on municipal securities business. The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under section 19(b)(3)(A) of the Act, which renders the proposal effective upon receipt of this filing by the Commission. 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 Board is filing the proposed rule change to provide interpretative guidance concerning rule G–37 on political contributions and prohibitions on municipal securities business.[1] Proposed new language is in italics.

**Rule G–37 Questions and Answers**

* * * * *

1. *Definition of Municipal Finance Professional: Solicitation of Municipal Securities Business (Rule G–37(g)(iv)(B))*

*Q. Any associated person who solicits municipal securities business is deemed a municipal finance professional under rule G–37. The Board previously noted that ''solicitation'' may encompass a number of activities, including, for example, making presentations of public finance and/or municipal securities marketing capabilities to issuer officials, and engaging in other activities calculated to appeal to issuer officials for municipal securities business, or which effectively do so (MSRB Reports, Vol. 14, No. 5 (Dec. 1994) at 8). If an associated person of a dealer attends a presentation by dealer personnel of public finance capabilities, would this also constitute ''solicitation'' under rule G–37?*

*A: Yes. If an associated person of a dealer attends such a presentation, then he or she is assumed to have solicited municipal securities business and therefore is deemed a municipal finance professional under rule G–37. Accordingly, any contributions given to issuer officials by that person within the last two years could subject the dealer to the rule's two-year prohibition on business with such issuers. For additional guidance in this area, please refer to O&A number 4 in the June 1994 issue of MSRB Reports (Vol. 14, No. 3), CCH Manual paragraph 3681; and Q&A numbers 1, 2 and 3 in the December 1994 issue of MSRB Reports (Vol. 14, No. 5), CCH Manual paragraph 3681.*

2. *Definition of Municipal Finance Professional: Supervisors (Rule G–37(g)(iv)(C))*

*Q: A sales representative at a branch office solicits municipal securities business for the dealer. Such activity results in that person becoming a ''municipal finance professional'' under rule G–37(g)(iv)(B). Would that person's branch manager also be considered a municipal finance professional?*

*A: Yes. Rule G–37(g)(iv)(C) provides that the definition of municipal finance professional includes, among others, any associated person who is both a (i) municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any associated person who solicits municipal securities business (or who is primarily engaged in municipal securities representative activities). If a sales person is soliciting municipal securities business, then the supervisor of that person (i.e., the branch manager) also is included within the definition of municipal finance professional. Prior to the most recent revision to this portion of the definition of municipal finance professional (which was approved on March 6, 1995 in Securities Exchange Act Release No. 34–35446), the definition included any ''direct supervisor'' of any associated person who solicited municipal securities business (or who was primarily engaged in municipal securities representative activities). Under both definitions, branch managers are included within the definition of municipal finance professional in the circumstances described above. For additional information in this area, please refer to MSRB Reports, Vol. 14, No. 4 (August 1994) at 28–29, CCH Manual paragraph 3681.*

* * * * *

## 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 Board 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 Board 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 April 7, 1994, the Commission approved Board rule G–37, concerning political contributions and prohibitions on municipal securities business.[2] Since that time, the Board has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board published three prior notices of interpretation which set forth, in question-and-answer format, general guidance on rule G–37.[3] In prior filings with the Commission, the Board stated that it will continue to monitor the application of rule G–37, and, from time to time, will publish additional notices of interpretations, as necessary.[4] In light of questions recently received from market participants concerning certain provisions of the rule, the Board has determined that it is necessary to provide further guidance to the municipal industry. Accordingly, the Board is publishing this fourth set of questions and answers which focuses on those provisions of the rule relating to: (1) solicitation of municipal securities business; and (2) the definition of municipal finance professional. As previously stated, the Board will continue to monitor the application of rule G–37, and, from time to time will publish additional notices of interpretations, as necessary.

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Because the proposed rule change would apply equally to all brokers, dealers and municipal securities dealers, the Board does not believe that

[1] The Board plans to publish the interpretations in the April 1995 MSRB Reports (Vol. 15, no. 1).

[2] Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994). The rule applies to contributions made on and after April 25, 1994

[3] *See* Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 14, 1994), Securities Exchange Act Release No. 34603 (Aug. 25, 1994); 59 FR 45049 (Aug. 31, 1994); and Securities Exchange Act Release No. 35128 (Dec. 20, 1994); 59 FR 66989 (Dec. 28, 1994). *See also MSRB Reports* Vol. 14, No. 3 at 11–16 (June 1994); Vol. 14, No. 4 at 31–32 (August 1994); and Vol. 14, No. 5 at 8 (December 1994)

[4] File Nos. SR–MSRB–94–6, SR–MSRB–94–15 and SR–MSRB–94–16.

the proposed rule change will impose any burden on competition 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*

Written 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 upon filing pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b–4 thereunder because the rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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, 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the Board. All submissions should refer to File No. SR–MSRB–95–02 and should be submitted by April 24, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–8088 Filed 3–31–95; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–35542; File No. SR–PHLX–94–69]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to a One Year Pilot Program for the Trading, Comparison, Clearing, Settling, Listing, and Delisting of Municipal Securities

March 28, 1995.

On December 20, 1994, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposal to establish a one year pilot program allowing the Exchange to list and trade municipal securities.

Notice of the proposal appeared in the **Federal Register** in Securities Exchange Act Release No. 35308 (January 31, 1995), 60 FR 7251 (February 7, 1995). No comments were received on the proposed rule change.[3]

The PHLX proposes to initiate a one year pilot program for the trading, comparison, clearance, settlement, listing and delisting of municipal securities. Specifically, the PHLX proposes to (1) Amend PHLX Rules 132, ''Dealing Outside the Exchange in Securities Dealt in on the Exchange,'' 501, ''Specialist Appointment,'' 803, ''Criteria for Listing—Tier I,'' and 810, ''Suspension and Delisting Policies Based on Exchange Findings;'' and (2) add PHLX Rule 309, ''Municipal Securities,'' to provide requirements for trading, comparison, settlement, clearing and listing and delisting of municipal securities.

To be eligible for listing on the Exchange, proposed PHLX Rule 803(c)(5) provides that a municipal debt security must: (1) Have an aggregate market value and principal amount outstanding of at least $20,000,000; (2) have at least 100 public beneficial holders of record; and (3) be rated as investment grade by at least one nationally recognized rating service.

Proposed PHLX Rule 810(b)(4)(d) allows the Exchange to delist a municipal debt security when the issue is (1) Not rated as investment grade by at least one nationally recognized rating service; (2) does not have at least a market value or principal amount outstanding of $500,000; or (3) is not held by at least 50 public beneficial holders of record.

The Exchange proposes to assign any municipal security it lists to a specialist[4] and to trade municipal securities in accordance with all PHLX regulations otherwise applicable to the trading of securities on the equities trading floor of the Exchange, except that pursuant to proposed PHLX Rule 132(d)(17) municipal securities shall be exempt from the provisions of the Exchange's off-board trading rule. Under proposed PHLX Rule 309, municipal securities will be compared, settled and cleared in accordance with the applicable regulations of the MSRB.

The PHLX believes that the proposed rule change is consistent with the requirements of section 6(b)(5) under the Act in that it is designed to promote the mechanism of a free and open market and to protect investors and the public interest.

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),[5] in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in, securities.

With regard to the listing standards for municipal securities proposed by the PHLX, the Commission notes that listing

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] On March 15, 1995, the PHLX amended its proposal to clarify the delisting standards for municipal securities. *See* Letter from Murray L. Ross, Secretary, PHLX, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated March 14, 1995 (''Amendment No. 1''). Specifically, Amendment No. 1 indicates that PHLX Rule 810(b)(4)(d), as amended, will apply solely to municipal securities.

[4] The PHLX intends to require specialist units applying for appointment and registration in municipal securities to be in compliance with the Municipal Securities Rulemaking Board (''MSRB'') Rule G–3 regulations regarding municipal securities principals and representatives. The National Association of Securities Dealers (''NASD'') has authority to enforce MSRB rules for listed municipal securities. The PHLX enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

[5] 15 U.S.C. 78f(b)(5) (1988).

standards serve as a means for a self-regulatory organization to screen issuers and to provide listed status only to issuers with sufficient investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity.

The Commission believes that the municipal securities listing and delisting criteria proposed by the PHLX are designed to protect investors and ensure the maintenance of fair and orderly markets in such listed securities. The PHLX's proposal provides that only municipal bond issuers that satisfy the criteria established in PHLX Rule 803(c)(5) will be considered for listing on the Exchange. Specifically, under PHLX Rule 803(c)(5) a municipal debt security must: (1) Have an aggregate market value and principal amount outstanding of at least $20,000,000; (2) have at least 100 public beneficial holders of record; and (3) be rated as investment grade by at least one nationally recognized rating service.

The Commission believes that these criteria, along with any other information relevant to determine whether the issue is appropriate for exchange trading, should help to ensure that only municipal issuers capable of meeting their financial obligation and whose bond issues can support a liquid trading market will be listed on the Exchange. The criteria will also alert municipal issuers seeking listing on the PHLX of the Exchange's specific listing standards.

The Commission notes that proposed PHLX Rule 810(b)(4)(d) allows the Exchange to delist a municipal debt security when the issue is (1) Not rated as investment grade by at least one nationally recognized rating service; (2) does not have at least a market value or principal amount outstanding of $500,000; or (3) is not held by at least 50 public beneficial holders of record. The Commission believes that the delisting standards should allow the Exchange to identify issuers that may have insufficient resources to meet their financial obligations or whose debt securities may lack sufficient trading depth and liquidity for a fair and orderly market.

Under the proposal, municipal securities will trade in accordance with all PHLX regulations otherwise applicable to the trading of securities on the equities trading floor of the Exchange, except that municipal securities will be exempt from the provisions of the PHLX's off-board trading rule. Because municipal securities will trade under the PHLX's existing regulatory regime for equities, which includes specialist obligations and margin requirements, the Commission believes that adequate safeguards are in place to ensure the protection of investors in municipal securities.

Further, the Commission notes that the regulatory scheme in place for municipal securities will continue to apply to PHLX-listed municipal securities,[6] with the additional coverage of the PHLX surveillance program to the trading of listed municipal securities. The Commission believes that this regulatory framework will provide sufficient oversight of municipal securities trading on the Exchange.

The PHLX intends to require specialist units applying for appointment and registration in municipal securities to be in compliance with MSRB Rule G–3 regarding municipal securities principals and representatives. The Commission notes that this requirement is consistent with the rules of the MSRB and, in addition, that it is important that any specialist selected by the PHLX for a listed municipal security be familiar with the characteristics of municipal securities.

Finally, the Commission notes that the PHLX's proposal to list and trade municipal securities is virtually identical to a proposal submitted by the Pacific Stock Exchange, Inc. (''PSE''), which was approved by the Commission.[7] Therefore, the Commission finds that the proposed rules are equally acceptable for the PHLX.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because Amendment No. 1 clarifies the proposal by indicating that the delisting standards for municipal securities apply solely to municipal securities and not to the debt of other non-listed issuers. Because Amendment No. 1 clarifies the Exchange's proposal and raises no new regulatory issues, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 24, 1995.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PHLX–94–69) relating to the pilot program for listing and trading municipal securities is approved until March 28, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–8092 Filed 3–31–95; 8:45 am]

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[6] *See* note 4, *supra.*

[7] *See* Securities Exchange Act Release Nos. 33721 (March 7, 1994), 59 FR 11636 (order approving File No. SR–PSE–94–05) (establishes municipal bond trading pilot program through July 5, 1994); 34317 (July 5, 1994), 59 FR 35546 (July 12, 1994) (order approving File No. SR–PSE–94–21) (extends municipal bond trading pilot program through November 2, 1994); 34911 (October 27, 1994), 59 FR 55303 (November 4, 1994) (order approving File No. SR–PSE–94–32) (extends municipal bond trading pilot program through November 2, 1995).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1994).

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**[Investment Company Act Rel. No. 20969; International Series Release No. 798/812–9354]**

## The Chase Manhattan Bank, N.A.; Notice of Application

March 28, 1995.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

**APPLICANT:** The Chase Manhattan Bank, N.A., (''Chase'').

**RELEVANT ACT SECTIONS:** Exemptions requested under section 6(c) from the provisions of section 17(f) of the Act.

**SUMMARY OF APPLICATION:** Chase seeks an order to enable it to maintain foreign securities and other assets of United States registered investment companies for which it serves as custodian or subcustodian in the custody of Chase Manhattan Bank International (''Chase-Russia'').

**FILING DATE:** The application was filed on December 9, 1994, and amended on March 14, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 24, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Daniel L. Goelzer, Esq., Baker & McKenzie, 815 Connecticut Avenue, NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Courtney S. Thornton, Senior Attorney, at (202) 942–0583, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

## Applicant's Representations and Legal Analysis

1. Chase requests expemptive relief for itself, any management investment company registered under the Act, other than an investment company registered under section 7(d) of the Act (a ''U.S. Investment Company'') and any custodian for a U.S. Investment Company from section 17(f) of the Act to the extent necessary to permit Chase-Russia to qualify as an ''Eligible Foreign Custodian'' under rule 17f–5. The requested exemption would permit Chase, a U.S. Investment Company, and any custodian for a U.S. Investment Company to maintain foreign securities, cash, and cash equivalents (collectively, ''Assets'') in the custody of Chase-Russia, a wholly-owned, indirect subsidiary of Chase located in Russia.[1] For purposes of the application, the term ''foreign securities'' includes (a) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation of other organization incorporated or organized under the laws of any foreign country, and (b) securities issued or guaranteed by the Government of the United States, or by any state or any political subdivision thereof, or by any agency thereof, or by any entity organized under the laws of the United States, or of any state thereof which have been issued and sold primarily outside the United States.

2. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities. Rule 17f–5 under the Act expands the group of entities located outside the United States that are permitted to serve as custodians for the Assets of registered management investment companies. Rule 17f–5 defines the term ''Eligible Foreign Custodian'' to include a majority-owned direct or indirect subsidiary of qualified U.S. bank or bank-holding company that is incorporated or organized under the laws of county other than the United States and that has shareholders' equity in excess of $100,000,000 (U.S. $ equivalent or U.S. $). as of the close of its most recently completed fiscal year. The rule defines the term ''Qualified U.S. Bank'' to include a banking institution organized under the laws of the United States that has an aggregate capital, surplus, and undivided profit of not less than $550,000.

3. Chase is a national banking association and is regulated as such by the Comptroller of the Currency under the National Bank Act. At December 31, 1993, Chase has shareholders' equity in excess of $6.4 billion. Thus, Chase is a ''Qualified U.S. Bank'' as defined in rule 17f–5, since it is a banking institution organized under the laws of the United States, and has aggregate capital, surplus, and undivided profit substantially in excess of the $500,000 minimum required by the rule.

4. Chase is a subsidiary of The Chase Manhattan Corporation, a Delaware corporation that is one of the leading financial services providers in the world. Through its Global Securities Service division (''GSS''), Chase provides custody and related services to global institutional investors, including U.S. mutual funds. GSS currently has over $1.3 trillion in assets under custody worldwide.

5. Chase-Russia, a wholly-owned indirect subsidiary of Chase, was incorporated in Russia on October 26, 1993, under General License No. 2629. Chase-Russia is authorized to engage in the business of commercial banking in Russia, and is supervised by the Central Bank of the Russian Federation. Chase-Russia offers customers a wide range of retail and wholesale banking services; it also operates a custody department to support local and foreign investors.

6. Chase-Russia will satisfy the requirements of rule 17f–5 insofar as it is an indirect, wholly-owned subsidiary of Chase, and is incorporated and organized under the laws of Russia. Chase-Russia will not, however, meet the $100 million minimum shareholders' equity requirement of rule 17f–5. Accordingly, Chase-Russia will not qualify as an Eligible Foreign Custodian under the rule and, absent exemptive relief, could not serve as custodian for the Assets of U.S. Investment Companies.

7. Where custody services are required in Russia, Chase will hold the Assets of U.S. Investment Companies as custodian or subcustodian, and will deposit, or cause or permit the deposit of, the Assets with Chase-Russia in accordance with the arrngements described below. Before permitting Chase-Russia to act as a custodian for the Assets of a U.S. Investment Company, Chase will ensure that Chase-Russia is capable and well-qualified to provide custody and subcustody services to Chase, U.S. Investment Companies, and custodians for U.S. Investment Companies. Under the proposed foreign custody arrangements, the protection afforded the Assets of U.S. Investment Companies held by Chase-Russia will not be diminished from the protection afforded by rule 17f–5.[2]

[1] Russian clearing and custody procedures differ substantially from the procedures generally employed elsewhere. Other than the exemption requested from section 17(f) to permit Chase-Russia to qualify as an ''eligible foreign custodian'' under rule 17f–5, applicant is not requesting (and any order would not grant) an exemption from section 17(f) or rule 17f–5 for any aspect of the custody or clearing procedures employed in Russia. Moreover, applicant acknowledges that any order will not constitute a determination by the Commission that the Russian clearing and custody procedures comply with section 17(f) or the rules thereunder.

[2] Applicant notes that there are special risks associated with investing in securities in the Russian market including, among others, risks relating to the settlement of trades and the registration of securities in an environment characterized by multiple, unaffiliated registrar

**Applicant's Conditions**

Chase agrees that any order of the SEC granting the requested relief may be conditioned upon the following:

1. The foreign custody arrangements proposed herein regarding Chase-Russia will satisfy the requirments of rule 17f–5 in all respects other than Chase-Russia's level of shareholders' equity.

2. Chase will deposit Assets with Chase-Russia only in accordance with the custody agreement and the subcustody agreement described below. The custody and subcustody agreements will remain in effect at all times during which Chase-Russia fails to satisfy the requirements of rule 17f–5.

a. The custody agreement will be between Chase and the U.S. Investment Company (or its custodian). In that agreement, Chase will undertake to provide custody or subcustody services, and the U.S. Investment Company (or its custodian) will authorize Chase to delegate to Chase-Russia such of Chase' duties and obligations as will be necessary to permit Chase-Russia to hold in custody in Russia the Assets of U.S. Investment Companies. The custody agreement will further provide that the delegation by Chase to Chase-Russia will not relieve Chase of any responsibility to the U.S. Investment Company or its custodian for any loss due to such delegation, and that Chase will be liable for any loss or claim arising out of or in connection with the performance by Chase-Russia of the custody services to the same extent as if Chase had itself provided the custody services under the custody agreement.

b. A subcustody agreement will be executed between Chase and Chase-Russia. Pursuant to this agreement, Chase will delegate to Chase-Russia such of Chase's duties and obligations as would be necessary to permit Chase-Russia to hold Assets in custody in Russia. The subcustody agreement will provide that (i) Chase-Russia is acting as a foreign custodian for Assets that belong to a U.S. Investment Company pursuant to the terms of an exemptive order issued by the SEC, and (ii) the U.S. Investment Company or its custodian (as the case may be) that has entered into a custody agreement will be entitled to enforce the terms of the subcustody agreement, and can seek relief directly against Chase-Russia. The subcustody agreement will provide that it will be governed by New York law.

3. Chase currently satisfies and will continue to satisfy the Qualified U.S. Bank requirement set forth in rule 17f–5(c)(3).

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–8027 Filed 3–31–95; 8:45 am]

BILLING CODE 8010–01–M

companies and non-authoritative paper share extract certificates. These risks, like other risks associated with foreign investment, would remain with the U.S. Investment Companies. Chase will be liable only to the same extent as if it had held the assets itself in Russia (*i.e.,* by opening a branch in Moscow). However, Chase's liability with respect to assets held in custody in Russia will not be reduced by Chase's causing such assets to be held in a subsidiary rather than directly by Chase. Chase's contracts with its customers will reflect this liability.

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**[Release No. 34–35543; File No. S7–27–93]**

## Consolidated Tape Association; Notice of Filing of Seventeenth Substantive Amendment to the Restated Consolidated Tape Association Plan and Twenty-First Substantive Amendment to the Consolidated Quotation Plan

March 28, 1995.

Pursuant to Rule 11Aa3–2 of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on March 9, 1995, the Consolidated Tape Association (''CTA'') and Consolidated Quotation (''CQ'') Plan Participants filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') amendments to the Restated CTA Plan and CQ Plan. The Commission is publishing this notice to solicit comments from interested persons on the amendments.

### I. Description and Purpose of the Amendments

The amendments seek to change a procedure for allocating high speed line access fee revenues between ''Network A'' and ''Network B'' under each plan. The participants propose to apply ''relative message usage percentages'' to the allocation of high speed line revenues between networks retroactively, beginning with the period commencing January 1, 1994.

The amendments would also eliminate the requirements that the participants set the high speed line access fee at a level designed to recover the costs of making the high speed line available, and set indirect high speed line access fees at a level that equals one-half of the direct access fees. The actual fees, however, would not be changed at this time.

*A. Allocation of High Speed Line Revenue*

Currently, under each plan, the participants impose on subscribers, vendors, computer input users and others one combined high speed line access fee for access to both Network A and Network B market data. Under the proposed amendments, the participants wish to change the current methods set forth in the plans for allocating each plan's high speed line access revenues between the two networks. The participants feel that a more appropriate and equitable way to achieve that allocation would be to apply a measure that reflects each network's relative usage of the plans' systems.

To that end, the participants have selected each network's ''relative message usage percentage''. These percentages, in the participants' view, reflect a network's relative portion of the total number of messages [1] that the participants disseminate over the high speed line for a given period. Under the proposed amendments, a ''relative message usage percentage'' would equal the number of a network's messages reported over the high speed line divided by the sum of the numbers of both networks' messages that both networks report over the high speed line.[2] The participants have proposed to retroactively apply the ''relative message usage percentage'' to the allocation of high speed line revenues between networks commencing January 1, 1994.

$$\text{CTA Network A Relative Message} \quad \frac{A}{A+B,}$$

If the instant amendments are approved, the participants will direct the Processor to calculate the allocation percentages on a monthly basis. Under the proposed amendments, the New York Stock Exchange (''NYSE'') shall distribute to the Network B

[1] For purposes of such calculations, a message includes any message that a participant disseminates over the Consolidated Tape System, including, but not limited to, prices relating to Eligible Securities or concurrent use securities, administrative messages, index messages, corrections, cancellations, and error messages.

[2] For example, a month's relative message usage for CTA network a would be calculated as follows:

Where:

''A'' represents the number of messages that CTA Network A participants disseminate over the CTA network A pursuant to the CTA plan during that month; and

''B'' represents the number of messages that CTA Network B participants disseminate over the CTA Network B pursuant to the CTA plan during the month.

To determine a month's relative message usage for CQ Network A, substitute ''CQ'' where ''CTA'' appears in this footnote.

administrator under each plan, a calendar quarter's high speed line revenues allocated to Network B under the plan as soon as the calculation becomes available for that quarter.

*B. Determination of High Speed Line Access Fees*

Both plans currently require participants: (a) to set high speed line access fees at levels that allow the participants to recover the operating expenses that the Processor incurs in making the high speed line available, and (b) to set indirect high speed line access fees at a level that equals one-half of the direct access fees. The proposed amendments would eliminate these two requirements and thereby alter the manner in which participants determine high speed line access fees.[3] The participants, however, are not proposing to amend the actual fees at this time.

**II. Solicitation of Comments**

Rule 11Aa3–2(c)(2) under the Act provides that the proposed amendment shall be approved by the Commission with such changes or subject to such conditions as the Commission may deem necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act within 120 days of the date of publication of notice of filing, or within such longer period as the Commission may designate up to 180 days of such date pursuant to Rule 11Aa3–2(c)(2).

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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CTA/CQ. All submissions should refer to the file number in the caption above and should be submitted by April 24, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–8091 Filed 3–31–95; 8:45 am]

BILLING CODE 8010–01–M

[3] The participants' reasons for requesting this amendment is that the above requirements were established over twenty years ago. Today's digital data feed and other technologies make high speed lines cheaper and easier to access.

[4] 17 CFR 200.30–3(a)(27) (1989).

## SMALL BUSINESS ADMINISTRATION

### Buffalo District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Buffalo District Advisory Council will hold a public meeting on Thursday, April 27, 1995 at 2:00 p.m. at the Key Bank of New York, Key Center at Fountain Plaza, 16th floor conference room, Buffalo, New York to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Franklin J. Sciortino, District Director, U.S. Small Business Administration, 111 West Huron Street, Room 1311, Buffalo, New York 14201, (716) 846–4301.

Dated: March 27, 1995.

**Dorothy A. Overal,**

*Director, Office of Advisory Council.*

[FR Doc. 95–8105 Filed 3–31–95; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD01–95–032]**

### Marine Inspection Office New York/ Captain of the Port New York Industry Day

**AGENCY:** Coast Guard DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** Coast Guard Marine Inspection Office New York and Captain of the Port, New York are sponsoring an Industry Day to exchange information with the maritime community. The meeting will be open to the public.

**DATES:** The meeting will be held on April 11, 1995.

**ADDRESSES:** The meeting will be held at the State University of New York Maritime College at Fort Schuyler, New York.

**FOR FURTHER INFORMATION CONTACT:** LCDR James Candee, USCG Marine Inspection Office, Battery Park Building, New York, New York, 10004, telephone (212) 668–7850, facsimile (212) 668–7863.

**SUPPLEMENTARY INFORMATION:** Rear Admiral John L. Linnon, Commander, First Coast Guard District and Rear Admiral James C. Card, Chief, Office of Marine Safety, Security and Environmental Protection will be featured speakers. Topics to be addressed include President Clinton's ''Presidential Regulation Reinvention Initiative,'' Port State Control, and the Alternative Compliance and Prevention through People Initiatives. Feedback received in the past from small passenger vessel owners and operators indicated a need to provide a separate Industry Day addressing their concerns. That was accomplished during Marine Inspection Office New York's small passenger vessel public forums. While small passenger vessel issues will not be specifically addressed during the April 11th meeting, small passenger vessel operators are still encouraged to attend. Attendance is open to the public. Advance registration is requested. Registration and agendas may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT**.

Dated: March 22, 1995.

**J.L. Linnon,**

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

[FR Doc. 95–8128 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–14–M

### National Highway Traffic Safety Administration

### Automotive Fuel Economy Program Report to Congress

The attached document, Automotive Fuel Economy Program, Nineteenth Annual Report to the Congress, was prepared pursuant to 49 U.S.C. 32916 which requires in pertinent part that ''the Secretary shall submit to each House of Congress, and publish in the **Federal Register**, a review of average fuel economy standards under this part.''

Issued: March 20, 1995.

**Barry Felrice,**

*Associate Administrator for Safety Performance Standards.*

**Automotive Fuel Economy Program**

**Nineteenth Annual Report to Congress**

**Calendar Year 1994**

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F. Advisory Committee on Personal Motor Vehicle Greenhouse Gas Reductions
G. General Agreement on Tariffs and Trade (GATT) Decision
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A. New Models
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**Section I: Introduction**

The Nineteenth Annual Report to Congress on Automotive Fuel Economy Program summarizes the activities of the National Highway Traffic Safety Administration (NHTSA) during 1994, in accordance with 49 U.S.C. 32916 *et seq.*, which requires the submission of a report each year. Included in this report are sections summarizing rulemaking activities during 1994 and a discussion of the use of advanced automotive technology by the industry as required by section 305, Title III, of the Department of Energy Act of 1978 (Pub. L. 95–238).

The Secretary of Transportation is required to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States market. The authority to administer the program was delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include:

(1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as necessary;

(2) Promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards;

(3) Considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them;

(4) Preparing reports to Congress annually on the fuel economy program;

(5) Enforcing fuel economy standards and regulations; and

(6) Responding to petitions concerning domestic production by foreign manufacturers and other matters.

Passenger car fuel economy standards were established by Congress for Model Year (MY) 1985 and thereafter at a level of 27.5 miles per gallon (mpg). NHTSA is authorized to amend the standard above or below that level. Standards for light trucks were established by NHTSA for MYs 1979 through 1997. NHTSA set a combined standard of 20.7 mpg for light truck fuel economy standard for MYs 1996 and 1997. All current standards are listed in Table I–1.

TABLE I–1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 1997 (IN MPG)

| Model year | Passenger cars | Light trucks [1] | | |
|---|---|---|---|---|
| | | Two-wheel drive | Four-wheel drive | Combined [2 3] |
| 1978 | [4] 18.0 | | | |
| 1979 | [4] 19.0 | 17.2 | 15.8 | |
| 1980 | [4] 20.0 | 16.0 | 14.0 | [5] |
| 1981 | 22.0 | [6] 16.7 | 15.0 | [5] |
| 1982 | 24.0 | 18.0 | 16.0 | 17.5 |
| 1983 | 26.0 | 19.5 | 17.5 | 19.0 |
| 1984 | 27.0 | 20.3 | 18.5 | 20.0 |
| 1985 | [4] 27.5 | [7] 19.7 | [7] 18.9 | [7] 19.5 |
| 1986 | [8] 26.0 | 20.5 | 19.5 | 20.0 |
| 1987 | [9] 26.0 | 21.0 | 19.5 | 20.5 |
| 1988 | [9] 26.0 | 21.0 | 19.5 | 20.5 |
| 1989 | [10] 26.5 | 21.5 | 19.0 | 20.5 |
| 1990 | [4] 27.5 | 20.5 | 19.0 | 20.0 |
| 1991 | [4] 27.5 | 20.7 | 19.1 | 20.2 |
| 1992 | [4] 27.5 | | | 20.2 |
| 1993 | [4] 27.5 | | | 20.4 |
| 1994 | [4] 27.5 | | | 20.5 |
| 1995 | [4] 27.5 | | | 20.6 |
| 1996 | [4] 27.5 | | | 20.7 |
| 1997 | [4] 27.5 | | | 20.7 |

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. Standards for MY 1980 and beyond are for light trucks with a GVWR of 8,500 pounds or less.

[2] For MY 1979, light truck manufacturers could comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.

[3] For MYs 1982–1991, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine all light trucks and comply with the combined standard.

[4] Established by Congress in Title V of the Act.

[5] A manufacturer whose light truck fleet was powered exclusively by basic engines which were not also used in passenger cars could meet standards of 14 mpg and 14.5 mpg in MYs 1980 and 1981, respectively.

[6] Revised in June 1979 from 18.0 mpg.

[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for combined.

[8] Revised in October 1985 from 27.5 mpg.

[9] Revised in October 1986 from 27.5 mpg.

[10] Revised in September 1988 from 27.5 mpg.

**Section II: Fuel Economy Improvement by Manufacturers**

The fuel economy achievements for domestic and foreign manufacturers in MY 1993 were updated to include final Environmental Protection Agency (EPA) calculations, where available, since the publication of the Eighteenth Annual Report to the Congress. These fuel economy achievements and current projected data for MY 1994 are listed in Tables II–1 and II–2.

Overall fleet fuel economy for passenger cars was 28.2 mpg in MY 1994, a decline of 0.2 mpg from the MY 1993 level. For MY 1994, CAFE values decreased below MY 1993 levels for 14 of 22 passenger car manufacturers' fleets. (See Table II–1). These 14 companies accounted for over 44 percent of the total MY 1994 production. Manufacturers continued to introduce new technologies and more fuel-efficient models, as well as some larger, less fuel-efficient models. For MY 1994, the overall domestic manufacturers' fleet average fuel economy was 27.3 mpg. For MY 1994, Chrysler, Ford, and Mazda domestic passenger car CAFE values fell 1.6 mpg, 0.7 mpg, and 0.6 mpg, respectively, from their 1993 levels, while GM remained at its MY 1993 level. Overall, the domestic manufacturers' combined CAFE declined 0.5 mpg below MY 1993 levels.

TABLE II–1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER*

[Model Years 1993 and 1994]

| Manufacturer | Model year cafe (mpg) | |
|---|---|---|
| | 1993 | 1994 |
| Domestic: | | |
| Chrysler | 27.8 | 26.2 |
| Ford | 28.3 | 27.6 |
| GM | 27.4 | 27.4 |
| Mazda | 29.7 | 29.1 |
| Sales weighted average (domestic) | 27.8 | 27.3 |
| Imported: | | |
| BMW | 25.2 | 25.1 |
| Chrysler Imports | 31.0 | 31.3 |
| Fiat | 23.9 | 19.8 |
| Ford Imports | 26.7 | 25.7 |
| GM Imports | 30.5 | 24.6 |
| Honda | 32.5 | 32.5 |
| Hyundai | 31.3 | 32.5 |
| Isuzu | 33.0 | ..... |
| Kia | 31.7 | 30.8 |
| Mazda | 31.0 | 31.2 |
| Mercedes-Benz | 22.9 | 23.8 |
| Mitsubishi | 29.4 | 28.9 |
| Nissan | 29.4 | 29.7 |
| Porsche | 22.5 | 22.0 |
| Subaru | 29.3 | 28.3 |
| Suzuki | 46.4 | 43.8 |
| Toyota | 29.1 | 29.0 |
| Volvo | 25.9 | 25.7 |
| VW | 27.2 | 28.1 |
| Sales weighted average (imported) | 29.6 | 29.6 |
| Total fleet average | 28.4 | 28.2 |
| Fuel economy standards | 27.5 | 27.5 |

*Manufacturers or importers of fewer than 1,000 passenger cars annually are not listed.

**Note:** Some MY 1993 CAFE values differ from those used in the *Eighteenth Annual Report to the Congress* due to the use of final EPA calculations.

In MY 1994, the fleet average fuel economy for imported passenger cars remained at the MY 1993 CAFE level. Import CAFE was 29.6 mpg in MY 1994. Eleven of the 19 imported car manufacturers decreased their CAFE values between MYs 1993 and 1994, including 5 of the 9 Asian importers. Figure II–1 illustrates the changes in total new passenger car fleet CAFE from MY 1978 to MY 1994.

The total light truck fleet CAFE decreased 0.3 mpg below the MY 1993 CAFE level of 20.9 mpg. Figure II–2 illustrates the trends in total fleet CAFE from MY 1979 to MY 1994 for light trucks.

A number of passenger car and a few light truck manufacturers are projected to fail to achieve the levels of the MY 1994 CAFE standards. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for noncompliance. Some MY 1994 CAFE values may change when final figures are provided to NHTSA by EPA, in mid-1995. In addition, several manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset later shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to offset current deficits.

TABLE II–2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER

[Model years 1993 and 1994]

| Manufacturer | Model year cafe (mpg) | |
|---|---|---|
| | Combined | |
| | 1993 | 1994 |
| Captive Import: | | |
| Chrysler Imports | 24.3 | ..... |
| Others: | | |
| Chrysler | 21.2 | 20.5 |
| Ford | 20.9 | 20.8 |
| GM | 19.8 | 19.9 |
| Isuzu | 21.8 | 20.8 |
| Mazda | 23.6 | 21.2 |
| Mitsubishi | 21.3 | 22.0 |
| Nissan | 23.7 | 22.5 |
| PAS | 18.5 | ..... |
| Land Rover | 15.5 | 16.4 |
| Subaru | 29.1 | 29.6 |
| Suzuki | 28.9 | 28.5 |
| Toyota | 22.3 | 22.0 |
| UMC | 18.8 | 18.5 |
| VW | 21.0 | 21.0 |
| Total fleet average | 20.9 | 20.6 |
| Fuel economy standard | 20.4 | 20.5 |

**Note:** Some MY 1993 CAFE values differ from those used in the *Eighteenth Annual Report to the Congress* due to the use of final EPA calculations.

Fleet average fuel economy for all MY 1994 passenger cars combined and for all light trucks combined exceeded the levels of the MY 1994 standards.

**BILLING CODE 4910–59–M**

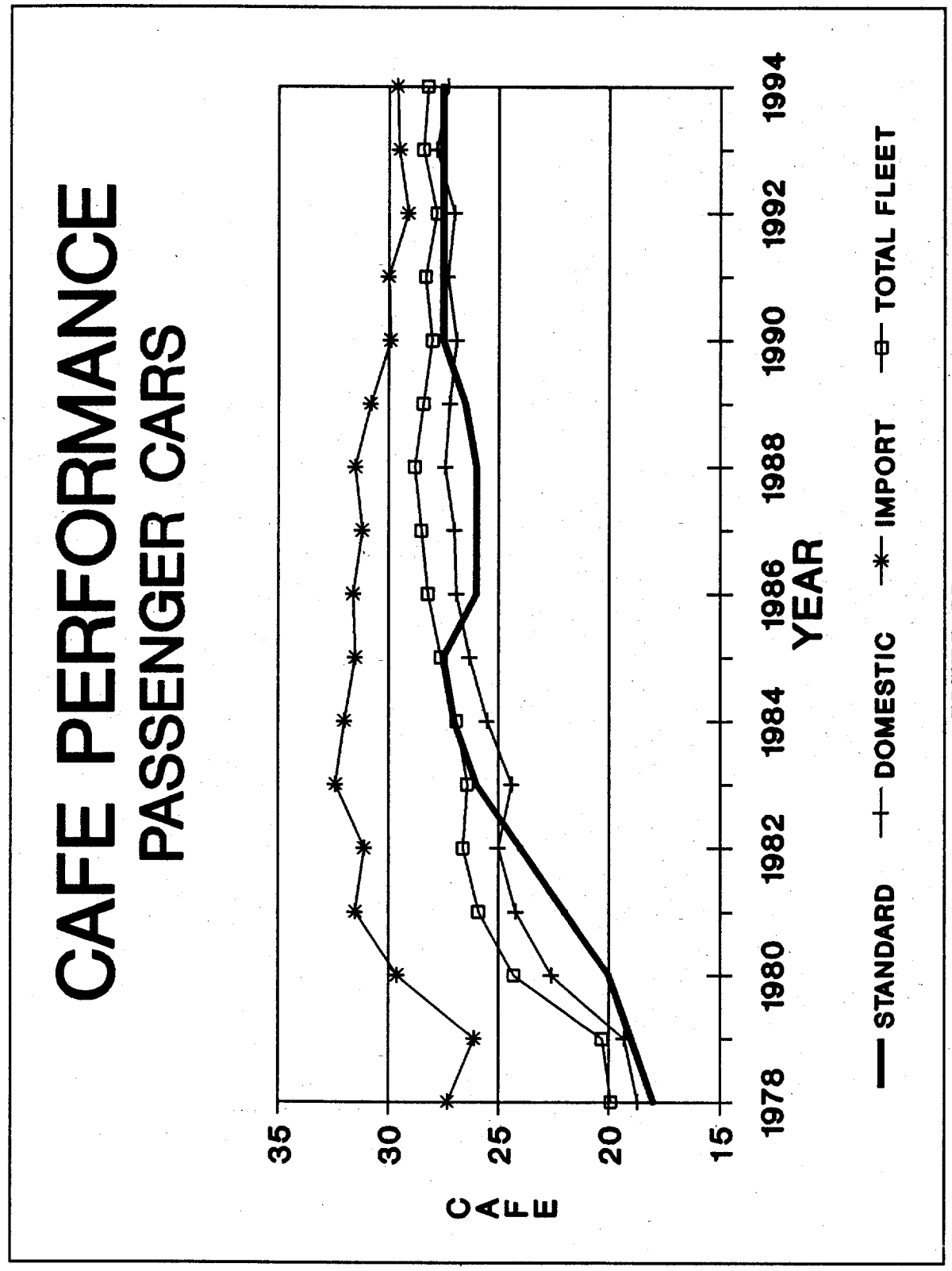
CAFE PERFORMANCE
PASSENGER CARS
CAFE
35
30
25
20
15
1978
1980
1982
1984
1986
1988
1990
1992
1994
YEAR
STANDARD
DOMESTIC
IMPORT
TOTAL FLEET

FIGURE II-1

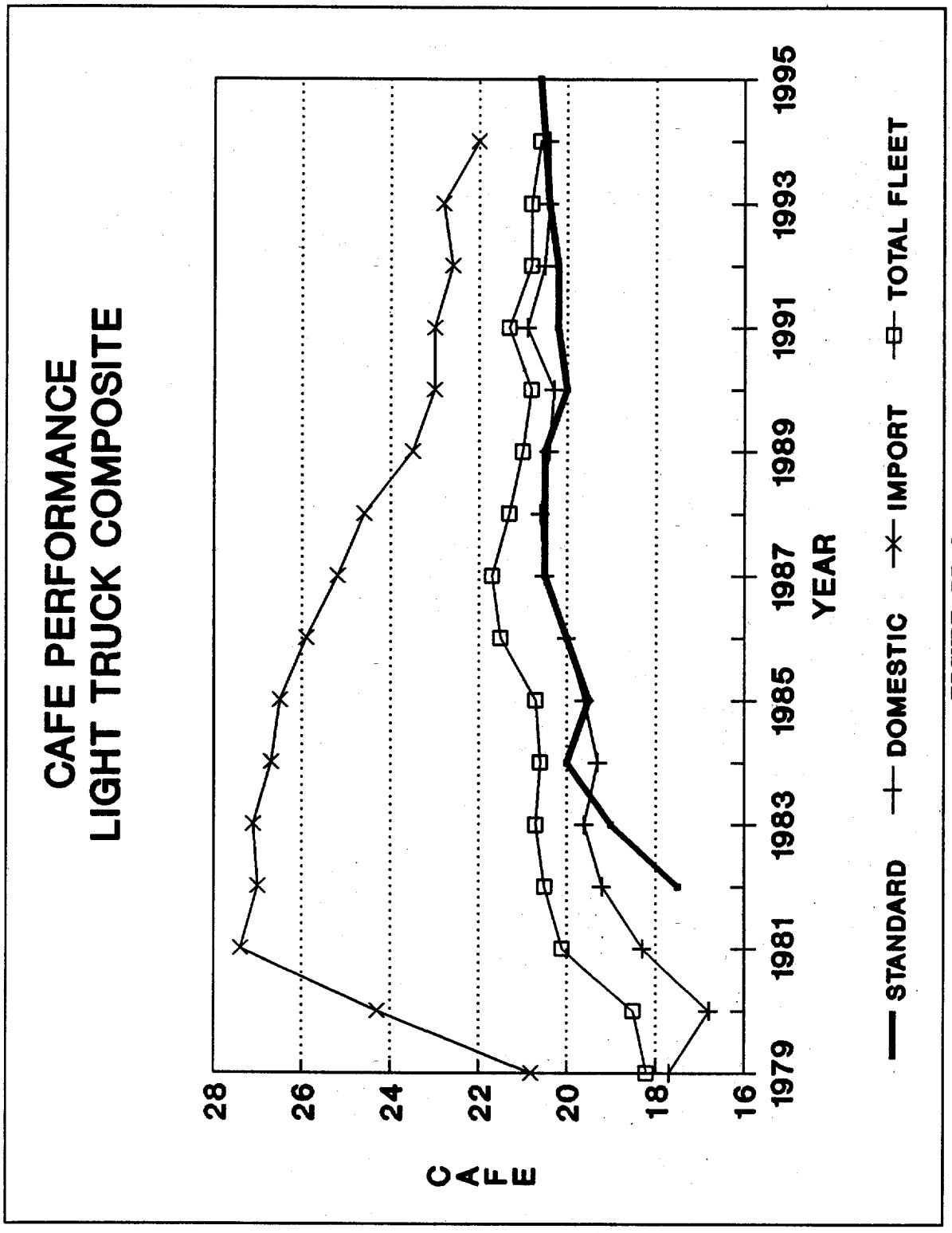


FIGURE II-2

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Isuzu terminated sales of its passenger cars in the United States after MY 1993; however, the manufacturer continues to sell its light trucks. Isuzu accumulated substantial CAFE credits during its 13-year marketing span of its passenger cars in the United States, but these vehicles sales reached such a low level that it apparently decided it was economically infeasible for their passenger cars to remain.

The characteristics of the MY 1994 passenger car fleet reflect a continuing trend toward increased consumer demand for higher performance cars. (See Table II–3.) From MY 1993 to MY 1994, horsepower/100 pounds, a measure of vehicle performance, increased from 4.56 to 4.79 for domestic passenger cars. However, it decreased slightly from 4.72 to 4.71 for imported passenger cars. The total fleet average for passenger cars increased from 4.62 in MY 1993 to 4.76 horsepower/100 pounds in MY 1994, the highest level in the 38 years for which the agency has data. Compared to MY 1993, the average curb weight for MY 1994 increased 52 pounds for the domestic fleet and 23 pounds for the imported fleet. The total new passenger car fleet is 41 pounds heavier than it was in MY 1993, primarily because of the larger share held by the domestic fleet. Average engine displacement increased from 184 to 188 cubic inches for domestic passenger cars and 136 to 137 cubic inches for imported passenger cars.

The 0.5 mpg fuel economy reduction for the MY 1994 domestic passenger car fleet may be attributed to increases in performance and average curb weight. Some of the weight increase reflects increased applications of safety features such as airbags, improved side impact protection, and antilock braking systems.

The size class breakdown shows an increased trend towards subcompact, compact, and large passenger cars and a decrease in two-seater, minicompact, and midsize passenger cars for the overall fleet. The domestic fleet shift is from midsize passenger cars to subcompact, compact, and large passenger cars. The shift of imported cars to compact size is particularly pronounced; compact cars increased to 41.6 percent of the imported fleet in MY 1994 from just 36.6 percent in MY 1993. The imported share of the passenger car market declined slightly in MY 1994. However, for the fifth consecutive year, imports exceeded 40 percent of the new passenger car fleet.

The domestic fleet had a dramatic decrease in share of turbocharged and supercharged engines. Diesel engines declined in share after a small increase in MY 1993. Diesel engines were offered only on certain Mercedes models during MY 1994.

TABLE II–3.—PASSENGER CAR FLEET CHARACTERISTICS FOR MYS 1993 AND 1994

| Characteristics | Total fleet | | Domestic fleet | | Imported fleet | |
|---|---|---|---|---|---|---|
| | 1993 | 1994 | 1993 | 1994 | 1993 | 1994 |
| Fleet average fuel economy, mpg | 28.4 | 28.2 | 27.8 | 27.3 | 29.6 | 29.6 |
| Fleet average curb weight, lbs. | 2971 | 3012 | 3046 | 3098 | 2861 | 2884 |
| Fleet average engine displacement, cu. in. | 164 | 167 | 184 | 188 | 136 | 137 |
| Fleet average horsepower/weight ratio, hp/100 lbs. | 4.62 | 4.76 | 4.56 | 4.79 | 4.72 | 4.71 |
| Percent of fleet | 100 | 100 | 59.4 | 59.8 | 40.6 | 40.2 |
| Segmentation by EPA size class, Percent: | | | | | | |
| Two-seater | 1.4 | 1.2 | 0.5 | 0.5 | 2.8 | 2.1 |
| Minicompact | 1.0 | 0.3 | 0.0 | 0.0 | 2.4 | 0.7 |
| Subcompact* | 23.0 | 23.4 | 14.4 | 17.0 | 35.4 | 32.8 |
| Compact* | 33.7 | 36.0 | 31.7 | 32.2 | 36.6 | 41.6 |
| Mid-size* | 29.4 | 25.6 | 37.8 | 31.2 | 17.2 | 17.3 |
| Large* | 11.5 | 13.6 | 15.6 | 19.1 | 5.6 | 5.5 |
| Percent diesel engines | 0.04 | 0.01 | 0.0 | 0.0 | 0.9 | 0.02 |
| Percent turbo or supercharged engines | 1.1 | 0.9 | 0.5 | 0.4 | 1.9 | 1.7 |
| Percent fuel injection | 100 | 100 | 100 | 100 | 100 | 100 |
| Percent front-wheel drive | 84.4 | 83.9 | 86.0 | 83.6 | 82.1 | 84.4 |
| Percent automatic transmissions | 79.9 | 81.7 | 87.4 | 87.8 | 69.1 | 72.6 |
| Percent automatic transmissions with lockup clutches | 93.1 | 94.9 | 93.3 | 94.8 | 92.6 | 95.0 |
| Percent automatic transmissions with four or more forward speeds | 77.2 | 84.7 | 69.2 | 79.8 | 91.9 | 92.4 |

*Includes associated station wagons.

Passenger car fleet average characteristics have changed significantly since MY 1978 (the first year of fuel economy standards). After substantial initial weight loss (from MY 1978 to MY 1982, the average passenger car fleet curb weight decreased from 3,349 to 2,808 pounds), the passenger car fleet average curb weight stabilized around 2,800 pounds from MY 1982 to MY 1987, but has risen to approximately 3,000 pounds since then. Table II–4 shows that the MY 1994 passenger car fleet has nearly equal interior volume and higher performance, but with over 40 percent better fuel economy than the MY 1978 fleet. (See Figure II–3)

The characteristics of the MY 1994 light truck fleet are shown in Table II–5. Since light truck manufacturers are not required the divide their fleets into domestic and import fleets based on the 75-percent domestic content threshold used for passenger car fleets, the domestic and imported fleet characteristics in Table II–5 are estimated, based mainly on manufacturer name. The agency assumed that all products of foreign-based manufacturers would not meet the domestic content threshold, whether they were assembled in the United States of Canada, or in another country. The exception to this is the assumption that the import-badged products of a domestic manufacturer's assembly plant were ''domestic'' (Mazda Navajo and pickup and Nissan Quest).

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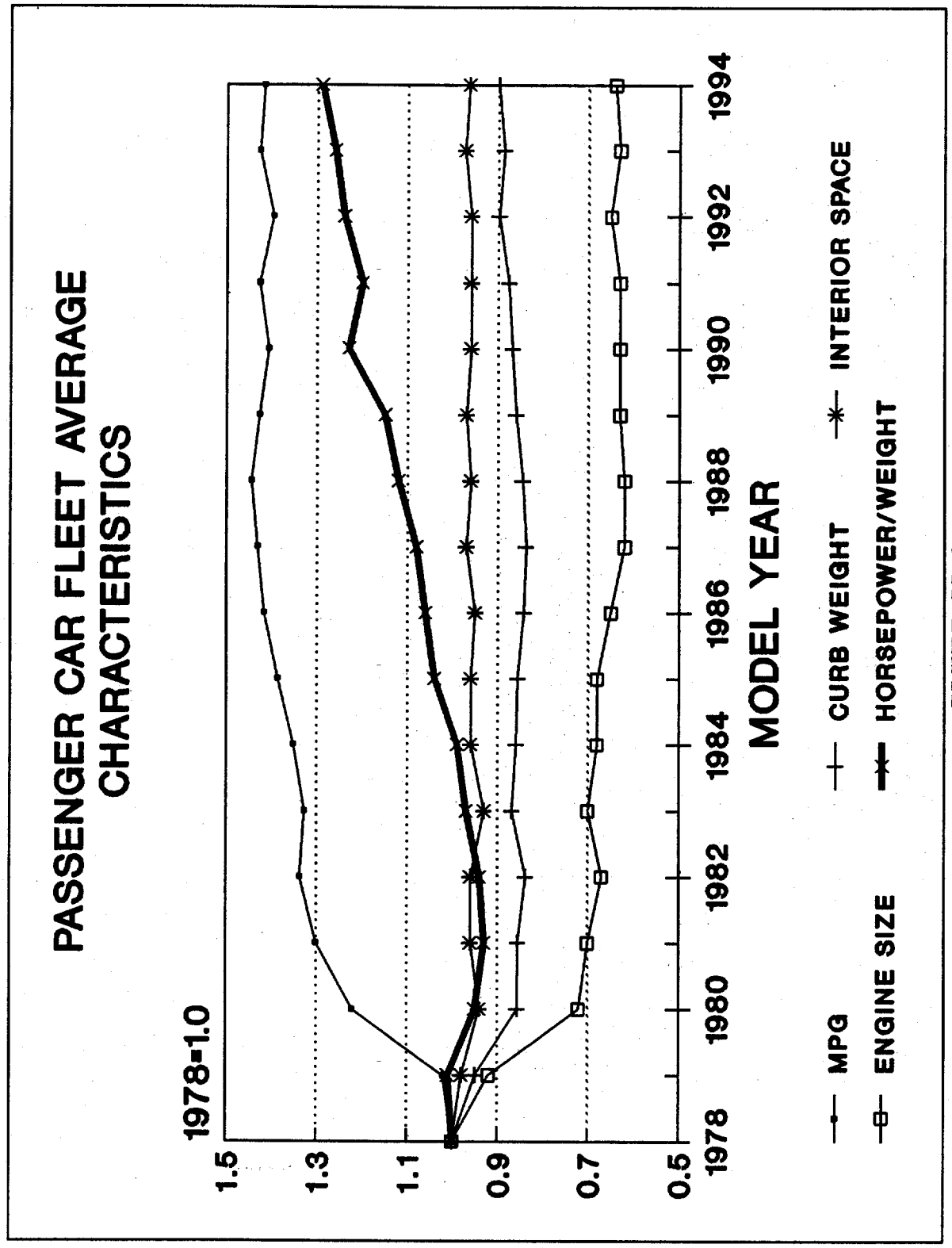


FIGURE II-3

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TABLE II–4.—NEW PASSENGER CAR FLEET AVERAGE CHARACTERISTICS

[Model years 1978–1993]

| Model year | Fuel economy (mpg) | Curb weight (lb.) | Interior space (cu. ft.) | Engine size (cu. in.) | Hosrepower/ weight (hp/100 lb.) |
|---|---|---|---|---|---|
| 1978 | 19.9 | 3349 | 112 | 260 | 3.68 |
| 1979 | 20.3 | 3180 | 110 | 238 | 3.72 |
| 1980 | 24.3 | 2867 | 105 | 187 | 3.51 |
| 1981 | 25.9 | 2883 | 108 | 182 | 3.43 |
| 1982 | 26.6 | 2808 | 107 | 173 | 3.47 |
| 1983 | 26.4 | 2908 | 109 | 182 | 3.57 |
| 1984 | 26.9 | 2878 | 108 | 178 | 3.66 |
| 1985 | 27.6 | 2867 | 108 | 177 | 3.84 |
| 1986 | 28.2 | 2821 | 106 | 169 | 3.89 |
| 1987 | 28.5 | 2805 | 109 | 162 | 3.98 |
| 1988 | 28.8 | 2831 | 107 | 161 | 4.11 |
| 1989 | 28.4 | 2879 | 109 | 163 | 4.24 |
| 1990 | 28.0 | 2908 | 108 | 163 | 4.53 |
| 1991 | 28.3 | 2934 | 108 | 164 | 4.42 |
| 1992 | 27.8 | 3007 | 108 | 169 | 4.56 |
| 1993 | 28.4 | 2971 | 109 | 164 | 4.62 |
| 1994 | 28.2 | 3012 | 108 | 167 | 4.76 |

TABLE II–5.—LIGHT TRUCK FLEET CHARACTERISTICS FOR MYS 1993 AND 1994

| Characteristics | Total fleet | | Domestic fleet | | Imported fleet | |
|---|---|---|---|---|---|---|
| | 1993 | 1994 | 1993 | 1994 | 1993 | 1994 |
| Fleet average fuel economy, mpg | 20.9 | 20.6 | 20.6 | 20.4 | 22.7 | 22.0 |
| Fleet average equivalent test weight, lbs | 4,201 | 4,274 | 4,284 | 4,340 | 3,727 | 3,832 |
| Fleet average engine displacement, cu. in | 237 | 243 | 249 | 255 | 167 | 165 |
| Fleet average horsepower/weight ratio, hp/100 lbs | 3.89 | 3.86 | 3.97 | 3.89 | 3.47 | 3.65 |
| Percent of fleet | 100 | 100 | 85.1 | 87.0 | 14.9 | 13.0 |
| Segmentation by type, percent: | | | | | | |
| Passenger van: | | | | | | |
| Compact | 23.6 | 17.0 | 25.8 | 18.6 | 11.1 | 6.3 |
| Large | 0.3 | 0.5 | 0.4 | 0.6 | | |
| Cargo van: | | | | | | |
| Compact | 1.4 | 1.5 | 1.6 | 1.7 | | |
| Large | 4.7 | 4.7 | 5.6 | 5.4 | | |
| Small pickup* | 7.9 | 6.2 | 6.6 | 5.3 | 15.2 | 12.2 |
| Large pickup* | 34.3 | 40.0 | 33.4 | 40.5 | 39.8 | 36.8 |
| Special purpose | 27.8 | 30.0 | 26.7 | 27.8 | 33.9 | 44.7 |
| Percent diesel engines | 0.07 | 0.30 | 0.09 | 0.30 | | |
| Percent fuel injection | 99.0 | 99.7 | 100 | 100 | 93.0 | 97.7 |
| Percent automatic transmissions | 76.2 | 77.3 | 82.5 | 82.5 | 39.9 | 45.7 |
| Percent automatic transmissions with lockup clutches | 98.6 | 98.3 | 99.1 | 98.5 | 92.3 | 94.0 |
| Percent automatic transmissions with four forward speeds | 90.5 | 92.1 | 89.9 | 91.6 | 97.1 | 98.9 |
| Percent 4-wheel drive | 33.7 | 36.1 | 32.3 | 34.1 | 41.2 | 49.5 |

*Including cab chassis.

The average test weight of the total light truck fleet increased by 73 pounds over that for MY 1993. Increased popularity of large pickups, special purpose vehicles, heavier, and higher performance trucks contributed to a 0.3 mpg fleet fuel economy decline for MY 1994, offsetting the small increase in the use of fuel injection and automatic transmissions with four forward speeds. Diesel engine usage increased in light truck to 0.30 percent in MY 1994 from 0.07 percent in MY 1993. The imported share of the MY 1994 light truck fleet decreased to 13.0 percent, 1.9 percent lower than MY 1993 and the lowest share since light truck fuel economy standards were established.

During MYs 1980 through 1994, CAFE levels for light trucks in the 0–8,500 pounds gross vehicle weight (GVW) class increased, beginning at 18.5 mpg in MY 1980 and reaching 21.7 mpg in MY 1987 before dropping to lower values in MY 1988 through MY 1994, as average weight, engine size, and performance increased. During these years, light truck production increased from 1.9 million in MY 1980 to 4.7 million in MY 1994. Light trucks comprised 40 percent of the total light duty vehicle fleet production in MY 1994, more than double its share in MY 1980.

Figure II–4 illustrates that the light duty fleet (passenger cars and light trucks together) average fuel economy steadily increased to MY 1987, but subsequently has been below the MY 1987 level. (See Table II–6). Light truck average fuel economy declined, but the passenger car average fuel economy remained relatively constant for MYs 1987–1994. Thus, the overall decline illustrates the growing influence of light trucks in the light duty fleet.

While both passenger car and light truck fleet fuel economies decreased from MY 1993 to MY 1994 by 0.2 mpg and 0.3 mpg, respectively, the total fleet fuel economy for MY 1994 decreased 0.5 mpg over the MY 1993 level (25.1 mpg for MY 1993 and 24.6 mpg for MY 1994). This is attributed to increased sales of light trucks, since the total light truck fleet fuel economy is far less than that of passenger cars. The shift to light trucks for general transportation is an important trend in consumers' preference and has a significant fleet fuel consumption effect.

Domestic and imported passenger car fleet average fuel economies have improved since

MY 1978, although the increase is far more dramatic for the domestic fleet. In MY 1994, the domestic passenger car fleet average fuel economy decreased from the prior year to 27.3 mpg, and imported passenger car fleet average fuel economy remained at 29.6 mpg. Compared to MY 1978, this reflects an increase of 8.6 mpg for domestic cars. For imported cars, the MY 1994 average fuel economy is only 2.3 mpg higher than that of MY 1978.

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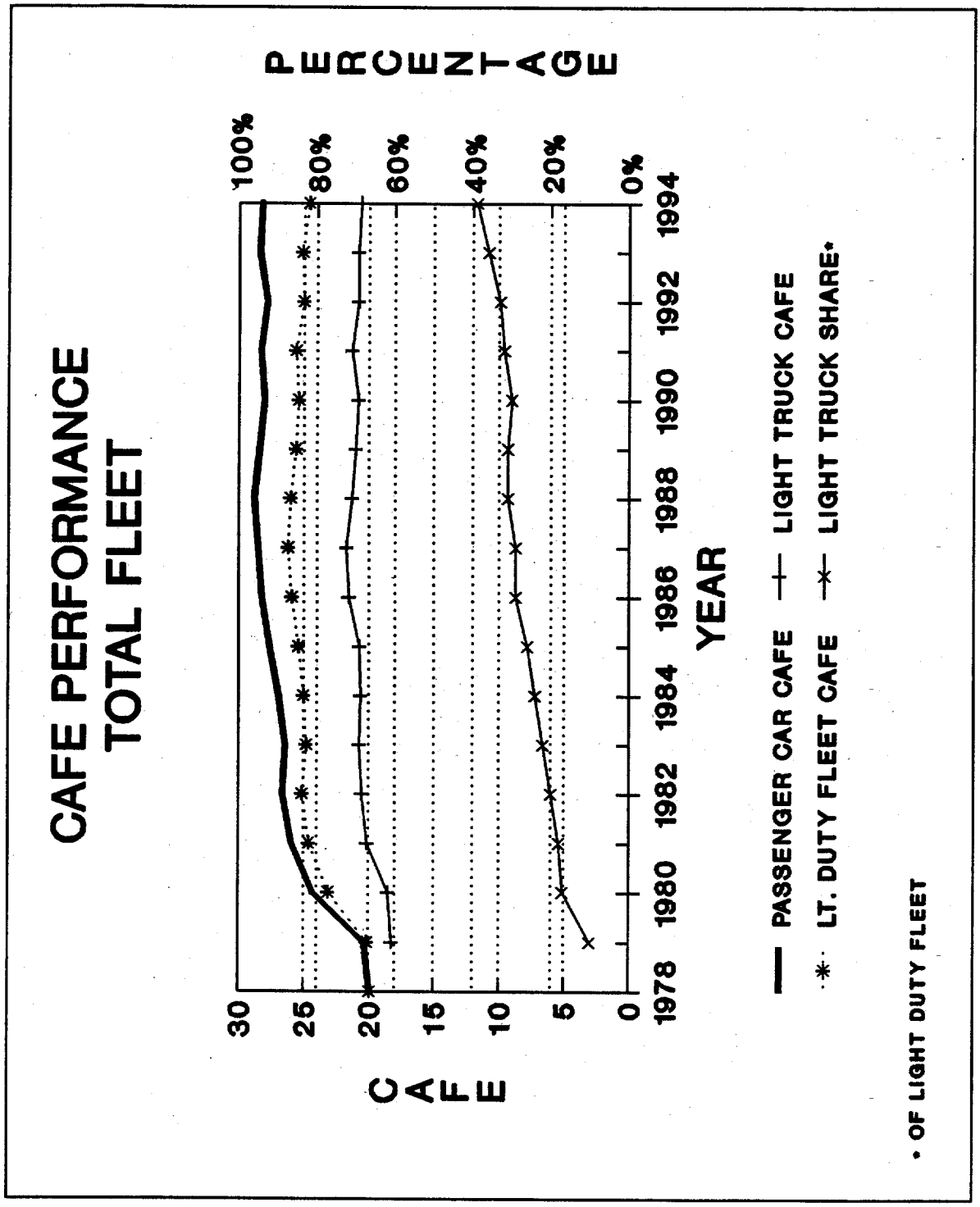


FIGURE II-4

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TABLE II–6.—DOMESTIC AND IMPORTED PASSENGER CAR AND LIGHT TRUCK FUEL ECONOMY AVERAGES FOR MODEL YEARS 1978–1994

[In MPG]

| Model year | Domestic | | | Imported | | | Total fleet |
|---|---|---|---|---|---|---|---|
| | Car | Light truck | Combined | Car | Light truck | Combined | |
| 1978 | 18.7 | | | 27.3 | | | |
| 1979 | 19.3 | 17.7 | 19.1 | 26.1 | 20.8 | 25.5 | 20.1 |
| 1980 | 22.6 | 16.8 | 21.4 | 29.6 | 24.3 | 28.6 | 23.1 |
| 1981 | 24.2 | 18.3 | 22.9 | 31.5 | 27.4 | 30.7 | 24.6 |
| 1982 | 25.0 | 19.2 | 23.5 | 31.1 | 27.0 | 30.4 | 25.0 |
| 1983 | 24.4 | 19.6 | 23.0 | 32.4 | 27.1 | 31.5 | 24.8 |
| 1984 | 25.5 | 19.3 | 23.6 | 32.0 | 26.7 | 30.6 | 25.0 |
| 1985 | 26.3 | 19.6 | 24.0 | 31.5 | 26.5 | 30.3 | 25.4 |
| 1986 | 26.9 | 20.0 | 24.4 | 31.6 | 25.9 | 29.8 | 25.9 |
| 1987 | 27.0 | 20.5 | 24.6 | 31.2 | 25.2 | 29.6 | 26.2 |
| 1988 | 27.4 | 20.6 | 24.5 | 31.5 | 24.6 | 30.0 | 26.0 |
| 1989 | 27.2 | 20.4 | 24.2 | 30.8 | 23.5 | 29.2 | 25.6 |
| 1990 | 26.9 | 20.3 | 23.9 | 29.9 | 23.0 | 28.5 | 25.4 |
| 1991 | 27.3 | 20.9 | 24.4 | 30.0 | 23.0 | 28.4 | 25.6 |
| 1992 | 27.0 | 20.5 | 23.8 | 29.1 | 22.6 | 27.8 | 25.0 |
| 1993 | 27.8 | 20.6 | 24.2 | 29.6 | 22.7 | 28.0 | 25.1 |
| 1994 | 27.3 | 20.4 | 23.5 | 29.6 | 22.0 | 27.8 | 24.6 |

Since MY 1980, the total light truck fleet average fuel economy and the average for domestic manufacturers have improved. However, the imported light truck average fuel economy has decreased significantly. The domestic manufacturers continued to dominate the light truck market. Domestic light trucks comprised 87.0 percent of the total light truck fleet. For MY 1994, the domestic light truck fleet has an average fuel economy 1.6 mpg lower than the imported light truck fleet. The imported light truck fleet fuel economy improved substantially up to MY 1981, but has been declining steadily since then. For MY 1994, the imported light truck fleet fuel economy decreased 0.7 mpg below MY 1993 to 22.0 mpg.

The gap between the average CAFEs of the imported and domestic manufacturers is smaller than in earlier years as domestic manufacturers maintain relatively stable CAFE values while the import manufacturers move to larger, higher performance vehicles and more 4-wheel drive light trucks.

**Section III: 1994 Activities**

**A. Passenger Car CAFE Standards**

The following synopsis describes recent litigation challenging NHTSA actions under the CAFE program.

*Competitive Enterprise Institute* v. *NHTSA*, D.C. Cir., No. 93–1210

This case challenges NHTSA's January 15, 1993, decision (D.C. Circuit's remand in Case No. 89–1422) to again terminate the rulemaking it commenced to consider amending the MY 1990 passenger car CAFE standard. The petition for review was filed on March 15, 1993. Briefs were filed between February and April 1994, and oral argument was held on May 16, 1994. To date, the Court has not issued a decision.

**B. Light Truck CAFE Standards**

NHTSA published a final rule establishing the MYs 1996 and 1997 light truck fuel economy standards on April 6, 1994, (59 FR 16312). The agency set a combined standard of 20.7 mpg for MYs 1996 and 1997.

In the final rule for MYs 1996 and 1997 light trucks, the agency determined that GM is the ''least capable'' manufacturer with a combined fuel economy capability of 20.7 mpg. The agency concluded upon balancing the relevant statutory factors, that the relatively small and uncertain energy savings that would be associated with setting a standard above GM's capability would not justify the economic harm to the company and the economy as a whole. The agency projected that GM could not achieve a combined fuel economy level higher than 20.7 mpg for MYs 1966 and 1997. In contrast, NHTSA concluded that Chrysler and Ford can achieve CAFE levels somewhat above 20.7 mpg.

The agency selected 20.7 mpg for MYs 1996 and 1997 as the final combined standards because these values balance the potentially serious adverse economic consequences associated with market and technological risks for GM to further increase its fuel economy levels. Since GM produces more than 30 percent of all light trucks that are subject to the fuel economy standards, its capability significantly affects the industry's capability and, therefore, the level of the standard.

The agency issued an advance notice of proposed rulemaking for Light Truck Average Fuel Economy Standards for MYs 1998–2006 (59 FR 16324; April 6, 1994). The agency sought information that would help to assess the extent to which manufacturers can improve light truck fuel economy, the benefits and costs to consumers of improved fuel economy, the benefits to the Nation of reducing fuel consumption, and the number of model years that should be covered by the proposal.

**C. Low Volume Petitions**

Article 49 U.S.C. 32902 (d) provides that a low volume manufacturer of passenger cars may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. A low volume manufacturer is one that manufactured fewer than 10,000 passenger cars worldwide, in the model year for which the exemption is sought (the affected model year) and in the second model year preceding that model year.

The agency acted on two low volume petitions in 1994, which were filed by Bugatti International Holding, SA (Bugatti International) and MedNet, Inc.

Bugatti International filed a joint low volume petition for Bugatti and Lotus high performance vehicles. Bugatti International requested alternative standards for its passenger cars for MYs 1994, 1995 and 1996. Another petitioner, MedNet, Inc., requested an alternative standard for its recently acquired Dutcher PTV vehicles for MYs 1995, 1996, and 1997. NHTSA is reviewing these petitions and will respond in early 1995.

**D. Enforcement**

Article 49 U.S.C. 23912 (b) imposes a civil penalty for $5 for each tenth of a mpg by which a manufacturer's CAFE level falls short of the standard, multiplied by the total number of passenger automobiles or light trucks produced by the manufacture in that model year. Credits that were earned for exceeding the standard in any of the three model years immediately prior to or subsequent to the model years in question can be used to offset the penalty.

With completion by EPA of final CAFE computations for MY 1993 for most passenger car fleets, the agency initiated appropriate enforcement actions for manufacturers that did not meet the CAFE standard.

Table III–1 shows the most recent CAFE fines paid by manufacturers.

TABLE III–1.—CAFE FINES COLLECTED DURING FISCAL YEAR 1994

| Model year and manufacturer | Amount fined | Date paid |
|---|---|---|
| 1991: | | |
| Land Rover | $520,520 | 10/93 |
| Sterling | 254,840 | 12/93 |
| Porsche | 1,871,470 | 02/94 |
| Fiat (revised) | 416,385 | 08/94 |
| 1992: | | |
| Land Rover | 607,620 | 10/93 |
| Porsche | 781,575 | 02/94 |
| Volvo | 5,361,515 | 04/94 |
| BMW | 12,888,750 | 05/94 |
| Vector | 1,740 | 05/94 |
| Fiat (revised)* | (2,250) | 08/94 |
| 1993: | | |
| Volvo | 5,764,800 | 06/94 |
| Fiat | 194,220 | 07/94 |
| Panoz | 3,080 | 07/94 |
| Vector | 870 | 07/94 |

*Fiat was refunded $2,250 after revised calculation of its CAFE.

**E. Partnership for a New Generation of Vehicles (PNGV)**

At a White House ceremony on September 29, 1993, President Clinton and Vice President Gore, together with the Chief Executive Officers of Chrysler, Ford, and General Motors, formally announced the Partnership for a New Generation of Vehicles (PNGV). PNGV (previously known as the ''Clean Car Initiative'') is a historic new partnership between the United States Government and the U.S. Council for Automotive Research (USCAR) which represents Chrysler, Ford, and General Motors. It is aimed at strengthening U.S. competitiveness by developing technologies for a new generation of vehicles.

PNGV focuses its research and development toward attaining three interrelated goals:

- Improve the productivity of the U.S. manufacturing base by significantly upgrading U.S. manufacturing technology, including the adoption of agile, flexible manufacturing and the reduction of cost and lead time, while reducing the environmental impact and improving quality.
- Pursue advances in vehicles that can lead to improvements in fuel efficiency and emissions of standard vehicle designs, while pursuing safety advances to maintain safety performance. Research will focus on technologies that reduce the demand for energy from the engine and the drive train.
- Within a decade, achieve automotive fuel efficiency improvements up to three times that of the average 1994 Chrysler Concorde/Ford Taurus/Chevrolet Lumina with equivalent performance, size, and utility, and with customer purchase price comparable to today's sedans adjusted for economics, while also meeting all current and future safety and emissions requirements, and preserving in-use safety compared to the target cars.

The development of energy efficient, low emission vehicles is economically and environmentally critical. From an economic level, the introduction of a new generation of vehicles will preserve American jobs and improve the Nation's competitiveness. From an environmental level, a new generation of fuel efficient vehicles will produce less carbon dioxide (greenhouse gas emissions) and decrease American dependency on imported oil.

The following timetable illustrates probable goals the PNGV expects to achieve within five to ten years. PNGV anticipates a concept vehicle by year 2000 and a prototype vehicle by year 2005.

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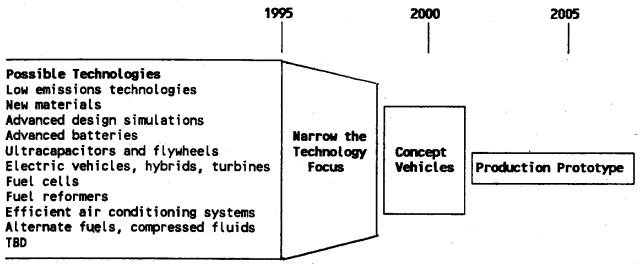


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**NHTSA's PNGV Role**

NHTSA's role in the PNGV initiative is to provide technical support to ensure that the selected PNGV vehicles meet existing and anticipated safety standards and to insure in-use safety equivalent to today's mid-size passenger cars. NHTSA will also ensure that the overall safety of the PNGV vehicles is not compromised.

NHTSA technical support includes:

- Develop advanced computer models of the PNGV platforms and selected vehicles which represent the fleet in order to evaluate the crashworthiness of conceptual designs and their safety compatibility with contemporary vehicles.
- Conduct and evaluate research of light weight materials such as advanced composites and develop new, unique material models for usage in the finite element model work.
- Provide require PNGV transportation infrastructure analyses.
- Provide peer review study of PNGV programs, including conceptual designs.

### F. Advisory Committee on Personal Motor Vehicle Greenhouse Gas Reductions

As part of the Administration's ''Climate Change Action Plan,'' the White House formed an advisory committee to develop recommendations to reduce greenhouse gas emissions by light vehicles to the year 1990 level. The committee is comprised of a number of stakeholders, including environmental and public interest groups, automotive manufacturers, fuel suppliers, vehicle users, and representatives of state and local governments.

The goal of the committee is to develop policy options that will cost-effectively reduce greenhouse gas emissions from the use of light vehicles (cars and light trucks) to the 1990 level by years 2005, 2015, and 2025.

Policy options being considered encompass vehicle-miles-traveled (VMT) reductions, efficiency enhancement, and alternative fuels. These policies include:

- Vehicle technologies.
- Fuels with lower carbon content.
- Vehicle-based regulatory strategies such as CAFE.
- Vehicle taxes and/or rebates.
- Market-based actions to reduce VMT (fuel taxes, congestion pricing, and pay-at-the-pump insurance).
- Others approaches (e.g., changed land-use patterns, increased mass transit, telecommuting, Intelligent Vehicle-Highway Systems (IVHS), and increased carpooling).

The advisory group has conducted four meetings: September 28–29, October 19–20, November 14–15, and December 15–16, 1994. This project will run for approximately one year, and it is expected to contribute to a broad-based approach by the Administration to address light vehicle greenhouse gas emissions.

### G. General Agreement on Tariffs and Trade (GATT) Decision

On September 30, 1994, a ruling by a panel under the General Agreement on Tariffs and Trade (GATT) upheld key provisions of the United States CAFE law, as well as the ''gas guzzler'' tax and luxury tax. The panel rejected a challenge under GATT by the European Union (EU) which alleged that the CAFE requirements, the gas guzzler tax, and the luxury tax discriminated against cars manufactured by Mercedes, BMW and other European luxury auto manufacturers. Those manufacturers have paid a large share of penalties and taxes under these laws. The panel agreed with EU complaints on one technical issue—the CAFE accounting rules that establish separate ''domestic'' and ''import'' fleets for determining overall fuel economy. Because these rules do not have any actual economic impact on EU auto manufacturers, and therefore no trade damage results from this requirement, U.S. Trade Representative Michael Kantor stated that the United States does not intend to make any changes in the CAFE rules.

## Section IV: Use of Advanced Technology

This section fulfills the statutory requirement of Section 305 of Title III of the Department of Energy Act of 1978 (Pub. L. 95–238), which directs the Secretary of Transportation to submit an annual report to Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models, the application of materials to save weight, and the advances in electronic technology which improved fuel economy in MY 1994.

### A. New Models

The domestic automakers introduced and replaced several completely new cars models and, in addition, introduced updates and redesigns of many previous passenger car models. Chrysler introduced the New Yorker and the Chrysler LHS, two all-new luxury sedans, with an average fuel economy of 22 mpg each for MY 1994. Ford redesigned the Mustang, the first major redesign since MY 1979. The car is 4.1 inches longer and 200 pounds heavier than the model it replaced, and already meets some Federal rules of the newly issued emissions and safety standards which are being phased in for future years. Ford also redesigned the Lincoln Continental to include a rounded grille, suspension modifications, and a smaller bumper. The fuel economy of that model has improved 1 mpg for city driving. General Motors (GM) introduced two all-new vehicles, the Cadillac De Ville and the Cadillac De Ville Concours for MY 1994. The De Ville has a 4.9 liter (L) V–8 engine, a new automatic transmission, speed sensitive suspension and steering. The upscale Concours gets the 270-hp 4.6 L double-overhead cam (DOHC) Northstar V–8 engine and the electronically controlled 4T80–E transmission. Both models have an average fuel economy of 21 mpg.

Automobile importers also introduced a variety of new passenger cars and updates of their previous models for MY 1994. The BMW 325i convertible is powered by a 2.5 L DOHC I–6 engine and a 5-speed manual transmission and has improved its average fuel economy over last year's model by 3 mpg. The 5-series has three new models for MY 1994, the 530i sedan, Touring wagon and 540i sedan, all powered with a V–8 engine. The average fuel economy of the 530i and the 540i is 19.5 mpg and the Touring wagon is 21.5 mpg. The 535i model has been discontinued. BMW also has an all-new 840Ci model with a 4.0 L 32-valve all aluminum V–8 engine with average fuel economy of 19.5 mpg and a 850CSi model with a 5.6 L 292-horsepower (hp) V–12 engine with an average fuel economy of 16 mpg.

Honda completely redesigned the Accord with a 2.2L SOHC I–4 engine. The fuel economy has improved by 0.5 mpg over its MY 1993 counterpart. Honda's Acura division completely redesigned the Integra to include a 1.8L 142 hp DOHC I–4 engine on the RS and LS model and a 1.8 L 170 hp VTEC variable-valve-timing I–4 engine on the GS–R model. Acura also has a new top-of-the-line Legend sedan with a 230 hp single overhead cam (SOHC) V–6 engine and a six-speed manual transmission.

Kia Motor Corporation introduced its first U.S.-vehicle entries under the Kia badge. Kia has three compact models, front-wheel-drive 4-door sedans powered by a 1.6 L 88 hp SOHC I–4 engine with an average fuel economy of 30 mpg.

Mercedes-Benz introduced its new C-class sedan to the line, powered by a 2.2 L I–4 engine with an average fuel economy of 25 mpg. The C280 model has a new 2.8 L I–6 engine with an average fuel economy of 23 mpg.

Saab has two all-new hatchback 900 series models with a larger 4-cylinder engine and an optional V–6 engine for the first time. The Saab 900 moved from the EPA compact size class to the midsize class for MY 1994. The average fuel economy of this model is 21.5 mpg for MY 1994.

Toyota introduced a new 2-door Camry with a 3.0 L aluminum V–6 engine with a 4-speed electronic controlled automatic transmission and an average fuel economy of 21 mpg. Also Toyota has introduced a new liftback Celicia model with an all-new 110 hp 1.8 L engine and an average fuel economy of 30.5 mpg for MY 1994.

Volvo introduce an all front-wheel drive 850 wagon in both touring and turbo versions with a 2.4 L engine and a average fuel economy of 24 mpg. This model replaced the 240 wagon which also had a fuel economy of 24 mpg.

In the domestic light truck area, Chrysler introduced the full-sized T300 Ram pickup replacing a model which had been in production since MY 1972.

The new model averages 16.8 mpg, the same as its predecessor despite being substantially larger and heavier. GM's GMC division completely redesigned the Sonoma's exterior and interior with a 2.2L I–4 engine and a 5-speed manual transmission. The Sonoma average fuel economy is 25.5 mpg an improvement of 0.5 mpg over MY 1993 light truck. GM also redesigned the companion Chevrolet S–10 pickup.

**B. Engine and Transmission Technology**

Some manufacturers made significant improvements in engine technology for model year 1994. GM has a new pushrod engine, which bears a close resemblance to familiar engines. The base Chevy Caprices gets a 4.3 L V–8 variant of the LT1 V–8 to replace the 5.0 L V–8. The 4.3 L engine produces 200 hp at 5200 revolutions per minute (rpm) (30 hp more than last year's 5.0 L) and 245-pound-feet of torque at 2400 rpm.

Ford introduced a more powerful engine controller called EEC–V on the MY 1994 Thunderbird, Cougar, and Mustang. Compared with EEC–IV, the new unit operates 20 percent faster and has 66 percent more memory. Developed in part through Ford's Formula 1 racing program, EEC–V features a ''Flash Erasable Electrically Programmable Read Only Memory'' chip (Flash-EEPROM) that allows service technicians to reprogram the computer, rather than replace it, when defects arise or upgrades becomes available.

Still in development at Ford is a new two-stroke gasoline engine. A major obstacle to two-stroke engine development in the United States is the Tier II emissions requirement of 0.2 grams per mile nitrogen oxide (NOx) which is, at best, marginally achievable with current lean-system two-stroke technology. According to *Ward's Automotive Yearbook 1994,* GM's two-stroke development program is winding down. GM preferred to proceed with development of its simpler dry-sump, roller-bearing version but reportedly was experiencing piston cooling and cylinder-bore distortion problems. Ford and Chrysler are moving ahead with two-stroke programs. Ford is field testing a two-stroke hybrid vehicle in Europe, and press reports indicate that Chrysler expects to show what it believes is a marketable wet-sump, externally scavenged engine some time in the near future.

**C. Electronics**

Applications of electronic components in vehicles continue to rise. Some of the applications include four-wheel steering, tire-pressure sensing, instrumentation, and in-car entertainment grouping. However, the main concentration is in engine management, powertrain management, antilock braking systems, air bags, air conditioning, and, increasingly, suspension control.

Electronic controllers are gradually being incorporated in all modern automatic transmissions, and this year Ford's 4R70W four-speed automatic truck transmission and GM's 4L60–E rear-drive four-speed automatic, both have electronic controls. The GM unit features a performance mode that provides quicker shifts and higher shift point speeds. In a quest for consistent shift quality, the controller alters shifting strategies at high altitudes, as components wear, and as temperatures rise.

**D. Materials**

For MY 1994, automakers chose aluminum, high strength steel, powder metal (P/M), and magnesium for a number of significant new component applications in their cars, and light trucks. The reduced weight of these components contributes to improved fuel economy of the models using them.

Aluminum usage has increased by five-eight pounds (lbs.) annually per vehicle since 1990 in North America, as reported in Ward's Automotive Yearbook 1994. Since 1990, the annual increase of plastic usage has been cut in half every year and is likely to increase only 0.5 lbs. per vehicle during MY 1994.

Even as the use of plastics and aluminum has grown, steel continue as the primary material in U.S.-built vehicles, comprising well over 50 percent of the weight of the average passenger car according to Ward's 1994 Automotive Yearbook. The amount of steel used in vehicles continues to grow, due mainly to redesigned vehicles that are longer, wider and/or taller than those they replaced. These models include the redesigned compact GMC Sonoma and Chevrolet S–10 pickup trucks, Cadillac's new Sedan De Ville and De Ville Concours, Chrysler's Dodge Ram pickup, and Ford's Mustang. The new Sonoma/S10 grew 10.6 inches and added 262 lbs. in MY 1994 over MY 1993. The long-box version of the truck gained 384 lbs. from the previous year. Ford added 200 lbs. to the Mustang, and Chrysler's new Dodge Ram full-size pickup has added 226 lbs.

New safety features added to vehicles also increase the amount of steel usage in todays vehicles. It is the material used for most door intrusion beams, roof structures and undercarriage reinforcements designed to protect occupants in crashes, rollovers and side impacts. The light-truck market has particularly shown an increase in steel usage as regulations and consumer demands force light truck manufacturers to incorporate the same safety features as cars. The GMC Jimmy, for instance, adds new side-door steel guard beams running the full length of the door. Steel intrusion beams also are standard in MY 1994 Ford's F-series pickups.

Other new applications include composite steel camshafts in GM's 3.1 L V–6s and 2.2 L 4-cylinder engines, and steel tubing on the Dodge Ram's radiator enclosure panels. Also the use of medium-strength steels, mostly bake-hardenable varieties, increased in MY 1994.

P/M makes up about 27 lbs. of weight of a typical family vehicle accordingly to Ward's Automotive Yearbook 1994. It continues to play an increasingly significant role because it can be used to make strong and lightweight parts that have very complex shapes. Applications for P/M have been growing steadily in recent years, and several new and expanded applications were introduced in MY 1994, including P/M bearing caps on GM's 3100 and 3800 series V–6 engines and P/M inserts in the bearing cap girdles for Ford's new aluminum 2.5 L and 3 L V–6 engines.

Magnesium use has risen every year since 1988 by 10 to 16 percent. Magnesium firsts in MY 1994 included knee-bolster retainers, steering wheel armatures, and seat pedestals, or stanchions. The knee-bolster retainers, the first large structural magnesium component application in the U.S. auto industry, debuted on several of GM's standard-size, front-drive cars, including the Buick Park Avenue. Ford replaced steel wheel armature subassemblies with magnesium on its Thunderbird, Cougar, Taurus, and Sable.

**E. Summary**

The stabilization of oil prices and supply has been a factor resulting in a shift of consumer demand in recent years to more powerful and roomier passenger cars and light trucks. The auto industry, responding to this shift, has increased the horsepower of its engines and shifted its production mix to somewhat larger cars. Still, there were some considerable technical gains, particularly in lightweight material usage, that contributed to improvements in fuel economy on some models in MY 1994.

[FR Doc. 95–7428 Filed 3–31–95; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

March 23, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–754
*Regulation ID Number:* LR–255–81 Final
*Type of Review:* Extension
*Title:* Substantiation of Charitable Contributions
*Description:* Congress intended that the IRS prescribe rules and requirements to assure substantiation and verification of charitable contributions. The regulations serve these purposes.
*Respondents:* Individuals or households, Business or other for-profit
*Estimated Number of Respondents:* 26,000,000
*Estimated Burden Hours Per Respondent:* 5 minutes
*Frequency of Response:* Other
*Estimated Total Reporting Burden:* 2,158,000 hours

*OMB Number:* 1545–0763
*Regulation ID Number:* LR–200–76 Final
*Type of Review:* Extension
*Title:* Qualified Conservation Contributions
*Description:* The information is necessary to comply with various substantive requirements of section 170(h), which describes situations in which a taxpayer is entitled to an income tax deduction for a charitable contribution for conservation purposes of a partial in real property.
*Respondents:* Individuals or households, Business or other for-profit, Farms, Not-for-profit institutions, Federal Government, State, Local or Tribal Government
*Estimated Number of Respondent:* 1,000
*Estimated Burden Hours Per Respondent:* 1 hour, 15 minutes
*Frequency of Response:* Other
*Estimated Total Reporting Burden:* 1,250 hours

*OMB Number:* 1545–1117
*ID Number:* IRS Notice 89–61
*Type of Review:* Extension
*Title:* Imported Substances; Rules for Filing a Petition
*Description:* The Notice sets forth procedures to be followed in petitioning the Secretary to modify the list of taxable substances in section 4672(a)(3).
*Respondents:* Business or other for-profit
*Estimated Number of Respondents:* 100
*Estimated Burden Hours Per Respondent:* 1 hour
*Frequency of Response:* On occasion
*Estimated Total Reporting/Recordkeeping Burden:* 1 hour
*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 95–8024 Filed 3–31–95; 8:45 am]

BILLING CODE 4830–01–P

## Customs Service

### List of Foreign Entities Violating Textile Transshipment Rules

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** This document notifies the public that the list of foreign entities identified by Customs as having violated the textile transshipment rules—authorized to be published by section 333(a) of the Uruguay Round Agreements Act—will not be published for this semiannual period, because Customs has not identified any violators during this time period that clearly fall within the purview of this section.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Crichton, Textile Industry Team, (202) 927–0001 or 927–0162.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 333 of the Uruguay Round Agreements Act (URAA) (Public Law 103–465, 108 Stat. 4809) (signed December 12, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a new section 592A, which authorizes the Secretary of the Treasury to publish in the **Federal Register** a list of foreign entities, *i.e.*, the names of any producers, manufacturers, suppliers, sellers, exporters, or any other persons located outside the Customs territory of the United States, against whom Customs has issued a penalty claim under section 592 of the Tariff Act of 1930, as amended, citing a violation of the Customs textile transshipment rules. See, 19 U.S.C. 1592A(a)(2). The list is to be published semiannually not later than March 31 and September 30 of each year.

In reviewing all information available, Customs has found that no one clearly falls within the purview of this section during this time period. Accordingly, no list will be published for the period ending March 31, 1995.

Dated: March 30, 1995.

**Stuart P. Seidel,**

*Assistant Commissioner, Office of Regulations and Rulings.*

[FR Doc. 95–8163 Filed 3–30–95; 12:01 pm]

BILLING CODE 4820–02–P

## Fiscal Service

**[Dept. Circ. 570, 1994 Rev., Supp. No. 15]**

### Surety Companies Acceptable on Federal Bonds; Redomestication; Cumberland Casualty & Surety Company

Cumberland Casualty & Surety Company has redomesticated from the state of Texas to the state of Florida effective September 1, 1994. The company was last listed as an acceptable surety on Federal bonds at 59 FR 34151, July 1, 1994.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 revision, on page 34151 to reflect this change.

Questions concerning this notice may be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (FTS/202) 874–6507.

Dated: March 27, 1995.

**Charles F. Schwan III,**

*Director, Funds Management Division, Financial Management Service.*

[FR Doc. 95–8101 Filed 3–31–95; 8:45 am]

BILLING CODE 4810–35–M

**[Dept. Circ. 570, 1994 Rev., Supp. No. 16]**

### Surety Companies Acceptable on Federal Bonds; Financial Pacific Insurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company

under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, on page 34155 to reflect this addition:

*Financial Pacific Insurance Company.* Business address: P.O. Box 292220, Sacramento, California, 95829–2220. Phone: (916) 381–8067. Underwriting Limitation *b*/: $589,000. Surety Licenses *c*/: CA. Incorporated in: California.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Hyattsville, MD 20782, telephone (202) 874–6765.

Dated: March 27, 1995.

**Charles F. Schwan III,**

*Director, Funds Management Division, Financial Management Service.*

[FR Doc. 95–8102 Filed 3–31–95; 8:45 am]

BILLING CODE 4810–35–M

# Sunshine Act Meetings

**Federal Register**

Vol. 60, No. 63

Monday, April 3, 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).

## U.S. CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10:00 a.m., Wednesday, April 5, 1995.

**LOCATION:** Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTER TO BE CONSIDERED:**

**Mid-Year Review**

The staff will brief the Commission and the Commission will consider issues related to fiscal year 1995 mid-year review.

For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: March 30, 1995.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 95–8250 Filed 3–30–95; 3:37 pm]

BILLING CODE 6355–01–M

## FEDERAL ENERGY REGULATORY COMMISSION

**''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT:** March 27, 1995, 60 FR 15819.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** March 29, 1995, 10:00 a.m.

**CHANGE IN THE MEETING:** The following Docket Number and Company has been added on the Agenda scheduled for March 29, 1995:

*Item No., Docket No., and Company*

E–2—ER94–1561–000, Citizens Utilities Company

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–8204 Filed 3–30–95; 3:03 pm]

BILLING CODE 6717–01–M

## UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–95–07]

**TIME AND DATE:** April 13, 1995 at 10:30 a.m.

**PLACE:** Room 101, 500 E Street S.W. Washington, DC 20436.

**STATUS:**

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–701 (Final) (Disposable Lighters from Thailand)—briefing and vote.
5. Outstanding action jackets: None.

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.

Issued: March 30, 1995.

By order of the Commission:

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–8235 Filed 3–30–95; 3:04 pm]

BILLING CODE 7020–02–P

## SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 3, 1995.

An open meeting will be held on Tuesday, April 4, 1995, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Thursday, April 6, 1995, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, April 4, 1995, at 10:00 a.m., will be:

The Commission will meet with representatives from the American Society of Corporate Secretaries to discuss a number of issues of mutual interest, including new developments in shareholder communications, the safe harbor concept release, the Section 16 proposals, shareholder proposals, the T+3/prospectus delivery proposals, and the security ratings proposals. For further information, please contact William Haseltine at (202) 942–2910.

The subject matter of the closed meeting scheduled for Thursday, April 6, 1995, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Opinions.

Post oral argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: March 29, 1995.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–8142 Filed 3–29–95; 4:07 pm]

BILLING CODE 8010–01–M

# Corrections

**Federal Register**

Vol. 60, No. 63

Monday, April 3, 1995

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.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 92–190–5]**

### Animal Damage Control Program; Record of Decision Based on Final Environmental Impact Statement

*Correction*

In notice document 95– 6097 beginning on page 13399 in the issue of Monday, March 13, 1995 make the following corrections:

1. On page 13399, in the first column, in the **ADDRESSES** section, in the 16th line, ''UDDA'' should read ''USDA''.

2. On page 13401, in the first column, in the 27th line, ''human'' should read ''humane'' and in the 29th line, ''Proving'' should read ''Providing''.

**BILLING CODE 1505–01–D**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 94-121-2]**

### Availability of Determination of Nonregulated Status for Genetically Engineered Potato Lines

*Correction*

In notice document 95–5993 beginning on page 13108 in the issue of Friday, March 10, 1995 make the following corrections:

1. On page 13108, in the second column, in the **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the 7th line, ''designed'' should read ''designated''.

2. On the same page, in the same column, in the first paragraph, in the 10th line, after ''potato'' insert ''Beetle''.

3. On the same page, in the third column, in the 14th line, ''patato'' should read ''potato''.

4. On the same page, in the same column, in the first full paragraph, in the 14th line from the bottom, ''patato'' should read ''potato''.

5. On page 13109, in the first column, in the first full paragraph, in the second line from the bottom, ''patato'' should read ''potato''.

6. On the same page, in the same column, in the second paragraph, in the 7th line, ''patio'' should read ''potato'' and in the 12th line ''breading'' should read ''breeding''.

7. On the same page, in the second column, in the 5th line, ''from'' should read ''found''.

**BILLING CODE 1505–01–D**

## DEPARTMENT OF AGRICULTURE

### Animal Plant Health Inspection Service

**[Docket No. 93-026-2]**

### Introduction of Nonindigenous Organisms

*Correction*

Proposed rule document 95-6907 was inadvertently published in the Notices section of the issue of Tuesday, March 21, 1995, beginning on page 14928. It should have appeared in the Proposed Rules section.

**BILLING CODE 1505–01–D**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### 37 CFR Part 1

**[Docket No. 950207044-5044-01]**
**RIN 0651-AA71**

### Patent Appeal and Interference Practice

*Correction*

In rule document 95–6377 beginning on page 14488, in the issue of Friday, March 17, 1995, make the following corrections:

1. On page 14513, in the 2nd column, in the 21st line from the top, ''ion'' should read ''in''.

2. On the same page, in the 3rd column, in the 5th paragraph, in the 12th line, before the word ''is'' insert '', for example. When a next-business-day commercial courier''.

**BILLING CODE 1505–01–D**

## EVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[AD-FRL-5168-8]**

**RIN 2060-AD95**

### National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutant Emissions from the Printing and Publishing Industry

*Correction*

In proposed rule document 95–5983 beginning on page 13664, in the issue of Tuesday, March 14, 1995, make the following corrections:

1. On page 13665, in the first column, in the first full paragraph, in the eighth line, after the word ''downloading'' insert ''on the''.

2. On page 13680, in the second column, the heading after the first full paragraph should have been run-in to the last word of the first full paragraph and should have appeared as follows: section V. G. These records would be maintained in accordance with the requirements of §63.10 (b).

**BILLING CODE 1505–01–D**

Federal Register

Monday
April 3, 1995

Part II

# Department of the Interior

**Bureau of Reclamation**

**43 CFR Parts 426 and 427**

**Acreage Limitation and Water Conservation Rules and Regulations; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Reclamation**

**43 CFR Parts 426 and 427**

**RIN 1006–AA32**

## Acreage Limitation and Water Conservation Rules and Regulations

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rulemaking would retitle and revise the existing Rules and Regulations for Projects Governed by Federal Reclamation Law (Part 426) and add new Water Conservation Rules and Regulations (Part 427). These rules would replace and expand upon existing rules that pertain to the administration of the Reclamation Reform Act of 1982 (RRA) and are in partial fulfillment of the requirements of a Settlement Contract between the Department of the Interior, Department of Justice, and the Natural Resources Defense Council (NRDC).

**DATES:** Written comments on these proposed rules and regulations must be received by June 2, 1995.

**ADDRESSES:** Written comments should be mailed to the Westwide Settlement Manager, Bureau of Reclamation, P.O. Box 25007 (Mail Code D–5010), Denver, Colorado 80225.

**FOR FURTHER INFORMATION CONTACT:** Concerning part 426, contact Richard Rizzi, Bureau of Reclamation, P.O. Box 25007 (Mail Code D–5200), Denver, Colorado 80225, telephone (303) 236–1061 ext. 235; concerning part 427, contact Craig Phillips, Bureau of Reclamation, P.O. Box 25007 (Mail Code D–5300), Denver, Colorado 80225, telephone (303) 236–1061 ext. 265.

**SUPPLEMENTARY INFORMATION:** The RRA (43 U.S.C. 390aa, *et seq.*) was signed into law on October 12, 1982. It was the culmination of an effort to modernize Federal reclamation law. The RRA made a number of changes to prior Federal reclamation law while retaining the basic principle of limiting the amount of land in ownership which may receive water deliveries from Bureau of Reclamation (Reclamation) projects.

Rules and regulations for implementing the RRA were published in the **Federal Register** (43 FR 54768, Dec. 6, 1983) and became effective on January 5, 1984. In 1987, the rules and regulations were amended, primarily to implement Section 203(b) of the RRA, which was not addressed in the 1983 rulemaking. Revisions also were made to those provisions of the rules and regulations pertaining to submission of certification and reporting forms, trusts, non-resident aliens, water transfers, covenant restrictions, and religious and charitable organizations.

The 1987 rules and regulations and three alternatives were evaluated in an Environmental Assessment (EA) published by Reclamation in April 1987. The EA concluded that the impacts of the proposed rulemaking were primarily economic in nature and that no significant impacts to the natural environment would result from the rulemaking. A Finding of No Significant Impact concerning the 1987 rulemaking was therefore issued by Reclamation on April 8, 1987. The final rules and regulations were published in the **Federal Register** (52 FR 11954, Apr. 13, 1987) and became effective on May 13, 1987.

The Omnibus Budget Reconciliation Act of 1987, enacted on December 22, 1987, included amendments to the RRA. The amendments addressed revocable trust agreements, provisions for audits by Reclamation to confirm information from reporting procedures, application of full-cost water rates for lands under extendable recordable contracts, and interest on underpayments or nonpayments. Consequently, further proposed amendments to the rules and regulations were evaluated in a supplemental EA published by Reclamation in September 1988. The supplemental EA concluded that the impacts of the proposed rulemaking were primarily economic in nature and that no significant impacts to the natural environment would result from the rulemaking. A Finding of No Significant Impact concerning the 1988 rulemaking was therefore issued by Reclamation on September 23, 1988. The final rules and regulations were published in the **Federal Register** (53 FR 50535, Dec. 16, 1988) and became effective on January 17, 1989.

### Litigation Concerning the RRA Rules and Regulations

The NRDC and others filed a lawsuit challenging the validity of the 1987 and 1988 rules and regulations (*NRDC* v. *Underwood, No. Civ. S–88–375–LKK*). On July 26, 1991, the United States District Court for the Eastern District of California (Court) granted NRDC's partial motion for summary judgment. The Court ruled that Reclamation had not complied with the requirements of the National Environmental Policy Act (NEPA) and the regulations of the Council of Environmental Quality in preparing the EA and the Findings of No Significant Impact in the promulgation of the 1987 rules and regulations.

Reclamation appealed the District Court's decision to the Ninth Circuit Court of Appeals. In September 1993, while the appeal was still pending, the Department of the Interior (Interior), the Department of Justice, and NRDC entered into a Settlement Contract which requires Reclamation ''to propose new rules and regulations implementing, on a westwide basis, the * * * (RRA) as part of a new rulemaking proceeding that comprehensively reexamines the implementation of the RRA.'' The Settlement Contract also requires Interior to prepare an environmental impact statement (EIS) considering the impact of the proposed rules and regulations and alternatives thereto. However, nothing in the contract requires Interior to adopt changes to the rules now in effect.

The required draft EIS has been published separately and notice of its availability will be published in the ''notice'' section of the **Federal Register**.

### Public Scoping

A notice of intent regarding the EIS and a notice of intent regarding the rulemaking were both published in the **Federal Register** (58 FR 64277 and 58 FR 64336, Dec. 6, 1993). A press release was issued on December 29, 1993, and approximately 3,500 information packets were distributed to environmental groups, entities that have contracts with Reclamation for project water supplies, the media, and other interested parties. Public scoping meetings were held in January 1994 to receive public input regarding the issues and alternatives to be considered in the EIS and rulemaking. Scoping sessions were held in Billings, MT; Fresno, CA; Salt Lake City, UT; Phoenix, AZ; Boise, ID; Spokane, WA; Portland, OR; and Denver, CO. In addition to the oral comments received at the scoping sessions, approximately 150 letters were received.

Public comments generally focused on 5 areas: process, acreage limitations on receipt of project water, water conservation, the Settlement Contract, and EIS alternatives. Each comment was considered in the development of EIS alternatives, the EIS analysis, and these proposed rules and regulations.

### Partnerships for Improved Resources Management

In December 1994, the Commissioner of Reclamation announced a new initiative to develop formal partnerships between Reclamation and water districts in a collaborative effort to improve the management of water and associated resources throughout the Western

United States. The partnerships will address mutually desirable water resources management objectives and provide for public involvement to consider the broadest range of traditional and emerging societal needs and water resources management solutions.

Under this initiative, partnerships will be formed with one or more districts on a district basis, project basis, or watershed basis. Partnerships will involve agricultural water districts, municipal and industrial water districts, other Reclamation contractors, and other water suppliers and users throughout the 17 Western States. The initiative will also provide for State participation in the partnerships to assure compliance with State water law and consideration of State resources priorities.

These proposed regulations acknowledge this new partnership initiative. Certain requirements are modified if a formal partnership with a district achieves the same objectives through similar or alternative means. One section specifically allows for this type of flexibility: § 426.17 regarding landholder information requirements.

**Description and Analysis of Part 426**

Reclamation has taken advantage of the opportunity afforded by the NRDC settlement to rework part 426 in its entirety. The majority of the changes have been made for the sole purpose of improving the clarity of the regulation. Thus, the bulk of the changes do not represent new Reclamation policy regarding the RRA, but rather an attempt on Reclamation's part to resolve any uncertainty that may have been associated with the interpretation of the existing regulations. In some cases, these proposed regulations include Reclamation policies that have been in effect for some time, but which are not specifically covered in the existing regulations.

However, a number of substantive changes have been proposed. The key topics under which substantive changes have been made is summarized as follows:

- Reduction in certification and reporting burden
- Definition of *lease*
- Nonresident alien and foreign legal entity entitlements
- Types of contracts considered *additional and supplemental benefits*
- Application of the RRA to religious and charitable organizations
- Application of class 1 equivalency
- Involuntary acquisition and future operation of formerly excess land by excess land sellers
- Application of the compensation rate and administrative fees in cases of irrigation of ineligible excess land
- New procedures for administrative appeals of RRA-related determinations.

Also, a new ordering of the sections has been proposed with the objectives of grouping related topics and of attaining a more logical and progressive sequence. For example, §§ 426.4 through 426.6 would address how basic landholding entitlements are determined, followed by §§ 426.7 through 426.9, which would discuss the entitlements of particular types of landholders. Sections 426.10 through 426.14 would be generally categorized as addressing the status of land under acreage limitation laws, and the remaining sections would address administrative and miscellaneous provisions.

Finally, all examples would be deleted from the text of the regulations and would be instead included, if necessary, in the following section-by-section analysis. This change would make the rule more compact, and would promote our effort to improve precision in the text of the regulation.

**Section-by-Section Analysis**

*Section 426.1.* The proposed rule would change the title of this section from *Objectives* to *Purpose*, and the narrative would be rewritten to include a straightforward statement as to the purpose of these regulations.

*Section 426.2.* The existing section on applicability would be removed because it is not possible to write a concise, yet accurate, statement as to the applicability of these regulations. Because the rule's scope of effect is not the same for the various provisions of the regulations, Reclamation proposes that the best approach would be to have each section speak for itself as to its applicability.

The proposed § 426.2 defines terms used in the regulation and would replace § 426.4 from the existing regulation.

Numerous changes would be made to the definition section. The more significant of the proposed changes are discussed as follows in alphabetical order:

*Acreage limitation entitlement, acreage limitation provisions, and acreage limitation status* would be added to the proposed regulations to add precision and to replace the compound term *ownership limitation and pricing restrictions.*

*Arable land* would be deleted because the term's only use is within the definition of *irrigable land.* The term *arable land* is included in the existing rules because the definition of *irrigable land* is based on one more useful for formal land classification purposes. It is suggested that a simpler definition of the term *irrigable land* would be appropriate for this regulation, and, therefore, a definition of the term *arable land* would be unnecessary.

*Compensation rate* would be newly defined in these proposed regulations to describe the full-cost charges applied to certain types of illegal irrigation water deliveries that are not discovered until after they have taken place.

For conciseness only, the two sentences in the definition of the term *contract* would be merged. In addition, the term agreement was added to broaden the definition to ensure all arrangements between Reclamation and water users that may be subject to application of the acreage limitation provisions are captured.

*Contract rate* would be changed to reflect awareness of the fact that many contracts do not include per acre or per acre-foot rates. For purposes of this part, however, *contract rate* would mean such a rate on a per acre or per-acre-foot basis.

*Direct* and *indirect* would be defined in this proposed regulation because they are used in the RRA and are frequently used in the text of the regulation. The terms apply in situations wherein land is held *directly* by a landowner or lessee, or indirectly by a party that has a beneficial interest in a legal entity that is a landowner or lessee (such as a stockholder, partner, or trust beneficiary).

*Discretionary provisions of Title II* would be deleted and would be replaced with the more concise *discretionary provisions.* Also, section 203(b) would be excepted from this definition, since it applies even to prior law districts and landholders. Finally, United States Code citations would be substituted, as they are more useful in locating the relevant statutes.

*District* would be changed to replace the phrase *eligible to contract* with *can potentially enter into a contract,* in order to avoid the use of the term *eligible,* which has its own specific meaning under part 426.

*Eligible* would be included to reflect its common meaning among those familiar with acreage limitation laws: the right to receive irrigation water without consideration of the price paid for that water. This definition can be compared with that of *ineligible.*

*Exempt land* would be replaced with the term *exempt* primarily because that term can be applied to districts and certain types of landholders (e.g.,

trustees and government agencies), as well as to specific land parcels.

In the definition of the term *full cost, Secretary* would be changed to *Reclamation*.

*Full-cost rate* and *full-cost charge* are defined to differentiate between the two terms.

*Indirect* would be added. See the above discussion of the term *direct*.

The reference to the Internal Revenue Code would be deleted from the definition of *individual* because that concept is covered in the definition of *dependent*.

*Ineligible* would be added to reflect that term's common meaning among those familiar with acreage limitation laws: The lack of eligibility to receive irrigation water at any price. This definition can be compared with that of *eligible*.

*Intermediate entity* would be added to define a term used in these regulations.

*Irrevocable election* would be changed to delete both the reference to *Title II* and the second sentence which presently contains additional explanation that is redundant with that contained in the text of the existing rule.

*Irrigable land* would be changed to be more concise and understandable. The phrases from the existing regulation excluding permanent buildings, etc., would be transferred to the definition of *nonexempt land*.

*Irrigation land* would be modified primarily to exclude land exempt from acreage limitation laws. Also, the phrase *in a given water year* would be added to clarify that land which has received irrigation water retains *irrigation land* status for the entire water year, even if irrigation is not taking place at any particular time.

*Landholder* would be modified to delete the references to the terms *qualified recipient, limited recipient,* and *prior law recipient*, because not all landholders fall into these categories (i.e. government agencies, Native American tribes, etc.).

*Landholding* would be greatly simplified. The proposed definition is clearer, and takes advantage of the new term *nonexempt land*. It should be noted that involuntarily acquired land would be included within this definition of *landholding*.

*Lease* would be substantially modified. Under the existing regulation, one of the key elements in the definition of *lease* is the assumption of economic risk by the reputed lessee. This definition permits the development of arrangements under which an individual or legal entity is paid a fixed fee for operating a farming enterprise. Since the operator under these arrangements assumes no economic risk, Reclamation currently does not deem operator to be in a lease relationship. Therefore, under the existing rules, operators are not subject to full-cost irrigation water rates.

The new definition would make *possession* the singular element indicating the existence of a lease. The definition would eliminate economic interest as an essential element of a lease (although economic risk would remain a factor indicating the existence of a lease). Thus, under the proposed regulation, whenever someone other than the landowner has possession of nonexempt land, a lease would exist. Reclamation would consider *fixed-fee* operations leases and would subject the parties to full cost pricing if possession of the land has been transferred, and if nonfull-cost entitlements are exceeded.

The second and third sentences of the definition would address the situation where more than one party has some degree of possession; for example, a landowner may contract with a farm manager but may retain some decisionmaking authority.

Reclamation intends the proposed definition of the term *lease* to exclude arrangements between landholders and custom operators, employees, lenders, and other landholders with whom farm equipment is shared.

*Legal entity* would be broadened to include certain types of landholding arrangements whose status for acreage limitation purposes had been unclear under the existing regulation.

*Nondiscretionary provisions* would be modified to eliminate the reference to Title II, to include section 203(b), and to include the United States Code citation. The second sentence of the current definition has been eliminated because that concept is covered elsewhere in the regulations.

*Nonexempt land* would be newly defined in these proposed regulations to replace the compound term *irrigable and irrigation land. Nonexempt land* would be defined more precisely than *irrigable and irrigation land*, and would be used as a concise term to describe, generally, all land subject to the acreage limitation provisions of Federal reclamation law.

*Nonfull-cost entitlement* would be modified to enhance clarity by including the defined term *nonfull-cost rate*.

*Nonresident alien entitlement* would be eliminated because, under the proposed rules, nonresident aliens would be treated as prior law recipients, and their entitlements derived accordingly. This fact would be made clear in the definition of *prior law recipient*.

*Operation and maintenance costs or O&M costs* would be newly defined in order to clarify the types of activities that are included in the calculation of operation and maintenance costs.

*Part owner* would be added to define a term that is used in these regulations.

*Prior law* would be modified primarily to include United States Code citations.

*Prior law recipient* would be modified to include within the definition, nonresident aliens and legal entities not registered in the United States. Under the proposed regulations such persons and entities could only be prior law recipients. This conclusion results from the RRA's definitions of *qualified recipient* and *limited recipient*.

*Public entity* would be added to define a term that is used in these regulations.

*Qualified recipient* would be modified to include married couples in which only one spouse is a U.S. citizen or resident alien.

*Reclamation fund* would be modified to eliminate unnecessary language.

*RRA* would be added. This term would be used throughout the part as it is concise and well understood by most readers.

*Title II* would be eliminated in favor of a definition of the term *RRA* which would be used throughout the part.

*Section 426.3*. The section in the existing regulations, entitled *Authority*, would be removed because it is redundant with the authorities statement that immediately follows the table of contents.

The proposed § 426.3, *Conformance to the discretionary provisions*, would replace the existing § 426.5 and add a more precise description of the section's contents.

The section would be generally rewritten to eliminate redundancy with other sections and paragraphs within the section. Paragraph (a) categorically describes the conditions under which districts remain subject to prior law. These conditions are summarized in the following table:

| If a district * * * | then * * * |
|---|---|
| Executes a new or renewed contract with Reclamation after October 12, 1982. | The discretionary provisions apply as of the execution date of the new or renewed contract. |
| Amends its contract to conform to the discretionary provisions (following the procedures specified in these regulations) and Reclamation amends the contract. | The district is subject to the discretionary provisions from the date it requests the amendment. |
| Amends its contract after October 12, 1982 to provide the district with additional or supplemental benefits (as described in these regulations) and the amendment includes the district's conformance to the discretionary provisions. | The discretionary provisions apply as of the date that the Secretary executes the contract amendment. |

A new standard RRA contract article is included under paragraph (c) to clarify any misconceptions concerning the applicability of the Acreage Limitation Rules and Regulations and Reclamation's right to administer contracts.

Another substantial proposed change in the rule would involve specific contract actions that would be considered additional and supplemental benefits. Under this proposed regulation, Rehabilitation and Betterment Act and Small Reclamation Projects Act (SRPA) loans, which are not currently considered additional and supplemental benefits, would now be considered as such. Any district already subject to the acreage limitation provisions that obtains benefits under these programs would be required to conform to the discretionary provisions. Furthermore, Emergency Fund Act and Distribution Systems Loan Act contracts, whose treatment is not clearly established under the current rules and policy, would be considered additional and supplemental benefits under this proposal. The listing of types of contract amendments requiring district conformance to the discretionary provisions should not, however, be considered comprehensive.

Actions pursuant to the Reclamation Safety of Dams Act of 1978 would be added to the list of items not considered to provide additional and supplemental benefits, as provided by statute.

The following statement and table are being considered as an alternative to § 426.3(a)(3)(iv)(F) in the final rules :

(F) Transfer of water on an annual basis from one district to another if the parties to the transfer meet the conditions in the table below:

| Party | Condition |
|---|---|
| Both districts | Must have contracts with the United States. |
| District receiving transferred water | Must pay a rate that:<br>—is the higher of the applicable water rate for either district;<br>—does not result in any increased operating losses to the United States above those that would have existed if there had not been a transfer; and<br>—does not decrease the capital repayment to the United States below what it would have been if there had been no transfer. |
| Recipients of transferred water | Must pay a rate that is at least equal to the actual O&M costs or the full-cost rate if the recipients would have been subject to these costs in the absence of a transfer. |

Paragraph (d), *The effect of a master contractor's and subcontractor's actions to conform to the discretionary provisions,* of the proposed regulation has been rewritten for conciseness. The following examples illustrate the application of this paragraph:

*Example (1).* Assume Districts A, B, and C are members of a water conservancy district which entered into a master contract with the United States prior to October 12, 1982. The water conservancy district has allocated all the irrigation water made available to it under the master contract to Districts A and B, pursuant to pre-October 12, 1982, subcontracts with the conservancy district to which the United States is a party. The irrigation water is not made available to District C or any other districts or landholders within the water conservancy district. Consequently, Districts A and B are subject to the acreage limitation and pricing provisions of prior law. Districts A and B may amend their subcontracts to conform to the discretionary provisions without making it necessary for the conservancy district or the other subcontracting entity with the conservancy district to so amend their contract or the subcontract.

*Example (2).* Assume District XYZ has a pre-October 12, 1982, contract with the United States for the delivery of irrigation water. The district also has allocated that irrigation water pursuant to subcontracts with six subcontracting entities. However, the United States is not a party to these subcontracts. A subcontractor may choose to conform to the discretionary provisions only if it makes the United States a party to the subcontract. Such action will not require the prior law master contractor or the other subcontractors to so amend.

*Example (3).* Assume District A, a master contracting agency, executes a water service contract with the United States after October 12, 1982. The irrigation water is to be delivered to only two of the eight member agencies within District A. Subcontracts are executed between District A, the United States, and each of the two member agencies to provide irrigation water service to the two member agencies. In this instance, the discretionary provisions become applicable to only the two member agencies which execute subcontracts with District A and the United States.

Paragraph (e) is new that would explain the effect of a district's becoming subject to the discretionary provisions on a landholder's status. It would explain how certain indirect landholders in districts with an amended contract can conform to the discretionary provisions by simply submitting a certification form. The provision would also explain how Reclamation would treat direct and indirect landholdings of nonresident aliens and foreign entities in amended districts.

Paragraph (f) would expand on the current rules' discussion of individual elections to address the effects of elections by part owners on entities and vice versa.

*Section 426.4* in the existing regulations, *Definitions,* would be renumbered § 426.2. The proposed new § 426.4, entitled *Attribution of land,* is intended to clarify how Reclamation would attribute land to indirect landholders, and to landholders who are

part owners or are entities not wholly owned by an individual. It would also concisely summarize existing policy regarding on how land is attributed for entitlement purposes.

Paragraph (a) would establish the general rule that individuals and entities cannot enhance their entitlements or eligibility through the creation or acquisition of legal entities. For example, a prior law recipient could not increase his or her 160-acre ownership entitlement (see § 426.5) by creating or acquiring an interest in a qualified recipient legal entity. Such a prior law recipient would need to conform to the discretionary provisions (through district contract action or individual irrevocable election) in order to realize an increase in his or her entitlements.

*Example (1).* Corporation A, a limited recipient that did not receive water on or before October 1, 1981, and therefore is not entitled to receive irrigation water at a nonfull-cost rate (see § 426.6). Such an entity may not gain entitlement to receive irrigation water at a nonfull-cost rate by acquiring Corporation B, an entity that received water on or before that date. If the latter entity were so acquired, irrigation water could be delivered to the entities' landholding only at the appropriate full-cost rate.

The converse is also true. If the entities' roles in the preceding example were reversed (that is, if Corporation B acquired Corporation A), the landholding of Corporation A could be irrigated only at the appropriate full-cost rate as long as Corporation A continued to exist. In this case, it should be noted that Corporation B, which is eligible to receive irrigation water at a nonfull-cost rate, could potentially receive nonfull-cost irrigation water on other land in its holding that is not held through Corporation A; but any land held by or through Corporation A could be irrigated only at full cost.

*Example (2).* Corporation C is a qualified recipient which owns and irrigates 500 acres. Corporation C is subsequently acquired by Corporation D, a limited recipient which received irrigation water on or before October 1, 1981, but which currently has no landholdings other than Corporation C's 500 acres. On the date of acquisition, Corporation C becomes a limited recipient because it benefits all the stockholders of Corporation D. Thus, both Corporations C and D are entitled to own and irrigate 640 acres (see § 426.5), but only 320 acres at the nonfull-cost water rate (see § 426.6). Therefore, if all 500 acres are irrigated, the full-cost water rate must be paid for water delivered to 180 of those acres.

*Example (3).* The trustees of five irrevocable trusts, each of which have six natural persons as beneficiaries, form a partnership that holds land subject to the acreage limitation provisions in a discretionary district. In order to determine if that partnership is a limited or qualified recipient, it is necessary to ascertain how many natural persons will benefit from the partnership. In this case, 30 natural persons will benefit (none of the trust beneficiaries benefit from more than one trust) and, therefore, the partnership has the acreage limitation status of limited recipient. Although the five trusts are not limited in the amount of land they can hold and receive irrigation water at the nonfull-cost rate (other than through the entitlements of their beneficiaries) the acreage limitation status of the partnership will limit how much land can be held through that entity by the trusts and receive such water.

Paragraph (b) would establish that, for purposes of acreage limitation entitlements, owned land is attributed to each indirect landholder proportionally based on that landholder's interest. Paragraph (c) would establish that leased land counts against the entitlements of both the owner and the lessee. Paragraph (d) would establish that if a series of legal entities has ownership relationships with each other, Reclamation would proportionately attribute the land to each such entity.

*Example (4).* Assume Trust A has two beneficiaries, beneficiary A and beneficiary B. Beneficiary A has a 60 percent interest in the trust, and beneficiary B has a 40 percent interest. Trust A owns 800 acres of nonexempt land. Reclamation attributes 480 acres toward her ownership entitlement, and beneficiary B must attribute 320 acres toward his ownership entitlement.

*Example (5).* Assume Corporation C wholly owns Corporation D, and that Corporation D owns a 60 percent interest in Corporation E. Corporation E leases 500 acres of irrigation land. Reclamation will attribute to Corporation E all 500 acres toward the company's nonfull-cost entitlement, and Corporations C and D must each attribute 300 acres toward their nonfull-cost entitlements.

*Example (6).* Attribution to both owner and lessee is demonstrated by Farmer A who owns 400 acres of irrigation land which she leases to Farmer B. Farmer A must count all 400 acres toward her ownership and nonfull-cost entitlements, and Farmer B must count all 400 acres toward his nonfull-cost entitlement.

Paragraph (e) addresses how land that is owned by a landholder and then is indirectly leased by the same landholder will be counted by that landholder.

*Example (7).* Farmer A owns 60 acres and leases that land to Corporation XYZ that leases a total of 200 acres. Farmer A also owns 50 percent of Corporation XYZ. Farmer A would claim his 60 owned acres, but would not have to claim the entire 200 acres leased by Corporation XYZ. Instead, Farmer A would claim 70 acres leased by Corporation XYZ (200 acres minus the 60 owned acres times the 50 percent ownership interest). Accordingly, Farmer A would claim a total landholding of 130 acres. If Farmer B was the other part owner of Corporation XYZ and leased his 140 owned acres to that entity, his claimed landholding would be 170 acres (140 owned acres, plus 200 acres minus the 140 owned acres times the 50 percent ownership interest).

Paragraph (f) would establish that, for purposes of eligibility, land is attributed in its entirety to all direct and indirect landholders, unless they hold divided interests. The provision acknowledges that irrigation water cannot be delivered to a legal entity without benefiting all indirect owners of undivided interests in that entity; therefore, all such indirect owners must be eligible in order for the entity to be eligible.

If the interests of the entity's indirect owners are divided, however, then the district could deliver irrigation water to the entity without necessarily benefiting all such owners. In this situation, it may be possible to deliver irrigation water to the entity even if one or more of the entity's indirect owners is not eligible.

*Example (8).* Assume two qualified recipients, Farmer A and Farmer B, form a qualified recipient partnership with equal, undivided interests. Farmer A has no landholding outside the partnership, but Farmer B owns 960 acres of nonexempt and nonexcess land outside the partnership, and has therefore completed his ownership entitlement. The partnership has no remaining ownership entitlement, because any land irrigated by the partnership would cause Farmer B to exceed his ownership entitlement.

If, however, the partnership agreement in this example provided that the partners' interests were separable and alienable, the partnership could receive irrigation water on that land attributable to Farmer A. It would need to be shown that Farmer B does not benefit from the receipt of irrigation water by the partnership.

*Section 426.5* in the existing regulations, *Contracts*, would be renamed and renumbered § 426.3. The proposed new § 426.5, *Ownership entitlement*, would replace § 426.6 of the existing regulations. This section would summarize the ownership entitlements of individuals and most types of entities, and would be generally rewritten for conciseness.

Paragraph (a) would be rewritten to achieve better organization and clarity. Moreover, the reference in the current language to the regulation on class 1 equivalency would be deleted because that topic is addressed in the discussion of qualified and limited recipient entitlement.

All descriptions of what constitutes qualified, limited, and prior law recipients would be deleted because they are redundant with the definitions found in § 426.2.

The trust discussion would be placed in a new § 426.7.

The following table summarizes the ownership entitlements specified in this section:

| If the landowner is a: | The size of his or her ownership entitlement is: | Basis of computation |
|---|---|---|
| Qualified recipient | 960 acres or class 1 equivalent | Westwide. |
| Limited recipient | 640 acres westwide or class 1 equivalent | Westwide |
| Prior law recipient and is a(n): | | |
| Individual | 160 acres | Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79. |
| Husband and wife who jointly own equal interest. | 320 acres | Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79. |
| Surviving spouse | Up to 320 acres | Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79. |
| Child | 160 acres | Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79. |
| Joint tenancy or tenancy-in-common, if interests are equal. | 160 acres per tenant | Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79. |
| Partnership if interests are: alienable, equal, and separable. | 160 acres per partner | Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79. |
| Partnership if interests are: not alienable or not separable. | 160 acres total | Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79. |
| Corporation | 160 acres | Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79. |

The following examples illustrate the application of this section:

*Example (1).* Farmer A receives irrigation water on 160 acres owned in District X, a district subject to prior law. District X subsequently amends its contract to conform to the discretionary provisions. Farmer A automatically becomes a qualified recipient by virtue of the district decision and is entitled to receive irrigation water on a maximum of 960 acres of irrigation land in his ownership.

*Example (2).* Farmer B and her husband are a qualified recipient by virtue of an irrevocable election. They own in joint tenancy 960 acres of nonexempt land. As a qualified recipient, they may irrigate the entire 960-acre landholding. However, they have completed their ownership entitlement.

*Example (3).* Farmer C and Farmer D are a married couple, and each owns 480 acres of irrigation land under separate title in District A. District A has amended its contract to conform to the discretionary provisions. Even though the land is held in separate title, Farmer C and Farmer D as a married couple have reached the limits of their ownership entitlement as a qualified recipient.

*Example (4).* Farmer E is a citizen of Germany, but has taken up permanent residency in the United States. Farmer E owns 160 acres in District Y and desires to purchase an additional 800 acres. District Y has not amended its contract to conform to the discretionary provisions. Farmer E; however, decides to execute an irrevocable election. After the election, Farmer E becomes entitled to receive irrigation water on 960 acres of owned land. This entitlement as a qualified recipient remains in force so long as Farmer E, as a resident alien, maintains permanent residency in the United States. If Farmer E were to become a U.S. citizen, his eligibility as a qualified recipient would, of course, remain in force.

*Example (5).* Farmer F is a citizen and resident of Switzerland. Farmer F owns 160 acres of irrigation land in District X, a district subject to prior law. Subsequently, District X amends its contract to conform to the discretionary provisions. Farmer F, as a nonresident alien, cannot meet the requirements of either a qualified recipient or limited recipient. For that reason, and because he owned the irrigation land prior to the district's contract amendment, Farmer F may, as set forth in § 426.11(e), place the land under recordable contract and receive irrigation water at the nonfull-cost rate for 5 years. (If the land were not placed under recordable contract or had Farmer F not acquired the irrigation land prior to the district's contract amendment, the 160 acres owned would be ineligible for service until such time as it was sold or otherwise transferred to an eligible recipient or Farmer F qualifies as a resident alien in the United States.)

*Example (6).* ABC Farms is a general partnership comprised of four individuals who are qualified recipients and who own equal interests in the partnership's 960-acre landownership. The land is located in District Z, which is subject to the discretionary provisions. Therefore, ABC Farms satisfies the requirements for a qualified recipient and may receive irrigation water for all 960 acres in its ownership. Moreover, the members of the partnership, as qualified recipients, may each receive irrigation water on a maximum of 720 acres in some ownership or ownerships other than ABC Farms.

*Example (7).* Six brothers who are citizens and residents of Canada form a family corporation registered in the State of Montana with each brother holding equal shares in the corporation. The corporation makes an irrevocable election and is therefore a qualified recipient entitled to receive irrigation water on 960 acres or less of owned land. The brothers cannot meet the requirements to be qualified recipients since none are citizens of the United States or residents aliens thereof. Therefore, each brother has completed his 160-acre ownership entitlement as a prior law recipient. In a district subject to the discretionary provisions, nonresident aliens may receive irrigation water only on lands held through legal entities (i.e., indirectly) and may not receive irrigation water on land they hold directly.

*Example (8).* Corporation A is a qualified recipient receiving irrigation water on a landownership of 960 acres. Farmer Brown is also a qualified recipient who owns 25 percent of Corporation A and farms 800 acres of owned land using irrigation water. In this instance, Farmer Brown exceeds his individual ownership entitlement by 80 acres and must either divest an appropriate share of his ownership in Corporation A or designate 80 acres of his directly owned land as excess.

*Example (9).* Corporation B and Corporation C, wholly owned subsidiaries of Corporation D, each own 500 acres in District Z which has amended its contract to conform to the discretionary provisions. All three corporations are qualified recipients. The landholdings of Corporations B and C are counted against the entitlement of the parent corporation, Corporation D. Therefore, Corporation D has exceeded its 960-acre ownership entitlement by 40 acres, and 40 acres must be declared excess.

*Example (10).* AAA Land Company, a corporation benefiting more than 25 persons and registered in the State of California, owns 320 acres in District Y. In the absence of district action, the company makes an irrevocable election to conform to the discretionary provisions. Thereby AAA Land Company becomes a limited recipient and is entitled to receive irrigation water on 640 acres or less owned westwide.

*Example (11).* BBB Fertilizer Company is a corporation registered in Nebraska and owns 160 acres of nonexcess and 480 acres of excess land in District X, a district subject to prior law. District X subsequently amends its contract to conform to the discretionary provisions. BBB Fertilizer Company benefits more than 25 persons and therefore automatically becomes a limited recipient with a 640-acre ownership entitlement. BBB Fertilizer Company may therefore redesignate the 480 excess acres as nonexcess.

*Example (12).* CDE Development Company is a corporation, incorporated in the Greater Antilles, with more than 25 shareholders. CDE Development Company buys 160 acres in a district which has amended its contract to conform to the discretionary provisions. However, unless and until such time as CDE Development Company establishes itself as a legal entity under State or Federal law, it cannot meet the requirements to become a limited recipient, and none of its directly held land is eligible for irrigation water. Had CDE Development Company been receiving irrigation water on the 160 acres prior to the district's amendment, it could have placed the land under recordable contract as set forth in § 426.11(e)(3) and could have continued to receive irrigation water for 5 years.

*Example (13).* FGH Corporation is owned by more than 25 stockholders and is registered in France. IJK Corporation is registered in California and is a wholly-owned subsidiary of FGH Corporation. IJK owns 640 acres in a district subject to the discretionary provisions. IJK is a limited recipient that would normally be entitled to irrigate the entire 640-acre landownership; however, FGH cannot become a limited recipient because it is not registered in the United States. Therefore, FGH has only the 160-acre ownership entitlement of a prior law recipient. As a result, only 160 acres of IJK's owned land is eligible to receive irrigation water. The remaining 480 acres must be declared excess.

*Example (14).* Farmer G, a prior law recipient, owns 160 acres of irrigation land in each of four districts. None of the districts in which Farmer G owns land has amended its contract to conform to the discretionary provisions, and Farmer G held title to the land prior to December 6, 1979. Thus, Farmer G remains eligible to receive irrigation water on the 640 acres owned in the four different districts.

**Note:** If title to the irrigated land changes hands, the 160-acre westwide entitlement will automatically apply to the transferred land, assuming the new landholder is a prior law recipient.

*Example (15).* Farmer H owns 160 acres in each of two prior law districts, and all of the acreage is eligible for irrigation water by virtue of the fact Farmer H owned the land prior to December 6, 1979. On January 1, 1983, Farmer H purchased another 160 acres of nonexcess land which is located in a third prior law district. The land newly purchased in this district must be declared excess, except as provided for in § 426.11(d).

*Example (16).* Farmer I and his wife own 320 acres of irrigation land in each of two prior law districts, for a total of 640 acres. The couple purchased both parcels of land in 1976. Farmer I and his wife have not made an irrevocable election. Since the land was purchased prior to December 6, 1979, Farmer I and his wife are entitled to receive irrigation water on all 640 acres. The couple has reached the limit of their ownership entitlement.

*Example (17).* Farmer J and Farmer K own equal interests in a tenancy-in-common which owns 320 acres of irrigation land in District Y. District Y has not amended its contract to become subject to the discretionary provisions. Both Farmers J and K own nonexempt land only through their interests in the tenancy; however, Farmer J wishes to purchase additional land in the district so he makes an irrevocable election. Since the tenancy remains subject to prior law, Farmers J and K may each receive irrigation water on a maximum of 160 acres through their interests in the entity. Therefore, the tenancy's 320 acres remain eligible to receive irrigation water, but the tenancy and Farmer K have both reached the limits of their ownership entitlements under prior law. However, as a qualified recipient, Farmer J may receive irrigation water on an additional 800 acres of owned land.

*Example (18).* Mr. and Mrs. L, who purchased all of their owned land prior to December 6, 1979, may receive Reclamation irrigation water on the 320 acres they jointly own as prior law recipients in District A and also on the 100 acres they own in District B. On July 1, 1991, Mr. and Mrs. L purchase an additional 40 acres in District B. Since the 40 acres were acquired after December 6, 1979, all 460 acres in their ownership must be taken into consideration to determine if the newly acquired land is within the couple's ownership entitlement. In this case, the total owned acres westwide (460 acres) exceeds the couple's maximum westwide entitlement as prior law recipients (320 acres). Therefore, the 40 newly acquired acres are considered to be excess land and ineligible to receive Reclamation irrigation water in the couple's landholding.

*Example (19).* EFG Farms, a partnership composed of four individuals who hold equal, separable, and alienable interests in the partnership, owns 960 acres of nonexempt land located in District Y. District Y has not amended its contract to become subject to the discretionary provisions. EFG Farms and two of the partners are subject to prior law; the other two partners have made irrevocable elections. Neither EFG Farms nor any of the partners owns irrigation land outside the partnership. Based on these facts, each partner may own and receive irrigation water on a maximum of 160 acres through the partnership. Therefore, 640 of the EFG Farms' 960 acres are entitled to receive irrigation water; the remaining 320 acres must be declared excess. The two partners who have made irrevocable elections may each purchase and receive irrigation water on another 800 acres outside the partnership in order to complete their individual 960-acre ownership entitlement for qualified recipients.

*Example (20).* Corporation GHI owns 320 acres in District Y, a prior law district. Corporation GHI's two shareholders, Farmer L and Farmer M, hold equal interests in the corporation. Both District Y and Farmer L are subject to prior law; however, Farmer M is a qualified recipient by virtue of having made an irrevocable election. As a corporation subject to prior law, only 160 of Corporation GHI's 320 acres can be declared nonexcess. Eighty acres of the corporation's nonexcess ownership is attributed toward the ownership entitlement of each shareholder. As a prior law recipient, Farmer L may receive irrigation water on another 80 acres of irrigation land through ownership arrangements outside the corporation in order to complete his individual 160-acre ownership entitlement. To complete his 960-acre ownership entitlement as a qualified recipient, Farmer M may receive irrigation water on an additional 880 acres outside the corporation.

*Example (21).* Farmer N and Farmer O form a corporation in which Farmer N owns a 60 percent interest and Farmer O owns a 40 percent interest. Neither individual owns land outside the corporation. Farmer N and the corporation are qualified recipients, but Farmer O remains subject to prior law. The maximum nonexempt acreage that the corporation can own as nonexcess is 400 acres (160 divided by 40 percent). If the corporation owned more than 400 nonexempt acres, this would cause Farmer O to exceed his ownership entitlement.

*Example (22).* Farmer P, a qualified recipient, owns 1,400 nonexempt acres and has designated 960 acres as nonexcess and eligible to receive irrigation water. In 1995, Farmer P irrigates only 800 acres; however, the entire 960 nonexcess acres are still counted against his ownership entitlement.

*Example (23).* Farmer Q, a qualified recipient, owns 640 acres receiving irrigation water. Farmer Q also owns 320 acres which are not in a district, but Farmer Q has individually entered into a 10-year contract with the United States for irrigation water for that land. All 960 acres receiving irrigation water must be counted for purposes of determining ownership entitlement.

*Example (24).* Farmer R, a prior law recipient, owns 160 nonexempt acres. However, only 120 acres were deemed irrigable and eligible to receive irrigation water. Some years subsequent to this determination, Farmer R installed a center pivot irrigation system and now irrigates 160 acres with the same amount of water as he once used to irrigate 120 acres. For purposes of ownership entitlement under the RRA, all 160 acres must be counted.

*Example (25).* Farmer S remains under prior law. Farmer S irrigates 160 acres of owned land. Subsequently, Farmer S buys, in another prior law district, a 160-acre farm which is also receiving irrigation water. All the land newly purchased by Farmer S thereby becomes ineligible for service except as provided for in § 426.11(d). If the 160 acres which Farmer S purchased had never received irrigation water and were in an area for which water distribution facilities had not been constructed, Farmer S could, as provided in § 426.11(d)(1)(ii) or (2)(ii), place the 160 acres under recordable contract when the facilities became available to serve the land.

*Section 426.6* in the existing regulations, *Ownership entitlement*, would be renumbered § 426.5. The proposed new § 426.6, *Leasing and full-cost pricing*, would replace § 426.7 of the existing regulations. This section would describe the conditions under which full-cost charges would be applied (see examples 1 through 14), and would describe how full-cost rates

are determined (see examples 15 through 21).

The paragraph in the existing regulation on what constitutes a lease would be deleted because it more properly belongs in the definition section.

Care has been taken to distinguish between the definition of a lease and the requirements of a lease. It is important to note that failure to meet the requirements of a lease does not mean failure to meet the definition of a lease. Thus, for example, it cannot be argued that an agreement does not constitute a lease because it is not in writing. Rather, a lease which is not written would not qualify for treatment as a lease for the purposes of the RRA, and therefore, the land associated with the lease would be ineligible to receive irrigation water.

In the discussion of nonfull-cost entitlements, the term *irrigation land* would be used liberally. The reference to exempt land would be deleted since use of the term *irrigation land* automatically excludes exempt land.

The citation regarding extended recordable contracts would be deleted because the paragraphs on extended recordable contracts are proposed for deletion from § 426.11 of the regulations. (This deletion will be addressed in the discussion of section 11.)

Under the discussion of nonfull-cost entitlements of qualified, limited, and prior law recipients, the sentences describing various types of land not subject to full cost would be deleted to eliminate redundancy with other sections. Land subject to recordable contracts is discussed in § 426.11; exempt land does not need discussion because it has been excluded through use of the term *irrigation land*; and involuntarily acquired land is addressed earlier in the section.

The paragraph on multidistrict landholdings would be deleted because it is redundant with the discussion of these topics in § 426.3.

The following table summarizes the nonfull-cost entitlements specified in this section:

| If the landholder is a: | The landholder's nonfull-cost entitlement is computed on a westwide basis and is: |
|---|---|
| Qualified recipient ..... | 960 acres. |
| Limited recipient who acquired the land: | |
| Prior to or on October 1, 1981. | 320 acres. |
| After October 1, 1981 .. | 0 acres. |
| Prior law recipient and is a(n): | |
| Individual ..... | 160 acres. |
| Husband and wife who jointly own equal interest. | 320 acres. |
| Surviving spouse ..... | Up to 320 acres. |
| Child ..... | 160 acres. |
| Joint tenancy or tenancy-in-common, if interests are equal. | 160 acres per tenant. |
| Partnership if interests are: alienable, equal, and separable. | 160 acres per partner. |
| Partnership if interests are: not alienable or not separable. | 160 acres total. |
| Corporation ..... | 160 acres. |

The application of § 426.6 is illustrated by the following examples:

*Example (1).* Farmer A, a qualified recipient, receives irrigation water on 900 of the 960 acres of nonexempt land in his ownership in District X. Farmer A leases and receives irrigation water on another 320 acres in District Y. Since Farmer A receives water on 260 acres over and above his nonfull-cost entitlement, he must select 260 acres of owned land, leased land, or a combination of both, and pay the full-cost rate for water delivered to that land.

*Example (2).* Farmer B, a qualified recipient, owns and receives irrigation water on 960 acres in District X. Farmer B decides to lease all 960 acres to another qualified recipient, Farmer C. Farmer C, however, already farms 960 acres receiving irrigation water. Therefore, Farmer C would be eligible for nonfull-cost rate irrigation water delivered to only 960 acres.

*Example (3).* Farmer D has made an irrevocable election and owns and receives irrigation water on 960 acres. Farmer E is subject to prior law and owns and receives water on 160 acres. Farmer D hires Farmer E to operate Farmer D's equipment in performance of all the physical farm work on Farmer D's 960 acres. Farmer E receives compensation for such services, which does not consist of a share of the crop and is not based, in advance, on the degree of economic success or failure of the production or marketing of the crop. Farmer D retains at all times the economic risk associated with both crop production and marketing from his 960 acres. Farmer D also makes all major decisions concerning the farming operation, and Farmer E merely carries out Farmer D's instructions. This arrangement between Farmer D and Farmer E does not constitute a lease because Farmer D has not transferred possession of his land to Farmer E.

*Example (4).* Assume the same facts as in example 3 of this section, except that Farmer E makes the major decisions concerning the farming operation. This arrangement between Farmer D and Farmer E constitutes a lease because possession of the land has transferred from Farmer D to Farmer E. Therefore, Farmer E has exceeded her nonfull-cost entitlement by 960 acres and must pay full cost for water delivered to 960 acres of her landholding.

*Example (5).* Landholder F, a qualified recipient, receives irrigation water on 960 acres of owned land in District X and 800 acres leased in District Y. At the beginning of the water year, Landholder F selects 360 owned acres plus 600 leased acres to receive irrigation water at the nonfull-cost rate. He pays the full-cost rate for water delivered to the remaining 800 acres. In July, Landholder F terminates the lease on the 600 acres of leased land which are part of his nonfull-cost entitlement. However, since nonfull-cost acreage is counted against one's entitlement on a cumulative basis during any 1 water year, Landholder F has already reached the limits of his nonfull-cost entitlement for this water year. Therefore, Landholder F may not replace in that water year those 600 nonfull-cost acres, even though they no longer receive irrigation water, with 600 acres from his full-cost land. Landholder F also must pay the full-cost rate for irrigation water delivered to any new land he irrigates during that water year.

*Example (6).* Landholder G, a qualified recipient, owns and irrigates 1,200 acres, 400 of which are subject to a recordable contract. Landholder G also irrigates 300 acres leased from another party. All of Landholder G's landholding, a total of 1,500 acres, counts against his nonfull-cost entitlement; therefore, he is in excess of his nonfull-cost entitlement by 540 acres. However, the 400 acres under recordable contract are not subject to full-cost pricing, so Landholder G need select only 140 acres for full-cost pricing. The full-cost land may be selected from the nonexcess, recordable contract, or leased land in his holding.

*Example (7).* ABC Farms remains under prior law. It owns and was receiving irrigation water on 160 acres in District X prior to October 1, 1981. ABC Farms also owns and irrigates 480 acres in another prior law district which are subject to a recordable contract. ABC Farms may continue to receive irrigation water at the nonfull-cost rate on its entire landholding until the end of the recordable contract period. At that time, if ABC Farms remains under prior law, only 160 acres in District X may continue to receive irrigation water. If ABC Farms makes an irrevocable election prior to the maturity of the recordable contract, it may amend the recordable contract to allow it to own and receive irrigation water on all 640 acres owned. Upon electing, ABC Farms may receive irrigation water at the nonfull-cost rate on 320 acres, but it must pay the full-cost rate on the 320 acres by which it has exceeded its nonfull-cost entitlement.

*Example (8).* CDE Farms, a limited recipient, owns 640 acres of land eligible to receive irrigation water. The purchase of the land took place after October 1, 1981, and CDE Farms was not receiving irrigation water on any other land on or before October 1, 1981. Therefore, in order for CDE Farms to receive irrigation water for any nonexempt land, it must pay the full-cost rate for that water.

*Example (9).* FGH Fertilizer Company, a limited recipient, buys 160 acres of land receiving irrigation water in District X. The purchase of the land is made subsequent to October 1, 1981. However, the company was receiving irrigation water on 160 leased acres in District B prior to October 1, 1981. Therefore, the 160 acres recently purchased are eligible to receive irrigation water at the nonfull-cost rate. If FGH Fertilizer Company buys or leases additional land, the company would have to select and pay the full-cost rate for any irrigation water delivered to land in excess of its 320-acre nonfull-cost entitlement.

*Example (10).* The XYZ Corporation, a limited recipient, owns 640 acres of irrigation land in District A. Since the corporation was receiving irrigation water prior to October 1, 1981, it is entitled to irrigate 320 acres at the nonfull-cost rate and 320 acres at the full-cost rate. If the corporation were to lease the owned land subject to full cost to another landholder, the full-cost rate would still apply.

*Example (11).* Farmer H and her husband receive irrigation water on 320 owned acres of irrigation land and on 40 leased acres in District X. District X has not amended its contract to become subject to the discretionary provisions and Farmer H and her husband have not made an irrevocable election. Since Farmer H and her husband receive irrigation water on 40 acres in excess of their 320-acre nonfull-cost entitlement, the couple must select 40 acres in their landholding and pay the full-cost rate for water delivered to that land. If Farmer H and her husband make an irrevocable election or if District X amends its contract to become subject to the discretionary provisions, the couple would thereby become a qualified recipient with a nonfull-cost entitlement of 960 acres. Since their landholding is within that entitlement, Farmer H and her husband would be able to receive irrigation water at the nonfull-cost rate on all 360 acres.

*Example (12).* Farmer I and his wife lease 640 acres of irrigation land in District X and another 640 acres of irrigation land in District Y. Districts X and Y have not amended their contracts to become subject to the discretionary provisions and Farmer I and his wife have not made an irrevocable election. Since the couple has exceeded their 320-acre nonfull-cost entitlement by 960 acres, Farmer I and his wife must select 960 acres in their landholding and pay the full-cost rate for water delivered to that land.

*Example 13.* Four brothers hold equal, separable, and alienable interests in a partnership they formed. The partnership owns 160 acres of irrigation land in District X and also leases another 320 acres from another party in District Y. The partnership and both districts remain subject to prior law. Since the partnership's landholding is within its 640-acre nonfull-cost entitlement (160 times 4), no full-cost charges will be assessed to water delivered to any land in the holding.

*Example (14).* Farmer J, a prior law recipient, owns 5,000 acres of irrigation land in District X, 4,900 of which are under recordable contract. He also receives irrigation water on another 320 acres which he leases in this same district. Thus, Farmer J is receiving irrigation water on 5,160 acres (5,320 minus 160) in excess of his nonfull-cost entitlement. However, his recordable contract land is not subject to full-cost pricing; therefore, Farmer J must select 260 acres (5,160 minus 4,900) for full-cost pricing. Although his recordable contract land is not subject to full-cost pricing, Farmer J may, at his option, select part or all of the 260 full-cost acres from the land under recordable contract in lieu of his nonexcess or leased land.

*Example (15).* District A contains 90,000 irrigable acres. The construction costs allocated to irrigation for the project and to be repaid by District A amount to $240 million. As of October 12, 1982, the district's accumulated repayments are $174 million, and 11 years remain on its contract term. The established annual contract rate is $66.67 per acre. This amount repays the outstanding balance of the contractual obligation ($66 million, or $733.33 per acre) in 11 years. The applicable interest rate is determined to be 7.5 percent; therefore, the equal annual payments for full cost would be $100.24. This payment is calculated using standard amortization procedures and is the annual payment necessary to retire a debt of $733.33 at a 7.5 percent rate of interest over 11 years. This full-cost charge will apply regardless of when District A amends its contract. Full O&M charges must be added to this charge and included in the assessment for any landholder subject to full-cost rates.

*Example (16).* District B has a water service contract that establishes a rate of $6.50 per acre-foot for 90,000 acre-feet of water delivered to the district, a rate which is fixed over the remaining 10 years of the contract term. Currently, $1 of the $6.50 rate is used to pay annual O&M charges. The remainder is credited to the repayment of irrigation construction costs, although inflation over the next 10 years is expected to leave a $5 per acre-foot payment to irrigation, averaged over the remaining 10 years. The construction costs to be repaid from irrigation revenues and assignable to be repaid by the land in District B are $24 million, and the district has paid $15.5 million of those costs to date.

As of October 12, 1982, the accumulated payments credited to repayment on construction are $15.5 million. The unpaid balance for full cost is $8.5 million ($24 million minus $15.5 million), and the applicable interest rate is determined to be 7.5 percent. Amortizing the unpaid balance over the remaining contract term of 10 years results in an annual full-cost charge of $1,384,016, or $15.38 per acre-foot. Full O&M charges must be added to this charge and included in the assessment for any landholder subject to full-cost rates. Upon expiration of the current contract, the district expects to enter into a subsequent water service contract in order to expand its water deliveries. If District B desires to amortize its unpaid balance for full cost over a longer period than 10 years, it can choose to renegotiate its existing contract before the current contract expires to bring it into conformance with current Reclamation policy. When the district renegotiates its contract, the unpaid balance for full cost could be reamortized, at the district's option, for any period up to the term of the new water service contract, which cannot exceed the repayment period authorized by Congress. For example, suppose the new water service contract runs for 18 years and is executed immediately. If the district chooses to amortize full cost over the longest permissible repayment period (18 years), then the full-cost charge would be $10.88 per acre-foot. If the district chooses to amortize over 15 years, the full-cost charge would be $11.96 per acre-foot, assuming the unpaid costs remain the same.

*Example (17).* District C contains 90,000 irrigable acres, and the construction costs allocated to irrigation for the project and assignable to be repaid amount to $240 million. As of October 12, 1982, the accumulated repayments of the district are $174 million. The district's repayment obligation is $200 million. (The $40 million difference between construction costs allocated to irrigation and the repayment obligation is scheduled to be paid from other project revenues.) The unpaid obligation on District C's repayment contract is $26 million, and 11 years remain on its contract term. The annual rate established by the contract is $26.26 per acre. This amount repays the outstanding balance of the contractual obligation in 11 years. As of October 12, 1982, the unpaid balance for full cost is $66 million (allocated cost, less payments) or $733.33 per acre, and the applicable interest rate is determined to be 7.5 percent. Therefore, the equal annual payment for full cost would be $100.24 per acre.

*Example (18).* District D has a 40-year water service contract for 90,000 acre-feet of water per year. The District's current contract expires in 1997 and will be renewed for another 40-year term, resulting in an expiration date of 2036. Construction costs assigned to District D are $24 million, and such costs are to be repaid from irrigation water service revenues. As of October 12, 1982, the accumulated payments credited to construction costs are $15.5 million. The unpaid balance for full cost is $8.5 million and the applicable interest rate is determined to be 7.5 percent. Water service rates for this project are designed to completely repay applicable expenditures by the end of the authorized repayment period, which occurs in 2030. Amortizing the unpaid balance over the remaining authorized repayment period of 48 years results in an annual full-cost charge of $657,945 or $7.31 per acre-foot. Normal O&M charges would be collected annually in addition to this rate. It should be noted that even though the contract renewal extends beyond 2030, the repayment period is limited to the authorized repayment period ending in 2030, with full-cost charges calculated accordingly.

*Example (19).* Farmer K, a qualified recipient, owns 960 acres receiving irrigation water in Alpha Irrigation District. Farmer K also leases 100 acres receiving irrigation water in Alpha Irrigation District from another party. Alpha Irrigation District's repayment contract specifies an annual assessment of $5 per irrigable acre. Alpha Irrigation District's annual full-cost rate is

calculated to be $15 per irrigable acre. Therefore, Farmer K's total water charge for that year is (960 acres times $5) plus (100 acres times $15), for a total of $6,300.

*Example (20).* Farmer L and his wife own 320 acres receiving irrigation water in Beta Irrigation District and lease another 320 acres receiving irrigation water in the same district. Farmer L, his wife, and Beta Irrigation District all remain subject to prior law. Beta Irrigation District's water service contract specifies a rate of $10 per acre-foot, and its full-cost rate is calculated to be $25 per acre-foot. Farmer L has a turnout and measuring device to the 320 acres he has selected to pay full cost, and a separate turnout and measuring device to the 320 acres receiving water at the contract rate. At the end of the water year, district records show that Farmer L received 1,000 acre-feet of water on his full-cost land, and 1,050 acre-feet of water on his nonfull-cost land. These measurements are judged to be accurate and reliable; therefore, Farmer L's water charges for that year are (1,000 acre-feet times $25) plus (1,050 acre-feet times $10) for a total of $35,500. If accurate records showing the amounts of water delivered to Farmer L's full-cost and nonfull-cost land had not been maintained, it would have been necessary to assume that equal amounts of water per acre had been delivered to both types of land. Without accurate water delivery records, Farmer L's water charges for that year would have been (1,025 acre-feet times $25) plus (1,025 acre-feet times $10) or $35,875.

*Example (21).* Farmer M, a qualified recipient, leases 1,000 acres in Gamma Irrigation District where the contract rate is $5 per acre-foot, and the full-cost rate is $15 per acre-foot. Farmer M applies irrigation water to 960 acres and irrigates the remaining 40 acres from a private well. In 1 particular year, Farmer M applied water to the land six times during the irrigation season; but in the final two applications, his well failed, so he chose to apply irrigation water to his entire landholding. Because there were no separate measuring devices for the 40 full-cost acres, it was necessarily assumed that equal amounts of water per acre were applied to the full-cost and nonfull-cost land during the final two applications of water. Gamma Irrigation District's record showed that 600 acre-feet were delivered to Farmer M during each of the first four applications, and 625 acre-feet during each of the last two applications. Farmer M's water charges for that year were calculated as follows: The first four applications did not include any full-cost water; therefore, the appropriate charge was (4 times 600 acre-feet × $5) or $12,000. The final two applications were 96 percent contract rate and 4 percent full cost. Thus, the appropriate charges were (2 times 625 acre-feet times .96 times $5) plus (2 times 625 times .04 times $15), or $6,750. Farmer M's total charge for the year was $12,000 for the first four applications plus $6,750 for the last two applications, for a total of $18,750.

*Section 426.7* of the existing regulations, *Leasing and full-cost pricing,* would be renumbered § 426.6. The proposed new § 426.7, *Trusts,* would be a new section devoted to describing the requirements and entitlements of trusts. This new section would not alter existing Reclamation policy regarding trusts, but would include some existing policies that are not referenced in the current regulation.

Paragraph (a) would define the three categories of trusts. The effects of inclusion or absence of required elements of each category of trust would be described in paragraph (b)

Paragraph (b)(1) would establish that land held by an irrevocable trust would be attributed to the trust's beneficiaries, provided that the trust agreement is in writing, has been approved by Reclamation, and the beneficiaries and that their interests are identified. Otherwise, the land would be attributed to the trustee.

Paragraph (b)(2) would describe attribution of trusted land in the case of a revocable trust that provides for reversion of the trusted land to the grantor upon revocation. Land held by trusts in this situation would be attributed to the grantor(s) of the trust, conditioned on the facts immediately prior to the transfer of the land to the trust, if specified criteria are met.

Paragraph (b)(3) would describe attribution of trusted land for all types of revocable trusts other than those covered under paragraph (b)(2). Land held by trusts in this category would be attributed to either the beneficiaries or to the trustee, depending on whether specified criteria are met. If the revocable trust, however, does not specify its grantors, the conditions under which it may be revoked, or to whom the land would revert upon revocation, the trusted land would be ineligible to receive irrigation water until these issues were resolved.

Application of this section is illustrated by the following examples:

*Example (1).* Bank X is the trustee for five irrevocable trusts, each of which has more than one beneficiary. The irrevocable trusts contain 1,280, 960, 640, 800, and 400 acres, respectively, and all meet the criteria set forth in § 426.7(b)(1). All trust beneficiaries are qualified recipients, and none has any landholdings outside of the trusts. Since all the trusts' land is attributable to the trust beneficiaries, and Reclamation determines all the beneficiaries are within their ownership and nonfull-cost entitlements, all 4,080 acres in the five irrevocable trusts are eligible to receive irrigation water.

*Example (2).* Farmer A, a qualified recipient, provides in his will for the establishment of a trust and the conveyance of 640 acres of his land receiving irrigation water into that trust for his daughter upon his death. The trust meets the criteria set forth in § 426.7(b)(1). The land is located in a district which has amended its contract to conform to the discretionary provisions. The brother, who is designated as trustee for the trust, owns 800 acres in the same district which receives an irrigation water supply. Farmer A dies, and the testamentary trust he has established is activated. The trust's land is attributable to the daughter as the sole trust beneficiary. Therefore, the trust's land is eligible to receive irrigation water at the nonfull-cost rate, assuming the daughter has not exceeded her acreage limitation entitlements as a result of this action.

*Example (3).* Farmer B, a qualified recipient, owns 960 acres eligible to receive irrigation water in a district subject to the discretionary provisions. He decides to place 160 acres of his land in an irrevocable trust with his daughter as the life tenant. The trust agreement satisfies the criteria of § 426.7(b)(1). The 160 acres of trust land shall be attributed to the daughter's entitlement if she is independent. If she is dependent, the 160 acres of trust land shall be attributed to Farmer B as her parent or to the person who is acting as her guardian.

*Example (4).* ABC Corporation, a prior law recipient, establishes a grantor revocable trust and places 160 acres of land receiving irrigation water in the trust for the benefit of J. Jones. The trust agreement satisfies all criteria of § 426.7(b)(2). Under the terms of the revocable trust, the trust will terminate and title to the 160 acres will revert back to ABC Corporation in 10 years. All 160 acres of the land in trust are attributed to the corporation and to the corporation's stockholders in proportion to their percent of stock held in the corporation.

*Example (5).* Assume the same facts as in Example 4 above, except that Corporation X, a legal entity fully independent of ABC Corporation, contributes the 160 acres to the trust created by ABC Corporation. In this example, the 160 acres are attributed to the beneficiary of the trust, J. Jones, since the criteria for attribution to the grantor (Corporation X) have not been met, namely, the 160 acres will revert in 10 years to the trustor (ABC Corporation), not the grantor, and the grantor does not have the power to revoke the trust. As such the trust is in fact an otherwise revocable trust.

*Example (6).* Farmer C, a qualified recipient, places 960 acres of land receiving irrigation water in a trust for his son. The trust agreement satisfies all criteria of § 426.7(b)(2) and (3). It provides that the trust shall expire in 20 years, and ownership of the trust land shall be vested in Corporation Y, of which Farmer C is a part owner with 5 percent interest. Because title to 5 percent of the trust land will revert indirectly to Farmer C upon termination of the trust, 48 acres (960 times 5 percent) of the trust land are attributed to Farmer C. The remaining 912 acres of trust land is attributable to the beneficiaries of the trust. If Farmer C's interest in Corporation Y changes during the term of the trust, the amount of trust land attributed to Farmer C will change accordingly.

*Section 426.8* of the existing regulations, *Operation and Maintenance (O&M) charges,* would be renumbered § 426.22. The proposed new § 426.8, *Religious or charitable organizations,* would replace § 426.15 of the existing

regulations. This section would describe the entitlements of these types of organizations.

Paragraph (a) would define religious or charitable organizations for the purpose of this section. The titles of paragraphs (b) and (c) would be modified to reflect their application to both the ownership and nonfull-cost entitlements of religious and charitable organizations. This change would eliminate the need for paragraph (d) in the existing regulation.

A more significant modification would change the consequences of failure by a subdivision of a religious or charitable organization to satisfy the three criteria established by the RRA. Under the current rules, failure by such a subdivision to meet these criteria results in the entire organization being reduced to the entitlements of a single limited recipient. Under the proposed rules, only the subdivision in question would be affected by its failure to meet the criteria; the central organization and other subdivisions would be unaffected.

The new language would also establish that the qualified or limited recipient status of a subdivision which fails to meet the three criteria would be determined by counting the subdivision's membership. Thus, most subdivisions which fail to meet the criteria would be treated as limited recipients.

Paragraph (d) on leasing would be deleted as unnecessary. The provisions establishing that religious or charitable organizations are treated either as qualified or limited recipients would eliminate any need for a separate statement regarding leasing. The proposed paragraph (d) on affiliated farm management would replace the existing paragraph.

*Section 426.9* in the existing regulations, *Class 1 equivalency*, would be renumbered § 426.10. The proposed new § 426.9, *Public entities*, would replace § 426.17 of the existing regulations. This section would describe the application of acreage limitation laws to public entities and would be rewritten for clarity and organization. Paragraph (a) would define the term public entities for purposes of this section. Paragraph (b) would be rewritten to show that public entities are exempt from certain acreage limitation provisions rather than the land. The rephrasing would more accurately state Reclamation policy, as the land can become subject to ownership limitations through the holding of a lessee. Also, the wording of paragraph (d) would be changed to state that land leased from a public entity would count toward the lessee's ownership entitlement, rather than being worded as a prohibition of leasing in excess of ownership entitlements.

*Section 426.10* in the existing regulations, *Information requirements*, would be replaced by §§ 426.17, *Landholder information requirements*, 426.18, *District responsibilities*, and 426.24 *Reclamation audits*. The proposed new § 426.10, *Class 1 equivalency*, would replace § 426.9 of the existing regulations.

Substantial editorial and organizational changes would be made throughout this section. The only substantive change would be in § 426.10(g). Provisions to this paragraph would prohibit application of class 1 equivalency in cases where irrigation of the land would result in hazardous or toxic return flows. This rule would affect existing equivalency determinations only if the land is reclassified for some reason.

The wording of paragraph (b) would be changed to make clear that only districts, and not individual landholders, can make requests to Reclamation for class 1 equivalency determinations. Individual landholders must work through their districts to obtain class 1 equivalency.

The following examples illustrate the application of § 426.10:

*Example (1).* Farmer X has a total landholding of 1,300 acres in District A. That acreage includes 800 acres of class 1 land, 300 acres of class 2 land, and 200 acres of class 3 land. The equivalency factors for the district have been determined to be: Class 1 equals 1.0, class 2 equals 1.20, and class 3 equals 1.50. Using these equivalency factors, the following landholding in terms of class 1 equivalency would apply:

- Class 1: 800 acres divided by 1.0 equals 800 acres class 1 equivalent
- Class 2: 300 acres divided by 1.2 equals 250 acres class 1 equivalent
- Class 3: 200 acres divided by 1.5 equals 133 acres class 1 equivalent

Thus, Farmer X's total landholding of 1,300 acres is equal to 1,183 acres of class 1 land in terms of productive capacity. It will be necessary for him to declare the equivalent of 223 acres of class 1 land (1,183 acres minus 960 acres), as excess and ineligible to receive irrigation water while in his landholding. This can be accomplished in any combination of class 1, 2, and 3 land that achieves the necessary result. If Farmer X desires to maximize his actual nonexcess acreage, he would declare 223 acres of class 1 land as excess and designate 577 acres of class 1, 300 acres (250 acres class 1 equivalent) of class 2, and 200 acres (133 acres class 1 equivalent) of class 3 as nonexcess and eligible to receive irrigation water. This would result in a total of 1,077 actual acres which would equal 960 acres of class 1 land in productive capacity. Or, he could maximize his holding of class 1 and 2 lands by designating as nonexcess 800 acres of class 1 land and 192 acres (192 divided by 1.2 equals 160 acres class 1 equivalent) of class 2 land. This total landholding of 992 acres would, again, be equal in productive capacity to 960 acres of class 1 land. In the latter case, all 200 acres of Farmer X's class 3 land and 108 acres of his class 2 land would be considered excess and ineligible to receive irrigation water in his landholding.

*Example (2).* A district with an existing contract decides not to amend its contract to conform to the discretionary provisions. However, an individual landholder within the district makes an irrevocable election to conform to these provisions. The landholder requests equivalency through the district, and the district requests Reclamation to make the equivalency determination for the entire district. Under such conditions, the district would be required to pay the United States for the cost of making the equivalency determination. The payment of the costs between the landholder and the district would be a district matter. The application of equivalency would be available only to the landholder(s) who exercise an irrevocable election.

*Example (3).* A district decides to amend its contract to conform to the discretionary provisions, but it elects not to request equivalency. Thus, individual landholders within the district are not entitled to equivalency until after the district makes the equivalency request and Reclamation has acted upon that request.

*Example (4).* Landholder X is a qualified recipient who owns no land, but leases 1,100 acres in a district which has requested equivalency. The land leased is a mix of class 1, 2, and 3 land. During the time the equivalency determination was being made, Landholder X would be required to pay the full-cost water rate on 140 acres (1,100 acres leased minus her 960-acre nonfull-cost entitlement) if she continued to receive irrigation water on that land. Once the equivalency determinations had been completed, Landholder X would be entitled to lease the equivalent of 960 acres of class 1 land at the nonfull-cost rate (something greater than 960 acres). Landholder X would also be reimbursed for certain full-cost payments made for land which became nonfull-cost as a result of the equivalency determination.

*Example (5).* Corporation Y is a limited recipient that owns 600 acres of irrigation land and leases another 160 acres in District A. District A has requested and received an equivalency determination. However, Corporation Y was not receiving irrigation water on or before October 1, 1981. Thus, even with equivalency, Corporation Y would be required to pay the full-cost water rate for all land served in its landholding. (If Corporation Y had been receiving irrigation water on or before October 1, 1981, it would have been entitled to receive irrigation water on the equivalent of 320 acres of class 1 land at the nonfull-cost rate. Deliveries on the remaining 440 acres or less, depending on application of class 1 equivalency, would be at the full-cost rate.)

*Example (6).* Farmer Jones is a qualified recipient and owns 320 acres in each of three districts. One of those districts, District A,

requests and receives an equivalency determination. From the equivalency determination, Farmer Jones is shown to own the equivalent of 240 acres of class 1 land in District A. Farmer Jones is therefore entitled to purchase and receive irrigation water on an additional 80 acres of irrigation land (or the class 1 equivalent thereof in District A) in any district. He could also lease 80 acres (class 1 equivalent thereof in District A) in any district and receive irrigation water on that land at the nonfull-cost rate.

*Example (7).* Landholder Y owns 1,200 acres in District A and 160 acres in District B. Landholder Y is a qualified recipient and has designated 800 acres in District A as nonexcess and 400 acres in District A as excess. She has placed the 400 acres of excess land under recordable contract so that it can be irrigated while still in her ownership. Subsequent to this nonexcess land designation, District A requests and receives an equivalency determination. Landholder Y is then free to withdraw excess land from recordable contract and redesignate it as nonexcess to take advantage of District A's equivalency determination, as provided in § 426.11(b) and (j)(5), if an appraisal of the excess land has not already been performed. The maturity date as determined in the original recordable contract, however, would not change.

*Section 426.11* would be generally rewritten for conciseness.

The *In general* section has been deleted because the first sentence contained a definition of *excess land* redundant with that found in § 426.2.

Paragraphs (d) (2) and (3) of the existing regulation would be merged in paragraph (d)(2) of the proposed regulation.

In the proposed paragraph (j)(4)(i), paragraph (e) of the existing regulation, the new language would make clear that land subject to a recordable contract can receive irrigation water at a less-than-full O&M rate only if both the owner and the lessee are subject to prior law. The sentence from the current rules allowing recordable contract land to be selected as full-cost land was deleted because that issue is addressed in § 426.6.

Paragraphs 426.11(g) and (i) of the current rules would be deleted. These paragraphs apply to only a very small number of landholders who have pre-1982 recordable contracts. Reclamation proposes to not retain paragraphs in the CFR that (1) currently apply to only a few landholders, and (2) are likely to become completely obsolete in the next few years. These few landholders' recordable contracts will continue to be administered as provided in the existing rule.

Paragraph 426.11(i) of the proposed regulation, which corresponds to paragraph 426.11(h) of the existing regulation, would add a new paragraph to the deed covenant language. The proposed language would provide that the covenant terms, which permit removal of the covenant and eliminate the requirement for sale price approval, would not apply if the acquiring party is the party who originally held the land as excess. It should be noted that the provisions of the deed covenant would apply only when title to the land is transferred. Thus, the deed covenant would apply only to direct landowners, and would not apply to the sale or purchase of an indirect interest in a legal entity that is the direct landholder.

In paragraph 426.11(e) of the proposed regulation, which corresponds to paragraph 426.11(k) of the current regulation, a new provision has been proposed. This language would permit direct landowners to place under recordable contract certain land indirectly held by nonresident aliens or legal entities not established under State or Federal law. If such land is not placed under a recordable contract it would become ineligible as a result of implementation of the proposed regulation.

The proposed regulation would add a new paragraph (g) which would promote the intent of statutes concerning the disposal of excess land by prohibiting excess land sellers from receiving irrigation water if they lease back or reacquire the land either voluntarily or involuntarily. Such *lease back* or reacquisition situations, however, would be grandfathered if the agreement or transaction transferring the land back to the excess land seller takes place prior to July 1, 1995.

The proposed regulation would also add a new paragraph (h) which would provide for assessment of the compensation rate (see § 426.2), which has been Reclamation policy, and an administrative fee (see § 426.19) if ineligible excess land is irrigated in violation of Federal reclamation law and regulations.

Application of the section is illustrated by the following examples:

*Example (1).* Landowner A owns 1,200 acres of irrigable land in District S. He purchased this land before the district entered its first repayment contract with the United States after October 12, 1982. Landowner A, as a qualified recipient, designates 960 of his 1,200 acres as nonexcess. With Reclamation approval, Landowner A may designate the 240 acres, which are now excess, as nonexcess and eligible to receive irrigation water, provided he redesignates 240 acres of presently nonexcess land as excess.

*Example (2).* Landowner B is a U.S. citizen and a qualified recipient by virtue of District T's contract amendment to conform to the discretionary provisions. Landowner B purchased 1,400 acres of irrigable land in this district before the district entered a repayment contract to receive an irrigation water supply. After the district's contract amendment, Landowner B designates 960 acres of his land as nonexcess. Subsequent to this designation, the district requests and receives an equivalency determination. All 1,400 acres of Landowner B's land is class 3 land, and in District T, 1 acre of class 1 land is equal to 1.4 acres of class 3 land. With equivalency, Landowner B may irrigate 1,344 acres of class 3 land in District T. Thus, he may redesignate everything in his ownership as nonexcess except for 56 acres. In the future, if Landowner B sells some of this 1,344 acres of nonexcess land, he may not designate any of the 56 excess acres as nonexcess.

*Example (3).* Farmer C, who owns irrigable land in excess of his ownership entitlement, sells 960 acres of his excess land to Farmer D, a qualified recipient, at a Reclamation-approved price. Farmer D owns no other irrigable land and designates the 960 acres as nonexcess and eligible to receive irrigation water in his ownership. After the 10-year period of the deed covenant expires, Farmer D sells the 960 acres at fair market value and purchases another 960 acres of irrigable land located in yet another district. Farmer D purchases the latter parcel at a Reclamation-approved price because the land was excess in the seller's holding. However, since Farmer D has already reached his 960-acre limit for recapturing the fair market value of land purchased at a Reclamation-approved price, the newly purchased land is not eligible to receive irrigation water while in his holding. In order to regain eligibility, the land must be sold to an eligible buyer at a Reclamation-approved price. After Farmer D sells that land at a Reclamation-approved price, he may purchase and receive irrigation water on another 960 acres, provided it is bought from nonexcess status.

*Example (4).* Landowner E is a resident alien and owns 480 acres of irrigable land in District X, which is subject to prior law. Landowner E has designated 160 acres as nonexcess, and it is receiving irrigation water. Following this designation, District X amends its contract to conform to the discretionary provisions. As a result of the district amendment, Landowner E satisfies the requirements for a qualified recipient and may designate all 480 acres owned as nonexcess.

*Example (5).* Landowner F and his wife own 1,200 acres of irrigable land in District Y which is subject to prior law. They owned this land even before District Y entered into a repayment contract with the United States. Landowner F and his wife have designated 320 acres as nonexcess and eligible to receive irrigation water. The remaining 880 acres are excess and ineligible to receive irrigation water. This excess land cannot be placed under recordable contract because the 10-year grace period for executing recordable contracts, as provided in the district's contract, has expired. Landowner F makes an irrevocable election to conform to the discretionary provisions. By that election, Landowner F becomes a qualified recipient, and is therefore entitled to redesignate 640

additional acres as nonexcess. Landowner F's remaining 240 acres can become eligible if he sells it to an eligible buyer at an approved price or redesignates it, with the approval of Reclamation, as nonexcess.

*Example (6).* Landowner G is a resident alien and owns 160 acres of irrigation land in District A. District A is subject to prior law. Landowner G purchases an additional 160 acres which had been designated nonexcess while in the landholding of the seller. Since Landowner G has purchased himself into excess status, the newly purchased land becomes ineligible to receive irrigation water in his holding. However, 3 weeks later, Landowner G makes an irrevocable election. Since he meets the requirements of a qualified recipient and since he has become subject to the discretionary provisions, Landowner G may designate the newly purchased 160 acres as nonexcess. As a qualified recipient, he may also purchase and receive irrigation water on another 640 acres of eligible land.

*Example (7).* In 1986, Landowner H bought 160 acres of irrigable land from excess status in District Z. Landowner H, however, failed to get sale price approval from Reclamation. This land is ineligible for service in his holding unless the sale is reformed at a Reclamation-approved price. If the price is not reformed, the 160 acres must be sold to an eligible buyer at a Reclamation-approved price in order to become eligible to receive irrigation water.

*Example (8).* In 1980, Landowner I, a U.S. citizen, buys 1,920 acres of land in District U. In addition to its own water supply, District U wishes to receive supplemental irrigation water. Therefore, it enters into a water service contract with the United States on May 14, 1984. Thereby, all direct landholders in the district automatically become subject to the discretionary provisions. As a qualified recipient, Landowner I may receive irrigation water on any 960 acres which he designates as nonexcess. The remaining 960 acres are excess and ineligible for service until Landowner I places the land under recordable contract, sells it to an eligible buyer at a price approved by Reclamation, or receives Reclamation approval to redesignate the land as nonexcess. If Landowner I had purchased the 1,920 acres from nonexcess status in 1985, rather than before the date of the district's contract, he still would have been able to designate 960 acres as nonexcess and eligible to receive irrigation water. However, the remaining 960 acres of excess land would not have been eligible until sold to an eligible buyer at a Reclamation-approved price, the sale is cancelled, or he receives Reclamation approval to redesignate the land as nonexcess. The excess acres could not have been placed under recordable contract unless irrigation water had not been physically available when the land was purchased.

*Example (9).* Landowner J is a qualified recipient and owns 1,400 acres of irrigable land in District Z. The landowner places 440 acres under recordable contract so that he may receive irrigation water at the nonfull-cost rate on all owned land in the district. Subsequently, Landowner J leases the 440 acres under recordable contract to Landowner K who is a limited recipient that did not receive irrigation water prior to October 1, 1981. Therefore, the full-cost rate must be paid for irrigation water delivered to the 440 leased acres. Leasing the land to Landholder K does not affect other terms of the recordable contract.

*Example (10).* Farmer L owns 160 acres of irrigable land in District V and 1,000 acres in District W. Districts V and W are both subject to prior law, and both have fixed-rate water service contracts which no longer cover actual operation and maintenance costs. Farmer L has designated the 160 acres in District V as nonexcess and has placed the 1,000 acres in District W under recordable contract. This means that Farmer L is able to receive irrigation water at the contract rate on all her owned land. Subsequently, District V amends its contract to become subject to the discretionary provisions. As provided in § 426.11(b)(1), Farmer L withdraws 800 acres from under recordable contract and redesignates that land as part of her 960-acre entitlement as a qualified recipient. Since Farmer L is now a qualified recipient, she must pay the full operation and maintenance costs applicable in each district for all land in her landholding, including the 200 acres remaining under recordable contract.

*Example (11).* Landowner M and his wife are U.S. citizens and own 320 acres of irrigation land purchased on or prior to December 6, 1979, and designated as nonexcess in each of Districts A, B, C, and D. In June of 1980, Landowner M purchased an additional 280 acres in District E. District A amends its contract to conform to the discretionary provisions. Landowner M and his wife automatically and without benefit of choice become a qualified recipient and as such are entitled to irrigate no more than 960 acres westwide with irrigation water. Their present ownership exceeds their 960-acre ownership entitlement by 600 acres. Since the 280 acres in District E were purchased after December 6, 1979, that land was ineligible to receive irrigation water even under prior law. Therefore, no part of that parcel can be placed under recordable contract and the land remains ineligible until sold to an eligible buyer at an approved price, the sale is cancelled, or the land is redesignated with Reclamation approval. The remaining 320 excess acres, however, have been eligible under prior law. Therefore, that land can continue to receive irrigation water if Landowner M either sells it to an eligible buyer or places the land under a 5-year recordable contract. In either case, Landowner M can sell the land at fair market value.

*Example (12).* ABC Corporation, which was established under the laws of Switzerland, is owned by two stockholders who are citizens and residents of Switzerland. The corporation owns 480 acres of irrigation land in District X and has designated 160 acres as nonexcess and eligible to receive irrigation water, and the remaining 320 acres as excess and ineligible. District X subsequently amends its contract to conform to the discretionary provisions. Thereby, ABC Corporation becomes ineligible to receive irrigation water as a qualified recipient because it is not established under State or Federal law. However, since 160 acres of its land were eligible to receive irrigation water under prior law, this land will continue to be eligible if it is placed under a recordable contract or sold to an eligible buyer. The 160 acres, whether or not under recordable contract, may be sold at fair market value; however, the 320 acres which were excess under prior law remain ineligible until sold to an eligible buyer at an approved price.

*Example (13).* Corporation N, a foreign corporation owned by two stockholders who are citizens and residents of Norway, purchased 480 acres of irrigation land in District A. Subsequent to the purchase, District A entered into its first contract with the United States, thereby becoming subject to the discretionary provisions. Corporation N, however, is not eligible to receive irrigation water as a qualified recipient because it is not established under State or Federal law. Since Corporation N's land had never been subject to prior law, it does not fall under the purview of § 426.11(e)(2). However, since the land was purchased before the date of the district's contract, the corporation can receive irrigation water by placing the land under a recordable contract requiring Reclamation sale price approval, as provided in § 426.11(e)(3)(i).

*Example (14).* Landholder O, a nonresident alien, is the sole stockholder in Corporation P, a qualified recipient legal entity registered in Idaho. In 1990, Corporation P purchased 960 acres of nonexempt land in District B. This land was all designated nonexcess under the then-current regulations. However, on the effective date of these regulations, Landholder O's ownership entitlement decreases to 160 acres, even for indirectly held land. The remaining 800 acres that become excess can continue to receive irrigation water if Corporation P places the land under recordable contract, and the land can be sold at fair market value and remain eligible if sold to an eligible buyer.

*Example (15).* Landholder P sold 500 acres of excess land to Landholder Q, and financed the purchase, in 1996. In 1998, Landholder Q defaults and Landholder P forecloses and repossesses the land. Upon transfer of the land's title back to Landholder P, the land becomes ineligible to receive irrigation water because that transaction took place after the effective date of these regulations. Furthermore, Landholder P may not make any part of the land nonexcess in his holding. Thus, Landholder P must sell the land to an eligible landholder at a Reclamation-approved price if it is to be eligible to receive irrigation water.

*Example (16).* Landholder R sold 500 acres of excess land to Landholder S in 1993. In 1994, Corporation T, of which Landholder R is the sole stockholder, leases the land from Landholder S. The land remains eligible until the expiration or termination date of the lease. If Corporation T renews the lease after the effective date of these regulations, the land becomes ineligible while the renewed lease is in effect, because of Landholder R's interest in Corporation T and the renewed agreement took effect after the effective date of these regulations.

*Section 426.12.* Editorial changes would be made to the existing regulation.

*Section 426.13* in the existing regulation, *Exemptions,* would be renumbered § 426.15. The proposed new § 426.13, *Involuntary acquisition of land,* would replace § 426.16 of the existing regulations.

Paragraph (a) would define involuntarily acquired land. A change would be made to paragraph (e) of this section to reflect the changes discussed in § 426.11 regarding the reacquisition of formerly excess land by the party that originally held the land as excess.

*Section 426.14* in the existing regulations, *Residency,* would be deleted because residency has not been a provision of acreage limitation law since it was repealed by the RRA in 1982. The proposed new § 426.14, *Commingling,* would replace § 426.18 of the existing regulations. Editorial changes would be made to the existing regulation.

The following examples illustrate the application of this section:

*Example (1).* District A has a distribution system constructed without funds made available pursuant to Federal reclamation law and irrigates land therein with nonproject surface supplies and ground water distributed to users within the district through its distribution system. The district enters into a contract with the United States for a supplemental irrigation water supply and intends to distribute that supplemental water through its distribution system. Only the landholders within the district who are eligible to receive a supply of irrigation water as specified in § 426.14(c)(1) are subject to reclamation law. The district is not restricted in its use of the nonproject surface water or ground water, and will be in compliance with the provisions of its contract so long as there is sufficient eligible land to receive the Reclamation irrigation water supply.

*Example (2).* District A has a contract with Reclamation for a supply of irrigation water. Within the boundary of the district there are several parcels of ineligible excess lands which are not supplied with irrigation water. Those lands are irrigated from the ground-water resources under them. If irrigation water furnished to the district pursuant to the contract reaches the underground strata of these ineligible lands as an unavoidable result of the furnishing of the irrigation water by the district to eligible lands, the continued irrigation of the ineligible excess lands with that ground water shall not be deemed to be in violation of reclamation law.

**Note:** Example 2 also is applicable to the issue of unavoidable ground-water recharge and can also serve as an example in § 426.15.

*Example (3).* A district has nonproject water available to deliver to lands considered not eligible (ineligible) for irrigation water under provisions of Federal reclamation law and these regulations. To eliminate the need to build a duplicate private conveyance system to transport nonproject water, the district would like to transport such water through facilities constructed with funds made available pursuant to Federal reclamation law without the nonproject water being subject to Federal reclamation law and these regulations. If the district agrees, with prior Reclamation approval, the nonproject water may be commingled in federally financed facilities and delivered to ineligible lands if the district pays the incremental fee, as determined by Reclamation, for the use of the federally financed facilities required to deliver the nonproject water. The fee will be in addition to the capital, operation, maintenance, and replacement costs the district is obligated to pay and will be based on a methodology designed to reasonably reflect an appropriate share of the cost to the Federal Government, including interest, of providing the service.

*Example (4).* The State of Euphoria has a water supply it wishes to transport in the same direction and elevation as planned in the Federal reclamation project. If Reclamation and the State each finance their share of the costs to construct and operate the project, the water supply of the State will not be subject to Federal reclamation law and these regulations.

*Example (5).* District A has water rights to divert water from a river. These water rights are adequate to meet its requirements. It is located immediately adjacent to a federally subsidized facility, District B. District B is located immediately adjacent to the river but several miles from the Federal facility. District B contracts with the United States for a supply of irrigation water, but rather than construct several miles of conveyance facility, District B, with the approval of the United States, contracts with District A to allow District A's water rights water to flow down the river for use by District B, and the irrigation water is in turn delivered to District A. District A is not subject to Federal reclamation law and these regulations by virtue of this exchange, provided it does not materially benefit from that exchange. District B, however, is subject to Federal reclamation law and these regulations since it is the beneficiary of the exchange, i.e. a water supply.

*Section 426.15* in the existing regulation, *Religious and charitable organizations,* would be renumbered § 426.8. The proposed new § 426.15, *Exemptions and exclusions,* would replace § 426.13 of the existing regulation.

This section would be rewritten for editorial changes and clarification. Paragraph (f) would be added to make clear that the RRA is not applicable to Indian trust or restricted lands.

It should be noted that a given contract action could be considered an additional or supplemental benefit pursuant to § 426.3 of this proposed regulation even though it neither invokes nor extends the application of acreage limitation laws in general. For example, Rehabilitation and Betterment Act contracts are considered additional and supplemental benefits under § 426.3 even though they would neither extend nor reinstate the application of acreage limitations, as provided in § 426.15.

*Section 426.16* in the existing regulation, *Involuntary acquisition of land,* would be renumbered § 426.13. The proposed new § 426.16, *Small reclamation projects,* would replace § 426.21 of the existing regulation.

The only substantive changes that would be made to this section are in paragraph (a). A phrase would be added to reflect the fact that Small Reclamation Projects Act loans would be considered additional and supplemental benefits as provided in § 426.3 of the new regulation. In addition, language has been added to reflect Title III of Pub. L. 99–546 and its effect of reducing the acreage limitation entitlements from 960 to 320 acres for districts that enter into a new SRPA contract or amend their SRPA contract after October 27, 1986.

*Section 426.17* in the existing regulation, *Land held by governmental agencies,* would be renumbered § 426.9. The proposed new § 426.17, *Landholder information requirements,* would replace, in part, § 426.10 of the existing regulation.

This section would be rewritten to address only the certification and reporting requirements of landholders. A new definition paragraph and section regarding district responsibilities (§ 426.18) would be added. This section would clarify district certification and reporting requirements. In addition, a new section concerning Reclamation audits (§ 426.24) would be added.

References to the contents of the certification and reporting forms would be deleted because a comprehensive list of these contents would be too unwieldy for these regulations, and a partial list would be inappropriate.

A paragraph on eligibility would be added stating that landholders that have not filed the required forms are not eligible to receive irrigation water. The phrase *must not accept delivery of* would be added to make clear that the landholder, as well as the district, is responsible for water deliveries in the absence of the required forms.

Wholly-owned subsidiaries would be specifically exempted from forms requirements, provided the ultimate parent legal entity has met its forms requirement.

The 40-acre certification and reporting exemption threshold would be replaced with a new system which would permit higher exemption thresholds for landholders in districts that meet the following requirements:

district conformance by contract with the discretionary provisions; the district's financial obligations are not delinquent; and the district has entered into a formal resources management partnership with Reclamation. Districts that meet the requirements would be granted Category 1 status. Category 1 districts would be allowed exemption thresholds as high as 240 acres for qualified recipients and 80 acres for some limited recipients. The specific threshold for a district would be determined and documented in the partnership agreement with the district, based on factors such as the resources management objectives of the partnership and the achievements of the district(s) under the partnership. Landholders in districts which have not formed formal partnerships with Reclamation or do not meet the other two criteria, would remain in Category 2 status. Such districts would be subject to an 80-acre exemption threshold for qualified recipients and a 5-acre threshold for all limited recipients. For both categories, the exemption threshold for prior law recipients remains set at 40 acres.

The following examples illustrate the application of this section:

*Example (1).* Landholder A failed to submit the required certification forms to District X in 1994 and 1995. District X delivered, and Landholder A accepted delivery of, irrigation water in those years. Landholder A submitted certification forms for 1996; however, Landholder A's landholding is not eligible to receive irrigation water until he submits the necessary forms for 1994 and 1995.

*Example (2).* Corporation A, which is registered in Venezuela, owns 100 percent of the stock of Corporation B, which is registered in Iowa. Corporation B, in turn, owns 100 percent of the stock in Corporations C and D, each of which are registered in Arizona and own and irrigate nonexempt land in two different Arizona irrigation districts. The landholdings exceed applicable certification and reporting exemption thresholds. Corporation A, as a prior law parent legal entity, must submit reporting forms to both Arizona districts. The forms must describe the corporate structure and Corporation A's entire landholding, including those of its subsidiaries. Furthermore, any stockholders of Corporation A that exceed applicable reporting thresholds must submit the necessary forms in order for the landholding to be eligible. Corporations B, C, and D are not required to file.

*Example (3).* In September 1996, the management of District A enters into a formal partnership agreement with Reclamation to improve resources management in the district. The district and Reclamation agree to develop an integrated resources management plan and develop and implement an incentive pricing mechanism for the district. As part of the close working relationship with the district and the information generated by the partnership, and the fact that the other two requirements specified in § 426.17(h) have been met, the Regional Director determines that a 240-acre reporting threshold would be appropriate for qualified recipients in the district and an 80-acre threshold would be appropriate for limited recipients who first received irrigation water on or before October 1, 1981. The partnership agreement establishes these thresholds as part of Category 1 status for the district.

*Example (4).* Landholder A is a qualified recipient who leases 120 acres in District X and 40 acres in District Y. For 1997, District X achieves Category 1 status, but District Y does not. Landholder A is therefore subject to Category 2 thresholds and must certify in both districts in 1997 because his total landholding exceeds the 80-acre qualified recipient threshold of Category 2.

*Example (5).* Bank Y is a limited recipient and has 12,000 acres of involuntarily acquired excess landholdings, some of which are located in Category 2 districts. Bank Y has also designated 500 acres as nonexcess. Stockholder A, a qualified recipient, owns a 15 percent interest in Bank Y. Thus, Stockholder A is attributed with 1,800 acres of involuntarily acquired excess land and 75 acres of nonexcess land. The fact that most of its landholdings are involuntarily acquired does not afford Bank Y with any exemption with respect to certification thresholds; therefore, Bank Y is subject to Category 2 thresholds and must file certification forms. Stockholder A need not consider the bank's involuntarily acquired excess land in determining whether she is required to certify, but she must consider the 75 acres of attributed nonexcess land. Because she has not exceeded the 80-acre threshold applicable to qualified recipients in Category 2 districts, she is not required to file. However, had Stockholder A exceeded a certification or reporting threshold, she would have been required to include all land attributed to her, including that land involuntarily acquired, on her RRA form(s).

*Example (6).* Corporation E leases 640 acres in a Category 1 district which has a partnership agreement with Reclamation specifying 80 acre and 200 acre thresholds for limited and qualified recipient, respectively. Corporation E is 90 percent owned by Corporation F, 5 percent owned by Corporation G, and 5 percent owned by Farmer B. Corporations E and F are limited recipients that did not receive irrigation water on or before October 1, 1981. Corporation G is a limited recipient that received irrigation water on or before October 1, 1981, but currently has no landholding outside of Corporation E. Farmer B is a qualified recipient who also directly owns 320 nonexempt acres in the same district. Corporations E and F must both file because both have exceeded the applicable 5-acre threshold, and because Corporation E is not wholly owned by Corporation F. Corporation G need not file because it is subject to an 80-acre threshold, as specified in the district's partnership agreement with Reclamation. Farmer B must file because he has exceeded the applicable 200-acre threshold also specified in the district's partnership agreement with Reclamation.

*Example (7).* Farmer C owns 440 acres in a Category 1 district. After the district's last delivery in 1996, Farmer C buys another 40-acre parcel in the same district. Farmer C need not submit new forms until the start of the next irrigation season.

*Section 426.18* in the existing regulation, *Commingling,* would be renumbered § 426.14. The proposed new § 426.18, *District responsibilities,* would replace, in part, § 426.10 of the existing regulation. This new section would be added to clarify the role of irrigation contracting entities in RRA administration and enforcement. Because this issue has caused some confusion and controversy in the past, it is considered desirable to explicitly establish district responsibilities in these proposed regulations.

The proposed changes to provisions of this section would be nonsubstantive, except the number of years districts will be required to retain expired RRA forms will be increased from 3 to 6 years. Some existing Reclamation policy not contained in the existing regulation, however, would be included. The proposed section would be included to help prevent future misunderstandings about districts' roles in RRA administration.

The application of this rule is illustrated by the following examples:

*Example (1).* Landholder A submitted to District X a certification form in 1988, then filed verification forms each year through 1993. He then filed a new certification form in March 1994. District X must retain Landholder A's 1988 certification form through March 2000; thereafter, it may be destroyed by the district.

*Example (2).* Same facts as Example 1, except that in October 1999 a Reclamation audit team requests that Landholder A's 1988 certification form be retained until January 2001. The district must retain the form until that date.

*Example (3).* Landholder B submitted to District X a certification form in 1985, and has submitted verification forms each year thereafter. District X must retain Landholder B's 1985 certification form as long as he continues to verify each year and, if he submits a new certification form, for 6 years thereafter.

*Example (4).* District Y delivers 2,000 acre-feet of irrigation water to Farmer C in 1996 at the contract rate of $10 per acre-foot. It is subsequently found that Farmer C used 100 acre-feet of that water to irrigate excess land. Therefore, the payments made by District Y to the United States for the water used to irrigate the excess land ($1,000) must be deposited into the Reclamation fund and not credited toward any obligation of District Y to the United States.

*Section 426.19* of the existing regulation, *Water conservation,* would be deleted as water conservation would be the topic of a new regulation, part 427. The proposed new § 426.19,

*Assessment of administrative costs*, would replace § 426.24 of the existing regulation.

The only proposed substantive change from the existing regulation would be to add irrigation of ineligible excess land as a violation subject to assessment of an administrative fee. Reclamation will base any changes to the assessment amount on Reclamation's costs for field observation; information analysis; communication with district representatives and landholders regarding possible cases of irrigation of ineligible excess land, or obtaining missing or corrected forms; assistance to landholders in completing certification or reporting forms for the period of time they were not in compliance with the form requirements; performance of onsite visits to determine if irrigation water deliveries have been terminated to landholders that failed to submit the required forms or that irrigated ineligible excess land; and performance of other activities necessary to address form and excess land violations.

The following examples illustrate the application of this section:

*Example (1).* ABC Corporation holds irrigable land in District Y and in District Z and has three shareholders (Farmers A, B, and C). In both 1992 and 1993, ABC Corporation and each shareholder filed certification forms prior to receiving irrigation water in these districts. However, in each year, Reclamation found several errors on the forms the three shareholders had submitted in each district. The districts were given 60-calendar days in which to have the forms corrected and returned to Reclamation. All the corrected forms were returned by the designated due date, except for Farmer C's. Districts Y and Z will each be assessed a fee of $520 ($260 for each of the 1992 and 1993 water years) because Farmer C's forms were not corrected and returned within the specified time period.

*Example (2).* Farmer X owns 560 acres and leases 400 acres in District A. Each year, Farmer X submitted certification forms to the district prior to receipt of irrigation water. However, Reclamation found that in 1992 and 1993, Farmer X had reported all of his owned land on his form but only 150 of his 400 leased acres. Reclamation determines that this omission of information is not an attempt to defraud the Federal Government. Accordingly, the district will be required to obtain a corrected form, and if this is not accomplished in 60-calendar days, it will be assessed a fee of $520 ($260 for 1992, and $260 for 1993.)

*Example (3).* Farmer X and his wife, who are prior law recipients, own 480 acres in District A. None of the 160 acres in excess of the couple's 320-acre ownership entitlement was under recordable contract, as set forth in § 426.11, or otherwise eligible to receive irrigation water. However, Reclamation found that irrigation water had been delivered to the 160 excess acres in both 1992 and 1993. For the irrigation water delivered in these 2 years, District A will be assessed the compensation rate as set forth in § 426.11(h). An additional fee of $520 will also be assessed to the district ($260 each for 1992 and 1993)

*Section 426.20* of the existing regulation, *Public participation*, would be renumbered § 426.21. The proposed new § 426.20, *Interest on underpayments*, would replace § 426.23 of the existing regulation.

A definition of underpayment is proposed as paragraph (a), and other editorial changes from the existing regulation would be made for clarity and organization.

*Section 426.21* of existing regulation, *Small reclamation projects*, would be renumbered § 426.16. The proposed new § 426.21, *Public participation*, would replace § 426.20 of the existing regulation.

The only substantive change made would be in paragraph (8) of the current rule, which would be replaced by paragraph (b) of the proposed rule, to delete the *60-day* public comment period. The existing provision reduces Reclamation's flexibility to base the comment period on specific circumstances and is not a statutory requirement.

*Section 426.22* of the existing regulation, *Decisions and appeals*, would be renumbered § 426.23. The proposed new § 426.22, *Recovery of operation and maintenance (O&M) costs*, would replace § 426.8 of the existing regulation.

This section would be rewritten for clarity. The proposed language would contain no substantive changes to existing policy.

*Section 426.23* of the existing regulation, *Severability*, would be renumbered § 426.25. The proposed new § 426.23, *Agency decisions and appeals*, would replace § 426.22 of the existing regulation.

This section would be rewritten to streamline the appeals process and to enhance the protection of parties who may be adversely affected by RRA-related decisions.

The proposed language would require the appropriate regional director to make initial agency decisions. It would provide flexibility to the regional director in establishing the effective date of the initial decision, and would protect landholders by providing for a 10 calendar day delay before deliveries of water are terminated. Furthermore, affected parties would be able to request reconsideration of the initial decision.

The proposed language would permit regional directors to notify potentially affected parties if appropriate, and would allow any impacted party to use the appeal process whether or not the regional director gave notice of the particular agency decision. Parties who were not notified would have a longer period of time to initiate the appeals process than would parties who were notified of an initial decision. The proposed rules would also allow affected parties to request a stay of the regional director's initial decision while it is being reconsidered.

Following reconsideration by the regional director, affected parties would have the opportunity to appeal the final agency action directly to the Department of the Interior's Office of Hearings and Appeals. This change would streamline the review process by eliminating the Commissioner level of review provided by the existing regulation.

The proposed language would also provide for retroactive application of decisions (which is current practice) and application of the compensation rate in cases of illegal irrigation water deliveries.

The proposed language would validate any decisions made under the existing appeals process, and provide that appeals pending as of the effective date of the new regulation would be processed under the existing regulation.

Completion of this administrative appeals process would be required before parties may file suit in court regarding final agency determinations pursuant to part 426.

*Section 426.24.* The proposed § 426.24, *Reclamation Audits*, would replace § 426.10(i) of the existing regulation.

*Section 426.25.* The proposed § 426.25, *Severability*, would replace § 426.24 of the existing regulations.

**Description and Analysis of Part 427**

Reclamation has a major responsibility, in partnership with water users, States, Indian tribes, and other interested parties, to help improve water management and the efficiency of water use in nearly every major river basin in the Western United States. Water conservation measures can improve reliability and reduce costs for water users, and under some circumstances yield water for additional agricultural, urban, or environmental needs.

Opportunities for additional water conservation and efficiency improvements vary from system to system depending on factors such as delivery and storage facilities, operational practices, existing conservation measures, and the use or destination of ''non-conserved'' water (i.e., downstream appropriators, riparian habitat, groundwater recharge, estuary inflow, evaporation, etc.). To be most

effective, water conservation measures must be evaluated on a site-specific basis and must be tailored to the circumstances of each water system and its local environment.

Preparation and implementation of water conservation plans by recipients of Reclamation project water is one aspect of Reclamation's overall water conservation program. Improvements in water management on Federal projects can reduce overall operating costs, improve reliability of existing water supplies, postpone the need for new or expanded water supplies, and reduce the impacts of drought.

The RRA challenges those who contract for Federal project water supplies to develop water conservation plans that examine existing water management practices, evaluate alternative water management strategies, and implement appropriate water conservation measures. A thoughtfully developed water conservation plan represents an opportunity for every district to identify water management problems, evaluate opportunities, highlight accomplishments, and plan for improvements.

These rules and regulations prescribe the requirements for preparation and submittal of water conservation plans prepared by water districts and other entities that contract with the United States for a supply or storage of water under Federal reclamation law, the Small Reclamation Projects Act, the Water Conservation and Utilization Act, or the Warren Act.

Section 427.1 explains the purpose of these rules and regulations, § 427.2 describes conservation plan requirements, and § 427.3 describes incentives for preparing adequate water conservation plans.

Section 427.4 references additional information that will be available from Reclamation in the form of Technical Guidelines and Criteria for Water Conservation Plans (Guidelines and Criteria). These Guidelines and Criteria describe the standards and process which Reclamation will use to evaluate district water conservation plans, describe the schedule and process for submitting plans, provide information on environmental compliance, suggest specific plan elements, and identify water conservation measures for evaluation and inclusion in district water conservation plans.

The Guidelines and Criteria are currently undergoing a public review that began on January 10, 1995 and will end on April 10, 1995. Upon completion of this review period, Reclamation intends to finalize the Guidelines and Criteria as guidance in the development and approval of water conservation plans.

Although the Guidelines and Criteria are not part of the proposed rules and regulations, they were included as part of the proposed rule alternative in the draft EIS. This allowed an evaluation of the proposed rules in combination with the Guidelines and Criteria. Although page 2–18 of the draft EIS states that the Guidelines and Criteria are included as an appendix to the rules, it was decided it was not necessary to print the Guidelines and Criteria with the proposed rules. A copy of the Guidelines and Criteria may be obtained by calling Mr. Craig Phillips at (303) 236–1061 ext. 265 or by contacting any Bureau of Reclamation Regional Office.

**Public Comment**

Public comment is solicited on all aspects of this proposed rulemaking. Reclamation will consider all comments received. All those wishing to make comments are advised that, pursuant to the Administrative Procedure Act (5 U.S.C. 551, 553), all information provided to Reclamation will be available for public inspection.

To assist Reclamation in compiling and analyzing comments, it is requested that comments be grouped according to the two separate parts (i.e, part 426 and 427) of the proposed rule. However, it is not required that comments be so organized.

Oral comments on the proposed rules will be accepted at public hearings which will be conducted in April 1995 on the proposed rules and regulations and on the draft EIS which evaluates these proposed rules and regulations. Hearings will be announced in a separate **Federal Register** notice.

**National Environmental Policy Act**

In compliance with the NEPA, a draft EIS has been prepared which analyzes the impacts of these proposed rules and regulations and alternatives thereto. The draft EIS includes a no action alternative, a preferred alternative (which is the proposed rule), and three additional alternatives encompassing a range of potential rules and regulations. The draft EIS is being published and distributed for public review concurrent with the publication of these proposed rules and regulations.

**Environmental Compliance, Review, and Consultation Requirements**

The EIS and related coordination activities described below will provide full compliance for the promulgation of final rules and regulations. However, any future actions taken pursuant to final rules and regulations by the Federal government or by contracting entities (e.g., irrigation districts, drainage districts, municipal and industrial water districts, etc.) shall be subject to the requirements of all applicable Federal environmental laws including, but not limited to, the NEPA, the Endangered Species Act, the Fish and Wildlife Coordination Act, the Clean Water Act, and the National Historic Preservation Act, and laws relating to Indian treaty and trust reponsibilities.

This EIS has been prepared concurrently with environmental review and consultation required by Federal environmental law other than NEPA, as required by 40 CFR 1502.25. Compliance with specific environmental review and consultation requirements is described below.

**Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.)**

The Fish and Wildlife Coordination Act (FWCA) requires Federal agencies to consult with the Fish and Wildlife Service, National Marine Fisheries Service (as applicable), and state wildlife agencies during the planning of new projects and for modifications to existing projects (e.g., whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever) so that wildlife resources receive equal consideration along with other project objectives and features.

Compliance with the FWCA requires: (1) Consultation, (2) opportunity for the Fish and Wildlife Service, the National Marine Fisheries Service, and the State wildlife agency to report, (3) consideration of FWCA report recommendations, (4) incorporation of justifiable wildlife features into a recommended plan or action, and (5) incorporation of the FWCA report as an integral part of the decision making package submitted to Congress or to any agency or person having the authority by administrative action to authorize construction of a project or modification of a previously authorized project.

In meetings and correspondence between Reclamation and the Fish and Wildlife Service, the National Marine Fisheries Service, and State wildlife agencies, it was agreed that a formal FWCA report would not be required for this rulemaking. Rather, coordination efforts with the Fish and Wildlife Service, the National Marine Fisheries Service, and State wildlife agencies were handled by those agencies providing technical assistance to

Reclamation, which assistance has been appropriately documented. Detailed FWCA coordination and formal reports will be accomplished for specific sites in the future as the need and opportunity arises (e.g., amendment or renewal of specific repayment or water service contracts which are subject to these regulations).

The EIS that accompanies this proposed rulemaking contains a description of the general FWCA compliance process and makes the commitment to deal with site-specific issues as they come up in the future when a site-specific Federal action is taken. The EIS does not satisfy the site-specific need for future compliance with the FWCA.

**Endangered Species Act (16 U.S.C. 1521, et seq.)**

The objective of the Endangered Species Act (ESA) is to provide a means whereby the ecosystem upon which endangered species and threatened species depend may be conserved and to provide a program for the conservation of such species. It is further stated in the ESA that it is the policy of the Congress ''that all Federal Departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of the Act.'' The ESA further states that ''Federal agencies shall cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species.''

Section 7 of the ESA establishes the interagency cooperation program under which Federal agencies have their primary compliance responsibilities. In meetings between Reclamation and the Fish and Wildlife Service and National Marine Fisheries Service, it was agreed that the way to comply with the ESA for the purposes of this rulemaking would be to use section 7(a)(1) of the ESA and describe, in broad terms, the general effects of actions associated with new or revised regulations. Thus, Reclamation initiated informal ESA consultation on a broad spectrum basis and requested a list of federally proposed or listed threatened, endangered, and candidate species from the Fish and Wildlife Service and the National Marine Fisheries Service.

A tiering process will be used down to a level more appropriate to section 7(a)(2) of the ESA, whereby consultation will be initiated if and when site-specific analyses becomes necessary, such as with the amendment or renewal of specific repayment or water service contracts. The EIS indicates that if Reclamation consults under Section 7 of the ESA, individual landowners will not have to go through Section 10 compliance on their own.

**National Historic Preservation Act (15 U.S.C. 470, et seq.)**

The National Historic Preservation Act of 1966, (NHPA), as amended, is the basic Federal law governing preservation of cultural resources of national, regional, state, and local significance. Specifically, section 106 of the NHPA requires each Federal agency to consider the effect of its actions on ''any district, site, building, structure or object that is included in or eligible for inclusion in the National Register''. Furthermore, an agency must afford the Advisory Council on Historic Preservation, an independent Federal agency created by the National Historic Preservation Act, an opportunity to comment on any of the agency's undertakings that could affect historic properties. Procedures for meeting section 106 requirements are defined in Federal regulations 36 CFR part 800. Other Federal legislation further promotes and requires the protection of historic and archaeological resources by the Federal government. Among these laws are the Archaeological Resources Protection Act and the Native American Graves Protection and Repatriation Act.

Informal consultation with the Advisory Council on Historic Preservation to apprise them that this rulemaking has been initiated. The draft EIS will be sent to the Council and the 17 western State Historic Preservation Offices for official comment. Procedures prescribed in 36 CFR part 800 will be followed for future site-specific Federal actions pursuant to these rules that trigger compliance under NHPA.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act requires that a regulatory flexibility analysis, describing the impact of regulations on small entities be prepared and published if proposed regulations will have a significant economic effect on a substantial number of small entities. It has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis has not been prepared.

**Paperwork Reduction Act**

Sections 206, 224(c), and 228 of the RRA (43 U.S.C. 390ff, 390ww(c), and 390zz) require, among other things, that (1) as a condition to the receipt of Reclamation irrigation water, each landholder must certify, in a form suitable to the Secretary, that they are in compliance with the provisions of the Act, and (2) districts must annually submit to Reclamation, in a form suitable to the Secretary, records and information necessary to implement the RRA. These requirements are presently promulgated in 43 CFR 426.10. To comply with these requirements, Reclamation provides forms for the landholders' and districts' use. The existing landholder forms have been approved by the Office of Management and Budget (OMB) under clearance number 1006–0005. This clearance expires on October 31, 1995. The district summary forms have been approved under clearance number 1006–0006; that clearance expires on July 31, 1995.

This proposed rulemaking contains a change to the existing § 426.10 that would reduce the reporting burden by raising the acreage threshold for which certification and reporting forms are required. The estimated average annual paperwork reduction which would occur if the proposed revisions to § 426.10 are made final is about 3100 hours per year westwide. It is estimated that the proposed rule's changes to the definition of what constitutes a lease will cause a slight increase of burden hours for farm operators who do not now have to complete forms. The net reduction would be approximately 3000 hours per year westwide and will reduce the paperwork burden by about 20 percent compared to current requirements, which are approximately 14,400 hours.

Section 427.2 of the proposed water conservation rules require that water districts and other entities prepare and submit water conservation plans. Reclamation will be requesting OMB approval for collection of information contained in water conservation plans consistent with the requirements of the Paperwork Reduction Act.

**Executive Order 12866**

Under Executive Order 12866, (58 FR 51735 Oct. 4, 1993), an agency must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this proposed rule is a significant regulatory action within the meaning of the Executive Order.

**Executive Order 12612, Federalism**

This rule has no significant impact on Federalism under Executive Order 12612. The regulations affect State/Federal relations in three ways, none of which are significant. First, while the

rules involve state water, consistent with section 8 of the Reclamation Act of 1902, 43 U.S.C. 383, these regulations do not affect state control of irrigation water rights. Second, the rules relate extensively to state organized irrigation districts. However, these proposed regulations would serve to clarify the existing Reclamation-district relationship and would not affect a significant change in policy. Finally, while the regulations address the commingling of Reclamation and non-reclamation water, the rules do not change existing policy.

**Executive Order 12630, Takings**

This proposed rule has been reviewed under Executive Order 12630 to determine the takings implications of the proposed rule. Because districts and individual water users hold only contractual rights to services provided by Reclamation and the proposed rule would have only a de minimus impact on the value of any Constitutionally-protected property right if such right exists, it has been determined that this proposed rule does not present a significant risk of a taking.

Authorship: The primary authors of these proposed regulations are Gary Anderson, J. William McDonald, Richard Rizzi, and Rusty Schuster, Program Analysis Office, Bureau of Reclamation; however, much of the substance of the regulations was developed by RRA and water conservation experts throughout Reclamation.

**List of Subjects in 43 CFR Part 426 and 43 CFR Part 427**

Administrative practice and procedure, Irrigation, Reclamation, Reporting and record keeping requirements.

Dated: March 22, 1995.

**Elizabeth Ann Rieke,**

*Assistant Secretary—Water and Science.*

For the reasons stated in the preamble, it is proposed that 43 CFR part 426 be revised as follows and that 43 CFR part 427 be added as follows:

Part 426 is revised to read as follows:

## PART 426—ACREAGE LIMITATION RULES AND REGULATIONS

Sec.

426.1 Purpose.
426.2 Definitions.
426.3 Conformance to the discretionary provisions.
426.4 Attribution of land.
426.5 Ownership entitlement.
426.6 Leasing and full-cost pricing.
426.7 Trusts.
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426.10 Class 1 equivalency.
426.11 Excess land.
426.12 Excess land appraisals.
426.13 Involuntary acquisition of land.
426.14 Commingling.
426.15 Exemptions and exclusions.
426.16 Small reclamation projects.
426.17 Landholder information requirements.
426.18 District responsibilities.
426.19 Assessment of administrative costs.
426.20 Interest on underpayments.
426.21 Public participation.
426.22 Recovery of operation and maintenance (O&M) costs.
426.23 Agency decisions and appeals.
426.24 Reclamation audits.
426.25 Severability.

**Authority:** 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z–11; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390aa to 390zz–1, 43 U.S.C. 418, 43 U.S.C. 423 to 425b, 43 U.S.C. 431, 434, 440, 43 U.S.C. 451 to 451k, 43 U.S.C. 462, 43 U.S.C. 485 to 485k, 43 U.S.C. 491 to 505, 43 U.S.C. 511 to 513, and 43 U.S.C. 544.

### § 426.1 Purpose.

These rules and regulations implement certain provisions of Federal reclamation law that address the ownership and leasing of land on Federal Reclamation irrigation projects, the pricing of Federal Reclamation project irrigation water, and establish terms and conditions for the delivery of Federal Reclamation project irrigation water.

### § 426.2 Definitions.

As used in these rules:

*Acreage limitation entitlements* means the ownership and nonfull-cost entitlements.

*Acreage limitation provisions* means the ownership limitations and pricing restrictions specified in Federal reclamation law, including but not limited to, sections 203(b), 204, and 205 of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

*Acreage limitation status* means whether a landholder is a qualified recipient, limited recipient, or prior law recipient.

*Commissioner* means the Commissioner of the Bureau of Reclamation, U.S. Department of the Interior.

*Compensation rate* means a water rate applied, in certain situations, to water deliveries to ineligible land that are not discovered until after the delivery has taken place. The compensation rate is equal to the established full-cost rate that would otherwise apply to the landholder.

*Contract* means any repayment or water service contract or agreement between the United States and a district providing for the payment to the United States of construction charges and normal operation, maintenance, and replacement costs under Federal reclamation law, even if the contract does not specifically identify the portion of the payment that is to be attributed to operation and maintenance and that is to be attributed to construction. This definition includes contracts made in accordance with the Distribution System Loans Act, as amended (43 U.S.C. 421).

*Contract rate* means the assessment as set forth in a contract that is to be paid by a district to the United States, and recomputed if necessary on a per acre or per acre foot basis.

*Dependent* means any natural person within the meaning of the term dependent in the Internal Revenue Code of 1954 (26 U.S.C. 152) and any subsequent amendments.

*Direct* when used in connection with the terms landholder, landowner, lessee, lessor, or owner, means that the party is the owner of record or the lessee of a land parcel, as appropriate. However, landholdings of joint tenants and tenants-in-common will not be considered direct under these regulations.

*Discretionary provisions* refers to sections 390cc through 390hh, except for 390cc(b), of the Reclamation Reform Act of 1982, (43 U.S.C. 390aa *et seq.*).

*District* means any individual or any legal entity established under State law that has entered into a contract or can potentially enter into a contract with the United States for irrigation water service through federally developed or improved water storage and/or distribution facilities.

*Eligible,* except where otherwise provided, means permitted to receive an irrigation water supply from a Bureau of Reclamation project under applicable Federal reclamation law.

*Entity,* see definition of *legal entity.*

*Excess land* means nonexempt land that is in excess of the landowner's maximum ownership entitlement under the applicable provisions of Federal reclamation law.

*Exempt,* except where otherwise provided, means not subject to the acreage limitation provisions of Federal reclamation law.

*Extended recordable contract* means a recordable contract whose term was extended due to moratoriums on the sale of excess land that were established in 1976 and 1977.

*Full cost* or *full-cost rate* means an annual rate established by the Bureau of Reclamation that amortizes the expenditures for construction properly allocable to irrigation facilities in service, including all operation and

maintenance deficits funded, less payments, over such periods as may be required under Federal reclamation law, or applicable contract provisions. Interest will accrue on both the construction expenditures and funded operation and maintenance deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. The full-cost rate includes actual operation, maintenance, and replacement costs required under Federal reclamation law.

*Full-cost charge* means the full-cost rate less the actual operation, maintenance, and replacement costs required under Federal reclamation law.

*Indirect,* when used in connection with the terms landholder, landowner, lessee, lessor or owner, means that such party is not the owner of record or the lessee of a land parcel, but that such party has a beneficial interest in the legal entity that is the owner of record or the lessee of a land parcel. Landholdings of joint tenants and tenants-in-common will be considered indirect under these regulations.

*Individual* means any natural person, including his or her spouse, and including other dependents; provided that, under prior law, the term individual does not include a natural person's spouse or dependents.

*Ineligible,* except where otherwise provided, means not permitted to receive an irrigation water supply under applicable Federal reclamation law regardless of the rate paid for such water.

*Intermediate entity* means an entity that is a part owner of another entity and in turn is owned by others, either another entity or individuals.

*Involuntary acquisition* means land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.

*Irrevocable election* means the legal instrument that a landholder executes to become subject to the discretionary provisions of Federal reclamation law.

*Irrevocable elector* means a landholder who makes an irrevocable election to conform to the discretionary provisions of Federal reclamation law.

*Irrigable land* means land so classified by the Bureau of Reclamation under a specific project plan for which irrigation water is, can be, or is planned to be provided, and for which facilities necessary for sustained irrigation are provided or are planned to be provided.

*Irrigation land* means any land receiving irrigation water in a given water year, except for land that has been specifically exempted by statute or administrative action from the acreage limitation provisions of Federal reclamation law.

*Irrigation water* means water made available for agricultural purposes from the operation of Reclamation project facilities.

*Landholder* means a party that directly or indirectly owns or leases nonexempt land.

*Landholding* means the total acreage of nonexempt land directly or indirectly owned or leased by a landholder.

*Lease* means any arrangement between a landholder (the lessor) and another party (the lessee) under which possession of the lessor's land is partially or wholly transferred to the lessee. Possession means the authority to make, or prevent the lessor from making, decisions concerning the farming enterprise on the land; or the assumption of economic risk with respect to the farming enterprise on the land. In situations where possession has been partially transferred from a landholder to another party, a lease will be considered to exist if the majority of possession is not held by the potential lessor. In situations where possession has been transferred from a landholder to more than one other party, a lease will be considered to exist between the lessor and the party holding the greatest degree of possession.

*Legal entity* means, but is not limited to, corporations, partnerships, trusts, organizations, associations, and any business or property ownership arrangements such as joint tenancies and tenancies-in-common.

*Limited recipient* means any legal entity established under State or Federal law benefiting more than 25 natural persons. In order to become limited recipients, individuals and legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

*Nondiscretionary provisions* means section 390cc(b) and 390hh through 390zz–1 of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.).

*Nonexempt land* means irrigation land or irrigable land that is subject to the acreage limitation provisions of Federal reclamation law. Areas used for field roads, farm ditches and drains, tailwater ponds, temporary equipment storage, and other improvements subject to change at will by that landowner, are included in the nonexempt acreage. Areas occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures such as feedlots, equipment storage yards, permanent roads, permanent ponds, and similar facilities, together with roads open for unrestricted use by the public are excluded from nonexempt acreage.

*Nonfull-cost entitlement* means the maximum acreage a landholder may irrigate with irrigation water at a nonfull-cost rate.

*Nonfull-cost rate* means any water rate other than the full-cost rate. Nonfull-cost rates are paid for irrigation water made available to land in a landholder's nonfull-cost entitlement.

*Nonresident alien* means any natural person who is neither a citizen nor a resident alien of the United States.

*Operation and maintenance costs* or *O&M costs* means all direct charges and overhead costs incurred by the United States after the date that Reclamation has declared a project, or a part thereof, substantially complete to operate, maintain, provide replacements of, administer, manage, and oversee project facilities and lands.

*Ownership entitlement* means the maximum acreage a landholder may directly or indirectly own and irrigate with irrigation water.

*Part owner* means an individual or entity that has a beneficial interest in an entity, but does not own 100 percent of that entity.

*Prior law* means the Reclamation Act of 1902, and acts amendatory and supplementary thereto (43 U.S.C. 371 *et seq.*) that were in effect prior to the enactment of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*), and as amended by the Reclamation Reform Act of 1982.

*Prior law recipient* means an individual or legal entity that has not become subject to the discretionary provisions. All nonresident aliens and legal entities not registered under State or Federal law will be considered prior law recipients, and shall have entitlement and eligibility only as prior law recipients.

*Project* means any irrigation project authorized by Federal reclamation law, or constructed by the United States pursuant to such law, or in connection with a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the United States through the Bureau of Reclamation for the reclamation of lands. The term project includes any incidental features of an irrigation project.

*Public entity* means States, political subdivisions or agencies thereof, and agencies of the Federal Government.

*Qualified recipient* means an individual who is a citizen or a resident alien of the United States or any legal

entity established under State or Federal law that benefits 25 natural persons or less. A married couple may become a qualified recipient if either spouse is a United States citizen or resident alien. In order to become qualified recipients, individuals and legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

*Reclamation* means the Bureau of Reclamation, U.S. Department of the Interior.

*Reclamation fund* means a special fund established by the Congress under the Reclamation Act of 1902, as amended, for the receipts from the sale of public lands and timber, proceeds from the Mineral Leasing Act, and certain other revenues.

*Recordable contract* means a written contract between Reclamation and a landowner capable of being recorded under State law, providing for the disposition of land held by that landowner in excess of the ownership limitations of Federal reclamation law.

*Resident alien* means any natural person within the meaning of the term as defined in the Internal Revenue Act of 1954 (26 U.S.C. 7701) as it may be amended.

*RRA* means the Reclamation Reform Act of 1982, Public Law 97–293, Title II, 96 Stat. 1263, (43 U.S.C. 390aa *et seq.*) as amended.

*Secretary* means Secretary of the Interior.

*Standard certification or reporting forms* means those forms on which landholders provide complete information about the directly and indirectly owned and leased land in their landholding.

*Westwide* means the 17 Western States where Reclamation projects are located, namely: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

**§ 426.3 Conformance to the discretionary provisions.**

(a) *Districts that are subject to the discretionary provisions.* Unless an exemption in § 426.15 applies, a district is subject to the discretionary provisions if:

(1) The district executes a new or renewed contract with Reclamation after October 12, 1982. The discretionary provisions apply as of the execution date of the new or renewed contract;

(2) The district amends its contract to conform to the discretionary provisions:

(i) A district may ask Reclamation to amend its contract solely to conform to the discretionary provisions;

(ii) The district's request to Reclamation must be accompanied by a duly adopted resolution dated and signed by the governing board of the district obligating the district to take, in a timely manner, actions required by applicable State law to amend its contract; and

(iii) If Reclamation amends the contract, the district becomes subject to the discretionary provisions from the date the district's request was made; or

(3) The district amends its contract after October 12, 1982, to provide the district with additional or supplemental benefits. The amendment must also include the district's conformance to the discretionary provisions:

(i) The discretionary provisions apply as of the date that the Secretary executes the contract amendment;

(ii) For purposes of application of the acreage limitation provisions, Reclamation considers all contract amendments as providing additional or supplemental benefits, except as specified in paragraphs (a)(3)(iii) or (iv) of this section. This includes loans made under the following acts that require amendment of a district's existing contract:

(A) Rehabilitation and Betterment Act (43 U.S.C. 504);

(B) Small Reclamation Projects Act (43 U.S.C. 422);

(C) Distribution Systems Loan Act (43 U.S.C. 421); and

(D) Emergency Fund Act (43 U.S.C. 502);

(iii) for purposes of application of the acreage limitation provisions Reclamation considers a contract amendment as not providing additional or supplemental benefits if that amendment:

(A) Does not require the United States to expend significant funds;

(B) Does not require the United States to commit significant additional water supplies; or

(C) Does not substantially modify contract payments due the United States; and

(iv) For purposes of application of the acreage limitation provisions Reclamation does not consider the following contract actions as providing additional or supplemental benefits:

(A) The construction of facilities for conveyance of irrigation water for which districts contracted on or before October 12, 1982;

(B) Minor drainage and construction work contracted under an existing repayment or water service contract;

(C) Operation and maintenance (O&M) amendments;

(D) The deferral of payments provided the deferral is for a period of 12 months or less;

(E) A temporary supply of irrigation water as set forth in § 426.15(d);

(F) The transfer of water on an annual basis from one district to another, provided that;

(1) Both districts have contracts with the United States;

(2) The rate paid by the district receiving the transferred water:

(i) Is the higher of the applicable water rate for either district;

(ii) Does not result in any increased operating losses to the United States above those that would have existed in the absence of the transfer; and

(iii) Does not result in any decrease in capital repayment to the United States below what would have existed in the absence of the transfer; and

(3) The recipients of the transferred water pay a rate for the water that is at least equal to the actual operation and maintenance costs or the full-cost rate in those cases where, for whatever reason, the recipients would have been subject to such costs had the water not been considered transferred water;

(G) Contract actions pursuant to the Reclamation Safety of Dams Act of 1978, as amended (43 U.S.C. 506); or

(H) Other contract actions that Reclamation determines do not provide additional or supplemental benefits.

(b) *Districts that are subject to prior law.* Any district which had a contract in force on October 12, 1982, that required landholders to comply with the ownership limitations of Federal reclamation law remain subject to prior law unless and until the district:

(1) Enters into a new or renewed contract requiring it to conform to the discretionary provisions, as provided in § 426.3(a)(1);

(2) Makes a contract action requiring conformance to the discretionary provisions, as provided in § 426.3(a) (2) or (3); or

(3) Becomes exempt, as provided in § 426.15.

(c) *Standard RRA contract article.*

(1) New or renewed contracts executed after October 12, 1982, or contracts that are amended to conform to the discretionary provisions through the effective date of these rules must include the following clause:

> The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract are subject to Federal reclamation law, as amended and supplemented, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

(2) New or renewed contracts executed after the effective date of these rules, or contracts that are amended to conform to the discretionary provisions

after the effective date of these rules must include the following clause:

The parties agree that the delivery of water or use of Federal facilities pursuant to this contract is subject to Federal reclamation law, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

The contracting officer shall have the right to make determinations necessary to administer this contract that are consistent with the expressed and implied provisions of this contract, the laws of the United States and the State as they now or hereafter exist, and the rules and regulations promulgated by the Secretary of the Interior. These determinations shall be made in consultation with the contractor.

(d) *The effect of a master contractor's and subcontractor's actions to conform to the discretionary provisions.* If a district provides irrigation water to other districts through subcontracts and the master contracting district is subject to:

(1) The discretionary provisions, then all subcontracting districts who are entitled to receive irrigation water must also conform to the discretionary provisions; or

(2) Prior law, then the subcontracting district can amend its subcontract to conform to the discretionary provisions without subjecting the master contractor or any other subcontractor of the master contractor to the discretionary provisions. If a subcontract that does not include the United States as a party is amended to conform to the discretionary provisions, or the subcontract is a new or renewed contract executed after October 12, 1982, then the amended, new, or renewed subcontract must include the United States as a party.

(e) *The effect on a landholder's status when a district becomes subject to the discretionary provisions.* If a district conforms to the discretionary provisions and the landholder is:

(1) Other than a nonresident alien or a legal entity that is not registered under State or Federal law, and is:

(i) A direct landholder in that district, then the landholder becomes subject to the discretionary provisions and that acreage limitation status will apply in any district in which the landholder holds land; or

(ii) Only an indirect landholder, then the landholder's acreage limitation status is not affected. Such a landholder can receive irrigation water as a prior law recipient on indirectly held lands in districts that conform to the discretionary provisions.

(2) A nonresident alien, or legal entity not registered under State or Federal law, and the landholder is:

(i) A direct landholder, then since such a landholder cannot become subject to, and has no eligibility under the discretionary provisions:

(A) All direct landholdings in districts that conform to the discretionary provisions become ineligible; and

(B) Directly held land that becomes ineligible as a result of the district's action to conform to the discretionary provisions may be placed under recordable contract as subject to the conditions specified in § 426.11; or

(ii) An indirect landholder, then such a landholder, as a prior law recipient, may receive irrigation water on land indirectly held in districts conforming to the discretionary provisions, but such holdings cannot exceed the landholder's prior law entitlements.

(f) *Landholder actions to conform to the discretionary provisions.*

(1) In the absence of a district's action to conform to the discretionary provisions, United States citizens, resident aliens, or legal entities established under State or Federal law, can elect to conform to the discretionary provisions by executing an irrevocable election. Upon execution of an irrevocable election:

(i) The elector's entire landholding in all districts shall be subject to the discretionary provisions;

(ii) The election shall be binding on the elector and his or her landholding, but will not be binding on subsequent landholders of that land;

(iii) An irrevocable election by a legal entity is binding only upon that entity and not on the members of that entity;

(iv) An irrevocable election by a member of a legal entity binds only the member making the election and not the entity or other members of the entity; and

(v) An irrevocable election by a lessor does not affect the status of a lessee, and vice versa. However, the eligibility and entitlement of neither a lessor nor a lessee may be enhanced through leasing.

(2) A landholder makes an irrevocable election by completing a Reclamation issued irrevocable election form:

(i) The elector's original irrevocable election form must be filed by the district with Reclamation and must be accompanied by a completed certification form, as specified in § 426.17;

(ii) The elector must file copies of the irrevocable election and certification forms concurrently with each district where the elector holds nonexempt land;

(iii) Reclamation will prepare a letter advising the recipient of the approval or disapproval of the election. Reclamation will base approval upon whether the election form and the accompanying certification or reporting forms(s) indicate the elector's satisfaction of the various requirements of Federal reclamation law and these regulations;

(iv) If the election is approved, the letter of approval, with a copy of the irrevocable election form and the original certification form(s), will be sent by Reclamation to each district where the elector holds land;

(v) The district(s) shall retain the forms; and

(vi) If the irrevocable election is disapproved, the landowner and the district will be advised by letter along with the reasons for disapproval.

(3) A landholder that only holds land indirectly in a district that has conformed to the discretionary provisions, other than a nonresident alien or a legal entity not registered under state or Federal law, may make an irrevocable election also by simply submitting a certification form. An election made in this manner is binding in all districts in which such elector holds land.

(g) *District reliance on irrevocable election form information.* The district is entitled to rely on the information contained in the irrevocable election form. The district does not need to make an independent investigation of the information.

(h) *Time limits for amendments or elections to conform to the discretionary provisions.* Reclamation will allow at anytime a landholder to elect or a district to amend its contract to conform to the discretionary provisions. An irrevocable election that was made after April 12, 1987, but on or before May 13, 1987, shall be considered effective on April 12, 1987.

### § 426.4 Attribution of land.

(a) *Prohibition on increasing acreage limitation entitlements.* Except as specifically provided in these rules, landholders cannot increase acreage limitation entitlements or eligibility by acquiring or holding a beneficial interest in a legal entity. Similarly, the acreage limitation status of an individual or legal entity that holds or has acquired a beneficial interest in another legal entity will not be permitted to enlarge the latter legal entity's acreage limitation entitlements or eligibility.

(b) *Attribution of owned land.* For purposes of determining acreage to be counted against acreage limitation entitlements, acreage will be attributed to all:

(1) Direct landowners in proportion to the direct beneficial interest the landowners own in the land; and

(2) Indirect landowners in proportion to the indirect beneficial interest they own in the entity that directly owns the land.

(c) *Attribution of leased land.* Leased land will be attributed to the direct and indirect landowners as well as to the direct and indirect lessees in the same manner as described in § 426.4 (b) and (d).

(d) *Attribution of land held through intermediate entities.* If land is held by a direct landholder and a series of indirect landholders, Reclamation will attribute that land to the acreage limitation entitlements of the direct landholder and each indirect landholder in proportion to each landholder's beneficial interest in the entity that directly holds the land.

(e) *Leasebacks.* Any land a landholder directly or indirectly owns and that is directly or indirectly leased back will only count once against that particular landholder's nonfull-cost entitlement.

(f) *Effect on an entity of attribution to part owners.* For purposes of determining eligibility, land will be attributed in its entirety to all direct and indirect landholders. If the interests in a legal entity are:

(1) Undivided, then all of the indirect part owners must be eligible in order for the entity to be eligible; or

(2) Divided, in such a manner that specific parcels are attributable to each indirect landholder, then the entity may qualify for eligibility on those portions of the landholding not attributable to any part owner who is ineligible.

### § 426.5 Ownership entitlement.

(a) *General.* Except as provided in §§ 426.11 and 426.13, all nonexempt land directly or indirectly owned by a landholder counts against that landholder's ownership entitlement. In addition, land owned or controlled by a public entity that is leased to another party counts against the lessee's ownership entitlement, as specified in § 426.9.

(b) *Qualified recipient ownership entitlement.* A qualified recipient is entitled to receive irrigation water on a maximum of 960 acres of owned nonexempt land, or the class 1 equivalent thereof. This entitlement applies on a westwide basis.

(c) *Limited recipient ownership entitlement.* A limited recipient is entitled to receive irrigation water on a maximum of 640 acres of owned nonexempt land, or the class 1 equivalent thereof. This entitlement applies on a westwide basis.

(d) *Prior law recipient ownership entitlement.*

(1) Ownership entitlements for prior law recipients are determined by whether the recipient is one individual or a married couple, and for entities by the type of entity as follows:

(i) Individuals subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land;

(ii) Married couples who hold equal interests are entitled to receive irrigation water on a maximum of 320 acres of jointly owned nonexempt land;

(iii) Surviving spouses until remarriage are entitled to receive irrigation water on that land owned jointly in marriage up to a maximum of 320 acres. If any of that land should be sold, the applicable ownership entitlement would be reduced accordingly, but not to less than 160 acres;

(iv) Children are each entitled to receive irrigation water on a maximum of 160 acres, regardless of whether they are independent or dependent;

(v) Joint tenancies and tenancies-in-common subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land per tenant, provided each tenant holds an equal interest in the tenancy;

(vi) Partnerships subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land per partner if the partners have separable and equal interests in the partnership and the right to alienate that interest. Partnerships where each partner does not have a separable interest and the right to alienate that interest are entitled to receive irrigation water on a maximum of 160 acres of nonexempt land owned by the partnership; and

(vii) All corporations subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land.

(2) Prior law recipient ownership entitlements, specified in this section, apply on a westwide basis unless the land was acquired by the current owner on or before December 6, 1979. For land acquired by the current owner on or before that date, prior law ownership entitlements apply on a district-by-district basis. For any land acquired after that date, prior law ownership entitlements apply on a westwide basis.

### § 426.6 Leasing and full-cost pricing.

(a) *Conditions that a lease must meet.* Districts can make irrigation water available to leased land only if the lease meets the following requirements.

Land that is leased under a lease instrument that does not meet the following requirements will be ineligible to receive irrigation water until the lease agreement is terminated or modified to satisfy these requirements.

(1) The lease must be in writing;

(2) The lease includes the effective date and term of the lease, the length of which must be:

(i) 10 years or less, including any exercisable options; or

(ii) Equal to the average life of the perennial crop grown on the land, if the crop has a life longer than 10 years. In no case may the term of a lease exceed 25 years, including any exercisable options;

(3) The lease includes a legal description of the land subject to the lease;

(4) Signatures with signature dates of all parties to the lease are included;

(5) The lease includes the date(s) lease payments are due and the amounts of the payment required;

(6) The lease must be available for Reclamation's inspection and Reclamation must review and approve all leases for terms longer than 10 years; and

(7) if either the lessor or the lessee is subject to the discretionary provisions, the lease must provide for agreed upon payments that reflect the reasonable value of the irrigation water to the productivity of the land.

(b) *Nonfull-cost entitlements.*

(1) The nonfull-cost entitlement for qualified recipients is 960 acres, or the class 1 equivalent thereof.

(2) The nonfull-cost entitlement for limited recipients that received irrigation water on or before October 1, 1981, is 320 acres or the class 1 equivalent thereof. The nonfull-cost entitlement for limited recipients that did not receive irrigation water on or prior to October 1, 1981, is zero.

(3) The nonfull-cost entitlement for prior law recipients is equal to the recipient's maximum ownership entitlement as set forth in § 426.5(d). However, for the purpose of computing the acreage subject to full cost, all owned and leased irrigation land westwide must be considered.

(c) *Application of the nonfull-cost and full-cost rates.*

(1) A landholder may irrigate at the nonfull-cost rate directly and indirectly held acreage equal to his or her nonfull-cost entitlement.

(2) If a landholding exceeds the landholder's nonfull-cost entitlement, the landholder must pay the appropriate full-cost rate for irrigation water delivered to acreage that equals the

amount of leased land that exceeds that entitlement.

(3) In the case of limited recipients, a landholder does not have to lease land to exceed a nonfull-cost entitlement, since the nonfull-cost entitlement is less than the ownership entitlement. Therefore, limited recipients must pay the appropriate full-cost rate for irrigation water delivered to any eligible land that exceeds their nonfull-cost entitlement.

(d) *Types of lands that count against the nonfull-cost entitlement.*

(1) All directly and indirectly owned irrigation land and irrigation land leased for any period of time during one water year counts towards a landholder's nonfull-cost entitlement, except:

(i) Involuntarily acquired land, as provided in §§ 426.11 and 426.13; and

(ii) Land that is leased for incidental grazing or similar purposes during periods when the land is not receiving irrigation water.

(2) Reclamation's process for determining if a nonfull-cost entitlement has been exceeded is as follows:

(i) All land counted toward a landholder's nonfull-cost entitlement will be counted on a cumulative basis during any one water year;

(ii) Once a landholder's nonfull-cost entitlement is met in a given water year, any additional land leased by that landholder in that water year may be irrigated only at the full-cost rate; and

(iii) Irrigation land will be counted towards nonfull-cost entitlements on a westwide basis, even for prior law recipients, regardless of the date of acquisition.

(e) *Selection of nonfull-cost land.*

(1) A landholder that has exceeded his or her nonfull-cost entitlement may select in each water year, from his or her directly held irrigation land, the land that can be irrigated at a nonfull-cost rate and the land that can be irrigated only at the full cost rate. Selections for full-cost or nonfull-cost land may include:

(i) Leased land;

(ii) Nonexcess owned land;

(iii) Land under recordable contract, unless that land is already subject to application of the full cost rate under an extended recordable contract; or

(iv) A combination of all three.

(2) Once a landholder has received irrigation water on a given land parcel during a water year, the selection of that parcel as full cost or nonfull-cost is binding for the remainder of that water year.

(f) *Applicability of a full-cost selection to an owner or lessee.* If a landowner or lessee should select land as subject to full-cost pricing, then that land can receive irrigation water only at the full-cost rate, regardless of eligibility of the other party to receive the irrigation water at the nonfull-cost rate.

(g) *Subleased land.* Land that is subleased (the lessee transfers possession of the land to a sublessee) will be attributed to the landholding of the sublessee and not to the lessee.

(h) *Calculating full-cost rates.* Reclamation will calculate a district's full-cost rate using accepted accounting procedures and under the following conditions.

(1) The full-cost charge does not recover interest retroactively before October 12, 1982, but interest on the unpaid balance does accrue from October 12, 1982; where the unpaid balance equals the irrigation allocated construction costs for facilities in service plus cumulative federally funded O&M deficits, less payments.

(2) The full-cost rate will be determined:

(i) As of October 12, 1982, for contracts entered into before that date regardless of amendments to conform to the discretionary provisions; and

(ii) At the time of contract execution for new and renewed contracts entered into on or after October 12, 1982.

(3) For repayment contracts, the full-cost charge will fix equal annual payments over the amortization period. For water service contracts, the full-cost charge will fix equal payments per acre-foot of projected water deliveries over the amortization period.

(4) If there are additional construction expenditures, or if the cost allocated to irrigation changes, then a new full-cost charge will be determined.

(5) Reclamation will notify the respective districts of changes in the full-cost charge at the time the district is notified of other payments due the United States.

(6) In determining full-cost charges, the following factors will be considered:

(i) *Amortization period.* The amortization period for calculating the full-cost charge will be the remaining balance of:

(A) The contract repayment period as of October 12, 1982 for contracts entered into before October 12, 1982;

(B) The contract repayment period for contracts entered into on or after October 12, 1982;

(C) For water service contracts, the period from October 12, 1982, or the execution date of the contract, whichever is later, to the anticipated date of project repayment; and

(D) In cases where water services rates are designed to completely repay applicable Federal expenditures in a specific time period, that time period may be used as the amortization period for full-cost calculations related to these expenditures; but, in no case will the amortization period exceed the project payback period authorized by the Congress;

(ii) *Construction costs.* For determining full cost, construction costs properly allocable to irrigation are those Federal project costs for facilities in service that have been assigned to irrigation within the overall allocation of total project construction costs. Total project construction costs include all direct expenditures necessary to install or implement a project, such as:

(A) Planning;

(B) Design;

(C) Land;

(D) Rights-of-way;

(E) Water-rights acquisitions;

(F) Construction expenditures;

(G) Interest during construction; and

(H) When appropriate, transfer costs associated with services provided from other projects;

(iii) *Facilities in service.* Facilities in service are those facilities that are in operation and providing irrigation services;

(iv) *Operation and maintenance deficits funded.* Operation and maintenance (O&M) deficits funded are the annual O&M costs including project-use pumping power allocated to irrigation that have been federally funded and that have not been paid by the district;

(v) *Payments received.* In calculating the payments that have been received, all receipts and credits applied to repay or reduce allocated irrigation construction costs in accordance with Federal reclamation law, policy, and applicable contract provisions will be considered. These may include:

(A) Direct repayment contract revenues;

(B) Net water service contract income;

(C) Contributions;

(D) Ad valorem taxes; and

(E) Other miscellaneous revenues and credits excluding power and municipal and industrial (M&I) revenues;

(vi) *Interest rates.* Interest rates to be used in calculating full cost charges will be determined by the Secretary of the Treasury as follows:

(A) For irrigation water delivered to qualified recipients, limited recipients receiving water on or before October 1, 1981, and extended recordable contract land owned by prior law recipients, the interest rate for expenditures made on or before October 12, 1982, will be the greater of 7.5 percent per annum or the weighted average yield of all interest-bearing marketable issues sold by the

Treasury during the fiscal year the expenditures were made by the United States. The interest rate for expenditures made after October 12, 1982, will be the arithmetic average of:

(1) The computed average interest rate payable by the Treasury upon its outstanding marketable public obligations that are neither due nor callable for redemption for 15 years from the date of issuance at the beginning of the fiscal year the expenditures are made; and

(2) The weighted average yield on all interest-bearing marketable issues sold by the Treasury during the fiscal year preceding the fiscal year the expenditures are made;

(B) For irrigation water delivered to limited recipients not receiving irrigation water on or before October 1, 1981, and prior law recipients, except for land owned subject to extended recordable contract, the interest rate will be determined on the arithmetic average as follows, based on the average interest rates and yields during the fiscal year preceding the fiscal year the expenditures are made, except that the interest rate for expenditures made before October 12, 1982, will be determined as of October 12, 1982:

(1) The computed average interest rate payable by the Treasury upon its outstanding marketable public obligations that are neither due nor callable for redemption for 15 years from the date of issuance; and

(2) The weighted average yield on all interest-bearing marketable issues sold by the Treasury.

(C) Landholders who were prior law recipients and become subject to the discretionary provisions after April 12, 1987, are eligible for the full-cost interest rate specified in paragraph (h)(6)(vi)(A) of this section, unless they are limited recipients that did not receive irrigation water on or before October 1, 1981, in that case they remain subject to the full-cost interest rate specified in paragraph (h)(6)(vi)(B) of this section.

(i) *Direct and proportional charges for full-cost water.* In situations where water delivery charges are contractually or customarily levied on a per-acre basis, full-cost assessments will be made on a per-acre basis. In situations where water delivery charges are contractually or customarily levied on a per acre-foot basis, one of the following methods must be used to make full-cost assessments:

(1) Assessments will be based on the actual amounts of water used in situations where measuring devices are in use, to the satisfaction of Reclamation, to reasonably determine the amounts of irrigation water being delivered to full-cost and nonfull-cost land; or

(2) In situations where, as determined by Reclamation, measuring devices are not a reliable method for determining the amounts of water being delivered to full-cost and nonfull-cost land, then water charges must be based on the assumption that equal amounts of water per acre are being delivered to both types of land during periods when both types of land are actually being irrigated.

(j) *Disposition of revenues obtained through full-cost water pricing.*

(1) *Legal deliveries.* If irrigation water has been delivered in compliance with Federal reclamation law and these regulations, then:

(i) That portion of the full-cost rate that would have been collected if the land had not been subject to full cost will be credited to the annual payments due under the district's contractual obligation;

(ii) Any O&M revenues collected over and above those required under the district's contract will be credited to the project O&M account; and

(iii) The remaining full-cost revenues will be credited to the Reclamation fund unless otherwise provided by law.

(2) *Illegal deliveries.* Revenues resulting from the assessment of compensation charges for illegal deliveries of irrigation water will be deposited into the Reclamation fund in their entirety, and will not be credited toward any contractual obligation or O&M account of the district or project.

**§ 426.7 Trusts.**

(a) *Definitions for purposes of this section:*

*Irrevocable trust* means a non-revocable trust that holds irrigable land or irrigation land.

*Grantor revocable trust* means a trust which holds irrigable land or irrigation land that may be revoked at the discretion of the grantor(s), or terminated at a specified point in time, in such a manner that revocation results in reversion of the land to the grantor(s), either directly or indirectly.

*Otherwise revocable trust* means a trust that holds irrigable land or irrigation land and that is revokable or terminable by the terms prescribed by the trust, and the revocation or termination results in the title to the land held in trust reverting either directly or indirectly to a person or entity other than the grantor.

(b) *Attribution of land held by a trust.* The acreage limitation entitlements of a trust are only limited by the acreage limitation entitlements of the trustees, grantors, or beneficiaries to whom land held by the trust must be attributed as provided for in § 426.4. The entitlements of the parties to whom trusted land is attributed is determined according to §§ 426.5 and 426.6, and any other applicable provisions of Federal reclamation law and these regulations. Reclamation attributes nonexempt land held by a trust as follows:

(1) For land held in an *irrevocable trust,* the land is attributed to the beneficiaries in proportion to their beneficial interest in the trust. However, this attribution is only made if the following criteria are met. If the trust fails to meet any portion of the criteria listed in paragraph (b)(1) (i) or (ii) of this section then Reclamation attributes the land held in the trust to the trustee.

(i) The trust is in written form and approved by Reclamation; and

(ii) The beneficiaries of the trust and the beneficiaries' respective interests are identified within the trust document.

(2) For land held in a *grantor revocable trust,* the land is attributed to the grantor according to the grantor's acreage limitation status and the land's eligibility immediately prior to its transfer to the trust. However, this attribution is only made if the following criteria are met. If the trust fails to meet any portion of the criteria listed in paragraph (b)(2) (i), (ii), (iii), or (iv) of this section, then the land held in trust will be ineligible to receive irrigation water until all of the criteria are met. The only exception is if the trust's and grantor's certification or reporting forms indicate that the land held by the trust has been attributed to the trust's grantor(s).

(i) The trust meets the criteria specified in § 426.7(b)(1);

(ii) The grantor(s) of all land held by the trust is identified within the trust document;

(iii) The conditions under which the trust may be revoked or terminated are identified within the trust document; and

(iv) The recipient(s) of the trust land upon revocation or termination is identified within the trust document.

(3) For land held in an *otherwise revocable trust,* the land is attributed to the beneficiaries in proportion to their beneficial interests in the trust. However, this attribution is only made if the trust meets the criteria specified in § 426.7(b)(1) and the trust meets the additional criteria specified in § 426.7(b)(2).

(i) If the trust fails to meet the criteria listed in § 426.7(b)(1), but does meet the additional criteria listed in § 426.7(b)(2), then the land is attributed to the trustee.

If the trust fails to meet the additional criteria listed in § 426.7(b)(2), then irrigation water will not be made available to the land held in trust until the trust satisfies the additional criteria listed in § 426.7(b)(2).

(c) *Application of full-cost rate to land held by grantor revocable trusts.* If a grantor revised his or her grantor revocable trust that meets the criteria specified in § 426.7(b)(2), in a manner that precludes attribution of the land held in trust to the grantor:

(1) Before April 20, 1988, Reclamation will not assess full-cost rates for the land held by the revised trust for the period before it was revised; or

(2) On or after April 20, 1988, Reclamation will charge the full-cost rate for irrigation water delivered to any land held by the trust that exceeds the grantor's nonfull-cost entitlement, commencing December 23, 1987, until the trust agreement is revised to make it an irrevocable trust or an otherwise revocable trust.

**§ 426.8 Religious or charitable organizations.**

(a) *Definition for purposes of this section*:

*Religious or charitable organization* means an organization or each congregation, chapter, parish, school, ward, or similar subdivision of a religious or charitable organization that is exempt from paying Federal taxation under section 501 of the Internal Revenue Code of 1954, as amended.

(b) *Acreage limitation status of religious or charitable organizations which are subject to the discretionary provisions.*

(1) Religious or charitable organizations or their subdivisions that are subject to the discretionary provisions have qualified recipient status, if:

(i) The organization's or subdivision's agricultural produce and proceeds from the sales of such produce are used only for charitable purposes;

(ii) The organization or subdivision, itself, operates the land; and

(iii) No part of the net earnings of the organization or subdivision accrue to the benefit of any private shareholder or individual.

(2) If Reclamation determines that a religious or charitable organization or any of its subdivisions does not meet the criteria listed in paragraph (b)(1) of this section, then:

(i) If the central organization has not met the criteria, then Reclamation will treat the entire organization, including all subdivisions, as a single entity; or

(ii) If a subdivision has not met the criteria, only that subdivision and any subdivisions of it will be treated as a single entity and not the central organization or other subdivisions of the central organization; and

(iii) In order to ascertain the acreage limitation status, Reclamation determines the total number of members in both the organization that has not met the criteria and in any subdivisions that are under that organization. If Reclamation determines that total number equals:

(A) More than 25 members, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a limited recipient status; or

(B) Less than 25 members, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a qualified recipient status.

(c) *Acreage limitation status of prior law religious or charitable organizations or subdivisions.*

(1) Reclamation treats each congregation, chapter, parish, school, ward, or other subdivision of a religious or charitable organization as an individual, prior law corporation, if neither the district nor that religious or charitable organization or its subdivisions elect to conform to the discretionary provisions.

(2) Reclamation must treat the entire organization, including all subdivisions, as a single prior law corporation if the central organization or any associated subdivisions do not meet the criteria specified in § 426.8(b)(1).

(d) *Affiliated farm management between a religious or charitable organization and a more central organization of the same affiliation.* Reclamation permits a subdivision of a religious or charitable organization to retain its status as an individual entity while cooperating with a more central organization of the same affiliation in farm operation and management. Reclamation permits affiliated farm management regardless of whether the subdivision is the owner of record of the land being operated.

**§ 426.9 Public entities.**

(a) *Definition of public entities.* For purposes of this section *public entities* means States, political subdivisions or agencies thereof, and agencies of the Federal government.

(b) *Application of the acreage limitation provisions to public entities.* Reclamation does not subject public entities to the acreage limitation provisions of Federal reclamation law with respect to land that Reclamation determines public entities farm primarily for nonrevenue producing functions. However, public entities are required to meet certification and reporting requirements as specified in § 426.17.

(c) *Sale of public land.* Reclamation does not require public entities to seek price approval before they sell irrigable lands. Once sold, Reclamation can make irrigation water available to such land if the purchaser meets RRA eligibility requirements.

(d) *Leasing of public land.* Public entities can lease irrigation land that they own or control to eligible landholders. Land leased from a public entity counts towards the lessee's ownership entitlement.

**§ 426.10 Class 1 equivalency.**

(a) *General application.* Class 1 equivalency determinations will establish, on a district-wide basis the acreage of land with lower productive potential (classes 2, 3, and 4) that would be equivalent in productive potential to the most suitable land (class 1) in the local agricultural economic setting.

(1) Reclamation establishes equivalency factors by comparing the weighted average farm size required to produce a given level of income on each of the lower classes of land with the farm size required to produce that income level on class 1 land.

(2) For equivalency purposes, Reclamation will classify all irrigable land as class 1, 2, or 3; no other classifications are permissible for irrigable land. Class 4 and special-use land classes will be allocated to one of these three classes on a case-by-case basis.

(3) Once the class 1 equivalency determinations have been made, individual landowners with classes 2, 3, and 4 land will have the right to adjust, for acreage limitation entitlement purposes, their actual landholding acreage to its class 1 equivalent acreage.

(4) In a district subject to prior law, class 1 equivalency can be applied only to landholders who are subject to the discretionary provisions.

(b) *Who may request a class 1 equivalency determination?* Only districts may request class 1 equivalency determinations. Upon the request of any district subject to the acreage limitation provisions, Reclamation will make a class 1 equivalency determination for that district. Equivalency determinations can be made only on a district-wide basis.

(c) *Definition of class 1 land.*

(1) Class 1 land is defined and will be classified as that irrigable land within a particular agricultural economic setting that:

(i) Most completely meets the various parameters and specifications established by Reclamation for irrigable land classes;

(ii) Has the relatively highest level of suitability for continuous, successful irrigation farming; and

(iii) Is estimated to have the highest relative productive potential measured in terms of net income per acre (reflecting both productivity and costs of production). The equivalency analysis will establish the acreage of each of the lower classes of land which is equal in productive potential (measured in terms of net farm income) to 1 acre of class 1 land.

(2) All land that Reclamation has not classified, or for which Reclamation has not yet performed the necessary economic studies, will be considered class 1 land for the purposes of determining entitlements under these rules until such time as the necessary classifications or studies have been completed.

(d) *Determination of land classes* . The extent and location of class 1 land and land in lower land classes in a district have been, or will be, determined by Reclamation.

(1) Reclamation will take into account the influence of economic and physical factors upon the productive potential of the land lying within the district. These factors will include, but are not limited to the following and their effect on agricultural practices:

(i) The physical and chemical characteristics of the soil;

(ii) Topography;

(iii) Drainage status;

(iv) Costs of production;

(v) Land development costs;

(vi) Water quality and adequacy;

(vii) Elevation;

(viii) Crop adaptability; and

(ix) Length of growing season.

(2) Acceptable levels of detail for land classification studies to be utilized in making class 1 equivalency determinations will be evaluated on the basis of the physical and agricultural economic characteristics of the area. For districts where the sole purpose of the land classification study is for a class 1 equivalency determination, the level of detail of the land classification to be made will never be greater than that required to make a class 1 equivalency determination.

(3) Reclamation will pay for at least a portion of the costs associated with the land classification study. The amount to be paid by Reclamation will be determined as follows:

(i) Reclamation has provided basic land classification data as part of the project development process since 1924. Accordingly, if the Commissioner determines that acceptable land classification data are not available for making requested class 1 equivalency determinations and if the project was authorized for construction since 1924, such data will be made available at Reclamation's expense; or

(ii) For each district located in projects authorized for construction prior to 1924, Reclamation will pay 50 percent of the costs and the district must pay 50 percent of the costs of new land classification studies required to make accurate class 1 equivalency determinations.

(4) When basic land classification data are available for a district, but the district does not agree with the accuracy or asserts that the data have become outdated, the district may request, and Reclamation may perform, a reclassification under the authority contained in the Reclamation Project Act of 1939 (43 U.S.C. 485), with the following conditions:

(i) The requesting district will pay 50 percent of the costs of performing such reclassifications and 100 percent of the cost of all other studies inherent in the equivalency process; and

(ii) The results of such reclassifications will be binding upon the requesting district and Reclamation.

(e) *Additional studies required for class 1 equivalency determinations.* Economic studies related to class 1 equivalency determinations will measure net farm income by land classes within the district.

(1) Net farm income will be determined by considering the disposable income accruing to the farm operator's labor, management, and equity from the sale of farm crops and livestock produced on irrigated land, after all fixed and variable costs of production, including costs of irrigation service, are accounted for.

(2) Net farm income will be the measure of productivity to establish equivalency factors reflecting the acreage of each of the lower classes of land which is equal in productive potential to 1 acre of class 1 land.

(3) The cost of performing new or additional economic studies and computations inherent in the equivalency process will be the responsibility of the requesting district.

(4) District requests for equivalency determinations will be scheduled by region, with the regional director of each Reclamation region having responsibility for such scheduling. Generally, requests will be honored on a first-come-first-served basis. However, if requests exceed the region's ability to fulfill them expeditiously, priority will be given on the basis of greatest immediate need.

(f) *Use of class 1 equivalency with the acreage limitation provisions.* Class 1 land and land in lower classes will be identified on a district basis by Reclamation using a standard approach in which the land classification for the entire district is considered. Equivalency factors will then be computed for the district and applied to specific tracts within individual landholdings. If adequate land classification data are not available, they will be developed as specified in § 426.10(d) using standard procedures established by Reclamation.

(1) For purposes of ownership entitlement, class 1 equivalency will not be applied until a final determination has been made by Reclamation on the district's request for equivalency.

(i) Reclamation will protect the excess landowner's property interests by ensuring that equivalency determinations are completed in advance of maturity dates on recordable contracts, provided the district's request for an equivalency determination was made at least 6 months prior to the maturity of the recordable contract and the district fulfills its obligations under this section and notifies Reclamation 6 months in advance of the maturity dates for the need for an expedited review.

(ii) Once the determination has been made, owners of land subject to recordable contracts may withdraw land from such recordable contracts in order to reach their ownership entitlement in class 1 equivalent acreage.

(iii) The requirement that land under recordable contract be sold at a price approved by Reclamation does not apply to land which is withdrawn from a recordable contract and included as part of a landowner's nonexcess landholding as a result of an equivalency determination.

(iv) In cases of equivalency determination disputes, Reclamation will not undertake the sale of the reasonable increment of the excess land under matured recordable contract which could be affected by a reclassification, provided the dispute is determined by Reclamation not to be an attempt to thwart the sale of excess land.

(2) For purposes of nonfull-cost entitlement, class 1 equivalency will not be applied until a final determination has been made by Reclamation on a district's request for equivalency.

(i) During the time when such determinations are pending, the full-cost rate will be assessed based on a landholder's nonfull-cost entitlement as

determined in the absence of class 1 equivalency.

(ii) Following Reclamation's final determination, Reclamation will reimburse the district for any full-cost charges that would not have been assessed had class 1 equivalency been in place from the date of the district's request. Districts will return such reimbursements to the appropriate landholders.

(3) A landholder with holdings in more than one district is entitled to equivalency only in those districts which have requested equivalency (or are already subject to equivalency). That part of the landholding in a district or districts not requesting equivalency will be counted as class 1 land for purposes of overall entitlement.

(g) *Exception to use of class 1 equivalency factors.* Prior to the application of class 1 equivalency to any land not subject to class 1 equivalency on the effective date of these rules, Reclamation will perform an analysis to determine whether the irrigation of such land could contribute to hazardous or toxic irrigation return flows. In addition, when any land subject to class 1 equivalency on the effective date of these rules is reclassified for any reason, Reclamation will perform an analysis to determine whether the irrigation of such land could contribute to hazardous or toxic irrigation return flows.

(1) Reclamation will make reasonable efforts to specifically identify any land that could contribute to hazardous or toxic return flows.

(2) Increased acreage entitlements as a result of class 1 equivalency will not be permitted on land whose irrigation Reclamation finds could contribute to hazardous or toxic irrigation return flows.

(3) On land for which application of class 1 equivalency will be revoked as a result of this paragraph (g), such revocation will take place at the beginning of the irrigation season following Reclamation's determination.

(4) The cost of performing the analyses required by this paragraph (g) will be the responsibility of the requesting district.

(h) *Existing equivalency determinations.* In districts where equivalency was a provision of project authorization, those equivalency factor determinations will be honored as originally calculated unless the district requests a reclassification.

**§ 426.11 Excess land.**

(a) *The process of designating excess and nonexcess land.* If a landowner owns more land than the landowner's ownership entitlement, all of the landowner's nonexempt land must be designated as excess and nonexcess as follows:

(1) The landowner designates which land is excess and which is nonexcess in accordance with the instructions on the appropriate certification or reporting forms; or

(2) If a landowner fails to designate his or her land as excess and nonexcess on the appropriate certification or reporting forms:

(i) And all of the landowner's nonexempt land is in only one district:

(A) If the district's contract with Reclamation includes designation procedures, then the land is designated according to those procedures; or

(B) If the district's contract with Reclamation does not include designation procedures, then:

(1) Reclamation will notify the landowner and the district that the landowner must designate the land as excess and nonexcess on the appropriate certification or reporting forms within 30 calendar days of the notification;

(2) If the landowner fails to make the designation within 30 calendar days of notification, the district will make the designation within 30 calendar days thereafter; or

(3) If the district does not make the designation within its 30 calendar days, Reclamation will make the designation; or

(ii) If the landowner owns nonexempt irrigable land or irrigation land in more than one district, then Reclamation will notify the landowner and the districts that the landowner has 60 calendar days from the date of notification to make the designation. If the landowner does not make the designation in the 60 calendar days, Reclamation will make the designation.

(b) *Changing excess and nonexcess land designations.*

(1) The designation of excess and nonexcess land must be filed with the district(s) in which the land is located and with Reclamation and is binding on the land. However, the landowner may change the designation under the following circumstances without Reclamation's approval:

(i) The excess land becomes eligible to receive irrigation water because the landowner becomes subject to the discretionary provisions as provided in § 426.3;

(ii) A recordable contract is amended to remove excess land when the landowner's entitlement increases because the landowner becomes subject to the discretionary provisions as provided in § 426.11(j)(5); or

(iii) The excess land becomes eligible to receive irrigation water as a result of equivalency determinations, as provided in § 426.10.

(2) No other redesignation of excess land is allowable without the approval of Reclamation in accordance with established Reclamation procedures. Reclamation will not approve a redesignation request if:

(i) The purpose of the redesignation is for achieving, through repeated redesignation, an effective farm size in excess of that permitted by Federal reclamation law; or

(ii) The landowner sells some or all of his or her land that is currently classified as nonexcess.

(3) When a redesignation involves an exchange of nonexcess land for excess land, a landowner must make an equal exchange of acreage (or class 1 equivalent acreage) through the redesignation.

(c) *Land that becomes excess when a district first contracts with Reclamation.*

(1) If a landowner owned irrigable land on the execution date of the district's first water service or repayment contract, and the execution date was on or before October 12, 1982, the landowner's excess land is ineligible until the landowner:

(i) Becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in § 426.11(b)(1)(i);

(ii) Places such excess land under a recordable contract, provided the period for executing recordable contracts under the district's contract has not expired;

(iii) Sells such excess land to an eligible buyer at a price and on terms approved by Reclamation; or

(iv) Redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2).

(2) If the landowner owned irrigable land on the execution date of the district's first water service or repayment contract and the execution date is after October 12, 1982, the landowner's excess land is ineligible until the landowner:

(i) Places such excess land under a recordable contract, provided the period for executing recordable contracts under the district's contract has not expired;

(ii) Sells such excess land to an eligible buyer in a sale or transfer at a price and on terms approved by Reclamation; or

(iii) Redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2).

(d) *Land acquired into excess after the district has already contracted with Reclamation.*

(1) If a landowner acquires land after the date the district first entered into a repayment or water service contract that was nonexcess to the previous owner and is excess to the acquiring landowner, the first repayment or water service contract was executed on or before October 12, 1982, and:

(i) Irrigation water was physically available when the landowner acquires such land, then the land is ineligible to receive such water until:

(A) The landowner becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in § 426.11(b)(1)(i);

(B) The landowner sells such land to an eligible buyer at a price and on terms approved by Reclamation;

(C) The sale from the previous landowner is cancelled; or

(D) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2); or

(ii) Irrigation water was physically not available when the landowner acquired the land, then the land is ineligible to receive water until:

(A) The landowner becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in § 426.11(b)(1)(i);

(B) The landowner sells the land to an eligible buyer at a price and on terms approved by Reclamation;

(C) The sale from the previous landowner is cancelled;

(D) The landowner places the land under recordable contract when water becomes available; or

(E) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2).

(2) If the landowner acquires land after the date the district first entered into a repayment or water service contract that was nonexcess to the previous owner and is excess to the acquiring landowner, the first repayment or water service contract was executed after October 12, 1982, and:

(i) Irrigation water was physically available when the landowner acquired such land, then the land is ineligible until:

(A) The landowner sells the land to an eligible buyer at a price and on terms approved by Reclamation;

(B) The sale from the previous landowner is cancelled; or

(C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2); or

(ii) Irrigation water was not physically available when the landowner acquired such land, then the land is ineligible to receive water until:

(A) The landowner sells the land to an eligible buyer at a price and on terms approved by Reclamation;

(B) The sale from the previous landowner is cancelled;

(C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2); or

(D) The landowner places the land under recordable contract when water becomes available.

(e) *If the status of land is changed by law and regulations.*

(1) If the district had a contract with Reclamation on or before October 12, 1982, and eligible land became excess because the landowner's entitlement changed from being based on a district-by-district basis to a westwide basis, then such formerly eligible land is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells such land to an eligible buyer. The sales price does not need Reclamation's approval.

(2) If the district had a contract with Reclamation on or before October 12, 1982, and the landowner was a nonresident alien or a legal entity not established under State or Federal law, who directly held eligible land and such land is no longer eligible to receive water, then such formerly eligible land is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells such land to an eligible buyer. The sales price does not need Reclamation's approval.

(3) If the district first entered a contract with Reclamation after October 12, 1982, and land would have been eligible before October 12, 1982, but is now ineligible because the landowner is a nonresident alien or a legal entity not established under State or Federal law, then such land that would have been eligible remains ineligible until:

(i) If the landowner acquired such land before the date of the district's contract:

(A) The landowner places such land under a recordable contract requiring Reclamation sales price approval; or

(B) Sells the land to an eligible buyer subject to Reclamation sales price approval; or

(ii) If the landowner acquired such land after the date of the district's contract, the landowner sells such land to an eligible buyer subject to Reclamation sales price approval.

(4) Eligible nonexcess land that is indirectly owned on or before July 1, 1995, by a nonresident alien or a legal entity not established under State or Federal law, and that becomes ineligible because of these rules is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells such land to an eligible buyer. The sales price does not need Reclamation's approval.

(f) *Excess land that is transferred without approval or in violation of other requirements.*

(1) If a landowner purchases land that is subject to Reclamation price approval, without obtaining such approval, the land is ineligible to receive water until:

(i) The sales price is reformed to conform to the price approved by Reclamation and is eligible to receive irrigation water in the landowner's ownership entitlement; or

(ii) Such landowner sells the land to an eligible buyer at a price approved by Reclamation.

(2) If a landowner acquires land for which irrigation water is available and by that acquisition places himself or herself in an excess status, the land so acquired cannot be placed under recordable contract. The landowner must sell the land to an eligible buyer at a price approved by Reclamation, in order for such land to again be eligible.

(g) *Excess land that is disposed of and subsequently reacquired.* Districts may not under any circumstances make available irrigation water to excess land of which a landholder disposes, if the landholder subsequently becomes a direct or indirect landholder of that land, unless:

(1) The landholder became or contracted to become a direct or indirect landholder of that land prior to July 1, 1995; or

(2) Such land becomes exempt from the acreage limitations of Federal reclamation law.

(h) *Application of the compensation rate for irrigating ineligible excess land with irrigation water.* Reclamation will charge the following for irrigation water

delivered to ineligible excess land in violation of Federal reclamation law and these regulations:

(1) The appropriate compensation rate for irrigation water delivered; and

(2) Any other applicable fees.

(i) *Deed covenants.*

(1) All land that is acquired from excess status after October 12, 1982, must have the following covenant (that runs with the land) placed in the deed transferring the land to the purchaser in order for the land to be eligible to receive irrigation water except as otherwise specified in these regulations. The covenant must be in the deed regardless of whether or not the land was under recordable contract.

This covenant is to satisfy the requirements in 209(f)(2) of Pub. L. 97–293 (43 U.S.C. 390, *et seq.*). This covenant expires on (date). Until the expiration date specified herein, sale price approval is required on this land. Sale by the landowner and his or her assigns of these lands for any value that exceeds the sum of the value of newly added improvements plus the value of the land as increased by the market appreciation unrelated to the delivery of irrigation water will result in the ineligibility of this land to receive Federal project water, provided however:

(i) The terms of this covenant requiring price approval shall not apply to this land if it is acquired into excess status pursuant to a bona fide involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, or devise (hereinafter Involuntary Conveyance). Thereafter, this land may be sold to a landholder at its fair market value without regard to any other provision of the Reclamation Reform Act of 1982 enacted on October 12, 1982, (43 U.S.C. 390aa *et seq.*), or to section 46 of the Act entitled ''an Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes,'' enacted May 25, 1926 (43 U.S.C. 423e);

(ii) If the status of this land changes from nonexcess into excess after a mortgage or deed of trust in favor of a lender is recorded and the land is subsequently acquired by a bona fide Involuntary Conveyance by reason of a default under that loan, this land may thereupon or thereafter be sold to a landholder at its fair market value;

(iii) The terms of this covenant requiring price approval shall not apply to the sales price obtained at the time of the Involuntary Conveyances described in subparagraphs (i) and (ii), nor to any subsequent voluntary sales by a landholder of this land after the Involuntary Conveyances or any subsequent Involuntary Conveyance;

(iv) Upon the completion of an Involuntary Conveyance, Reclamation shall reconvey or otherwise terminate this covenant of record; and

(v) Paragraphs (i) through (iv) above shall not apply if the acquiring party specified therein is the party whose excess ownership originally required the placement of this covenant. Furthermore, the party whose excess ownership originally required the placement of this covenant may not under any circumstances receive Federal reclamation project irrigation water on the land subject to this covenant as a direct or indirect landowner or lessee.

**Note:** 1. Clause (v) of this covenant shall only be required on those covenants placed in deeds transferring land after the effective date of these regulations.

2. The date that the covenant expires shall be 10 years from the date the land was first transferred from excess to nonexcess status.

(2) A landholder may purchase or otherwise voluntarily acquire into nonexcess status, land subject to a deed covenant, at a price approved by Reclamation if the land is within the landholder's ownership entitlement.

(3) Upon expiration of the terms of the deed covenant, a landowner may resell such land at fair market value. A landowner may not sell more of such land in his or her lifetime than an amount equal to his or her ownership entitlement. Once the landowner reaches this limit, any additional excess land or land subject to a deed covenant the landowner acquires is ineligible to receive irrigation water, until such land is sold to an eligible buyer at a price approved by Reclamation.

(4) If a landholder acquires land burdened by such a deed covenant through involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt, including, but not limited to, a mortgage, real estate contract, or deed of trust, inheritance, or devise, and is not the party whose excess ownership originally required placement of the deed covenant, then the deed covenant must be terminated by Reclamation upon the landholder's request.

(j) *Recordable Contracts.*

(1) *Qualifications for recordable contracts.* A landowner can make excess land eligible by entering into a recordable contract with the United States if the landowner qualifies under applicable provisions of:

(i) The landowner's water district's contract with Reclamation;

(ii) Federal reclamation law; and

(iii) These regulations.

(2) *Clauses to be included in recordable contracts.* A recordable contract must include:

(i) A clause whereby the landowner agrees to dispose of the excess land, excluding mineral rights and easements, under terms and conditions of the sale, in accordance with § 426.12; and within the period allowed for the disposition of excess land, that must be within 5 years from the date that the recordable contract is executed by Reclamation (except for the Central Arizona Project wherein the time period is 10 years from the date water becomes available to the land); and

(ii) A clause granting power of attorney to Reclamation to sell the land held under the recordable contract, if the landholder has not already sold the land by the recordable contract's maturation.

(3) *Date Reclamation can make irrigation water available.* Reclamation can make available irrigation water to land that the landowner plans to place under a recordable contract on the day that Reclamation receives the landowner's written request to execute a recordable contract. The landowner has 20-working days in which to execute the recordable contract from the date Reclamation sends the recordable contract to the landowner. Reclamation, in its discretion, may extend this period upon the landowner's request.

(4) *Water rate.* The rate for irrigation water delivered to land placed under recordable contract will be determined as follows:

(i) If both the landowner and any lessee are prior law recipients, land placed under a recordable contract can receive irrigation water at a contract rate that does not cover full operation and maintenance costs;

(ii) If either landowner or any lessee is subject to the discretionary provisions, the water rate applicable to the recordable contract must cover, at a minimum, the annual operation and maintenance costs; or

(iii) If a lessee holds land under a recordable contract and is in excess of his or her nonfull-cost entitlement, the lessee may select such land as the land on which full-cost will be charged for the delivery of irrigation water.

(5) *Amending a recordable contract to include less acreage.* Reclamation permits a landowner to amend a recordable contract to transfer land out of a recordable contract to nonexcess status, if:

(i) The landowner has an increased ownership entitlement because of becoming subject to the discretionary provisions; or

(ii) Land becomes eligible by implementation of class 1 equivalency, if the landowner amends the recordable contract prior to performance of appraisal.

(6) *Sale of land by Reclamation.* If the landowner does not dispose of the excess land held under recordable contract within the period specified in the contract, Reclamation will sell that land. Reclamation will not sell the land if the landowner complies with all requirements for sale of excess land

under these rules within the period specified, whether Reclamation gives any needed final approval of the sale within that period or after.

(7) *Delivery of water when a recordable contract has matured.* Reclamation can make available irrigation water at the current applicable rate, pursuant to § 426.11(j)(4), to excess land held under a matured recordable contract until Reclamation sells the land.

(8) *Procedures Reclamation follows in selling excess land.* If Reclamation must sell excess land, the following procedures will be used:

(i) a qualified surveyor must make a land survey, as determined necessary by Reclamation. The United States will pay for the survey initially, but such costs will be added to the approved sale price for the land. The United States will reimburse itself for these costs from the sale of the land;

(ii) Reclamation will appraise the value of the excess land, in the manner prescribed by § 426.12 of these regulations, to determine the appropriate sale price. The United States will pay for the appraisal initially, but such costs will be added to the approved sale price for the land. The United States will reimburse itself for these costs from the sale of the land; and

(iii) Reclamation will advertise the sale of the property in farm journals and in newspapers within the county in which the land lies, and by other public notices as deemed advisable. The United States will pay for the advertisements and notices initially, but such costs will be added to the approved sale price for the land. The United States will reimburse itself for these costs from the sale of the land. The notices must state:

(A) the minimum acceptable sale price for the property (which equals the appraised value plus the cost of the appraisal, survey, and advertising);

(B) that Reclamation will sell the land by auction for cash, or on terms acceptable to the landowner, to the highest eligible bidder whose bid equals or exceeds the minimum acceptable sale price; and

(C) the date of the sale (which must not exceed 90 calendar days from the date of the advertisement and notices);

(iv) The proceeds from the sale of the land will be paid:

(A) First, to the landowner in the amount of the appraised value;

(B) Second, to the United States for costs of the survey, appraisal, advertising, etc.; and

(C) Third, any remaining proceeds will be credited to the Reclamation fund or other funds as prescribed by law; and

(v) Reclamation will close the sale of the excess land when parties complete all sale arrangements. Reclamation will execute a deed conveying the land to the purchaser. Reclamation will not require the purchaser to include a covenant in the deed restricting any further resale of the land, as specified in § 426.11(i).

**§ 426.12 Excess land appraisals.**

(a) *When does Reclamation appraise the value of a landowner's land?* Reclamation appraises excess land or land burdened by a deed covenant upon a landowner's request or when required by Reclamation. If a landowner does not request an appraisal within 6 months of the maturity date of a recordable contract, Reclamation, in its discretion, can initiate the appraisal.

(b) *Procedures Reclamation uses to determine the sale price of excess land or land burdened by a deed covenant.* Reclamation complies with the following procedures to determine the sale price of excess land and land burdened by a deed covenant, except if a landholder owns land subject to a recordable contract that was in force on October 12, 1982, or other pertinent contract that was in force on that date, and these regulations would be inconsistent with provisions in such a contract:

(1) *Appraisals of land.* Reclamation will base all appraisals of land on the fair market value of the land at the time of appraisal without reference to the construction of the irrigation works. Reclamation must use standard appraisal procedures including: the income, comparable sales, and cost methods, as applicable. Reclamation will consider nonproject water supply factors as provided in § 426.12(c)(1) as appropriate; and

(2) *Appraisal of improvements to land.* Reclamation will assess the contributory fair market value of improvements to land, as of the date of appraisal, using standard appraisal procedures.

(c) *Appraisals of nonproject water supplies.*

(1) The appraiser will consider nonproject water supply factors, where appropriate, including:

(i) Ground water pumping lift;

(ii) Surface water supply;

(iii) Water quality; and

(iv) Trends associated with paragraphs (c)(1) (i) through (iii) of this section, where appropriate.

(2) Reclamation may develop the nonproject water supply and trend information with the assistance of:

(i) The district in which the land is located, if the district desires to participate;

(ii) Landowners of excess land or land burdened by a deed covenant and prospective buyers who submit information either to the district or Reclamation; and

(iii) Public meetings and forums, at the discretion of Reclamation.

(3) Data submitted may include:

(i) Historic geologic data;

(ii) Changing crops and cropping patterns; and

(iii) Other factors associated with the nonproject water supply.

(4) If Reclamation and the district cannot reach agreement on the nonproject water supply information within 60 calendar days, Reclamation will review and update the trend information as it deems necessary and make all final determinations considering the data provided by Reclamation and the district. Reclamation will provide these data to the appraisers who must consider the data in the appraisal process, and clearly explain how they used the data in the valuation of the land.

(d) *The date of the appraisal.* The date of the appraisal will be the date of last inspection by the appraiser(s) unless there is an existing signed instrument, such as an option, contract for sale, agreement for sale, etc., affecting the property. In those cases, the date of appraisal will be the date of such instrument.

(e) *Cost of appraisal.* If the appraisal is:

(1) The excess land's first appraisal, the United States will initially pay the costs of appraising the excess land's value, but such costs will be added to the approved sale price for the land. The United States will reimburse itself for these costs from the sale of the land; or

(2) Not the excess land's first appraisal, the landowner must pay any costs associated with the reappraisal, unless the value set by the reappraisal differs by more than 10 percent, in which case the United States will pay for the reappraisal.

(f) *Appraiser selection.* Reclamation will select a qualified appraiser to appraise the excess land or land burdened by a deed covenant, except as specified within § 426.12(g).

(g) *Appraisal dispute resolution.* The landowner who requested the appraisal may request that the United States conduct a second appraisal of the excess land or land burdened by a deed covenant if the landowner disagrees with the first appraisal. The second appraisal will be prepared by a panel of three qualified appraisers, one

designated by the United States, one designated by the district, and the third designated jointly by the first two. The appraisal made by the panel will fix the maximum value of the excess land and will be binding on both parties after review and approval as provided in § 426.12(h).

(h) *Review of appraisals of excess land or land burdened by a deed covenant.* Reclamation will review all appraisals of excess land or land burdened by a deed covenant for:

(1) Technical accuracy and compliance with these rules and regulations;

(2) Applicable portions of the ''Uniform Appraisal Standards for Federal Land Acquisition-Interagency Land Acquisition Conference 1973,'' as revised in 1992;

(3) Reclamation policy; and

(4) Any detailed instructions provided by Reclamation setting conditions applicable to an individual appraisal.

**§ 426.13 Involuntary acquisition of land.**

(a) *Definitions.*

For purposes of this section *involuntarily acquired land* is land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.

(b) *Ineligible excess land that is involuntarily acquired.* Reclamation cannot make available irrigation water to land that was ineligible excess land before the new landowner involuntarily acquired it, unless:

(1) The land becomes nonexcess in the new landowner's ownership; and

(2) The deed to the land contains the 10-year covenant requiring Reclamation sale price approval, commencing when the land becomes eligible to receive irrigation water.

(3) If either of these conditions is not met, the land remains ineligible excess until sold to an eligible buyer at an approved price, and the seller places the 10-year covenant requiring Reclamation price approval, as specified in § 426.11(i), in the deed transferring title to the land to the buyer.

(c) *Land that was held under a recordable contract and is acquired involuntarily.* Reclamation can make available irrigation water to land held under a recordable contract that is involuntarily acquired under the terms of the recordable contract, if the landowner, to the extent the land continues to be excess in his or her landholding:

(1) Assumes the recordable contract; and

(2) Executes an assumption agreement provided by Reclamation.

(3) This land will remain eligible to receive irrigation water for the longer of 5 years from the date that the land was involuntarily acquired, or for the remainder of the recordable contract period. The sale of this land shall be under terms and conditions set forth in the recordable contract and must be satisfactory to and at a price approved by Reclamation.

(d) *Mortgaged land.* Reclamation treats mortgaged land that changed from nonexcess status to excess status after the mortgage was recorded, and which is subsequently acquired by a new landowner through an involuntary foreclosure or similar process of law, or by a bona fide conveyance in satisfaction of a mortgage, in the following manner:

(1) If the new landowner designates the land as excess in his or her holding, then:

(i) The land is eligible to receive irrigation water for a period of 5 years or until transferred to an eligible landowner, whichever occurs first;

(ii) During the 5-year period Reclamation will charge a rate for irrigation water equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing; and

(iii) The land is eligible for sale at its fair market value without a deed covenant restricting its future sale price; or

(2) If the new landowner is eligible to designate the land as nonexcess and he or she designates the land as nonexcess, the land will be treated in the same manner as any other nonexcess land and will be eligible for sale at its fair market value without a deed covenant restricting its future sale price.

(e) *Nonexcess land that becomes excess when acquired involuntarily.*

(1) Reclamation can make irrigation water available to a landowner for a period of 5 years if the landowner acquires land involuntarily and that land becomes excess in the involuntarily acquiring landowner's holding provided:

(i) The land was nonexcess to the previous owner; and

(ii) The acquiring landowner never previously held such land as ineligible excess land or under a recordable contract, except as provided for in § 426.11(g).

(2) The following will be applicable in situations that meet the criteria specified under paragraph (e)(1) of this section:

(i) Reclamation will charge a rate for irrigation water delivered to such land equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing;

(ii) The new landowner may not place such land under a recordable contract;

(iii) The new landowner may remove a deed covenant as provided in § 426.11(i)(4), and may sell such land at any time without price approval and without the deed covenant;

(iv) Reclamation will not allow the involuntary acquiring landowner to redesignate the land as nonexcess after he or she designates the land as excess; and

(v) Such land will become ineligible to receive irrigation water 5 years after it was acquired and will remain ineligible until sold to an eligible buyer.

(f) *Effect of involuntarily acquiring land subject to the discretionary provisions.* A landowner does not automatically become subject to the discretionary provisions if the landowner acquires irrigation land involuntarily which was formerly subject to the discretionary provisions.

(g) *Land acquired by inheritance or devise.* If the landowner receives irrigation land through inheritance or devise, the 5-year eligibility period for receiving irrigation water on the newly acquired land per § 426.13(e) begins on the date of the previous landowner's death.

**§ 426.14 Commingling.**

(a) *Definitions for purposes of this section:*

*Commingled water* means irrigation water and nonproject water that uses the same facilities.

*Nonproject water* means water from other sources as defined in the contract.

(b) *Application of Federal reclamation law and these regulations to existing commingling provisions in contracts.* If a district entered into its present contract with Reclamation prior to October 1, 1981, or renewed such a contract, and that contract has provisions addressing commingled water situations, those provisions stay in effect.

(c) *Establishment of new commingling provision in contracts.* New, amended, or renewed contracts may provide that irrigation water can be commingled with nonproject water as follows:

(1) If the facilities used for the commingling of irrigation water and nonproject water are constructed without funds made available pursuant to Federal reclamation law, the provisions of Federal reclamation law and these regulations will apply only to the landholders who receive irrigation water, provided:

(i) That the water requirements for eligible lands can be established; and

(ii) The quantity of irrigation water to be used is less than or equal to the quantity necessary to irrigate eligible lands.

(2) If the facilities used for commingling irrigation water and nonproject water are constructed with funds made available pursuant to Federal reclamation law, nonproject water will be subject to Federal reclamation law and these regulations unless:

(i) The district collects and pays to the United States an incremental fee which reasonably reflects an appropriate share of the cost to the Federal Government, including interest, of storing or delivering the nonproject water; and

(ii) The fee will be established by Reclamation and will be in addition to the district's obligation to pay for capital, operation, maintenance, and replacement costs associated with the facilities required to provide the service.

(3) If paragraphs (c)(2) (i) and (ii) of this section are met, the provisions of Federal reclamation law and these regulations will be applicable to only those landholders who receive irrigation water. Accordingly, the provisions of Federal reclamation law and these regulations will not be applicable to landholders who receive nonproject water delivered through Reclamation program-funded facilities if those paragraphs are met.

(d) Federal reclamation law and these regulations do not apply to irrigation water from federally financed facilities that is acquired by an exchange and that results in no material benefit to the recipient of the water.

**§ 426.15 Exemptions and exclusions.**

(a) *Army Corps of Engineers projects.*

(1) If Reclamation determines that land receives its agricultural water from an Army Corps of Engineers (Corps) project Reclamation will exempt that land from specific provisions of Federal reclamation law, including the RRA, unless:

(i) Federal law explicitly designates, integrates, or incorporates that land into a Federal Reclamation project; or

(ii) Reclamation provides project works for the control or conveyance of the agricultural water supply from the Corps project to that land.

(2) Upon such determination, Reclamation will:

(i) Notify the district of its exemption status;

(ii) Require the district's agricultural water users to continue, under contracts made with Reclamation, to repay their share of construction, operation and maintenance, and contract administration costs of the Corps project allocated to conservation or irrigation storage; and

(iii) At the request of the district delete provisions of the district's repayment or water service contract that imposes acreage limitation for those lands served by Corps projects.

(b) *Repayment of construction obligations.* The acreage limitation provisions do not apply to districts that have repaid, in accordance with the district's contract with Reclamation, all obligated construction costs for Reclamation facilities.

(1) Payments by periodic installments over the contract repayment term, as well as lump-sum and accelerated payments, if allowed by the district's contract with Reclamation, will qualify the district to become exempt.

(2) If a district has a contract with the United States providing for individual repayment of construction charges allocated to land, and the individual landowner has repaid all obligated construction costs allocated for that landowner's land, that landowner may become exempt from the acreage limitation provisions.

(3) Upon exemption Reclamation will:

(i) Notify the district or individual landowner of the exemption from the acreage limitation provisions;

(ii) Notify the district or individual landowner that the exemption does not relieve the district or individual landowner of the obligation to continue to pay, on an annual basis, O&M costs;

(iii) Allow the owner of land for which repayment has occurred, to request a certificate from Reclamation acknowledging that the land is free of the acreage limitation provisions of Federal reclamation law;

(iv) No longer apply the certification and reporting requirements to the district, if the entire district is exempt, or to exempt landowners as specified in § 426.15(b)(2); and

(v) Consider on a case-by-case basis continuation of the exemption if additional construction funds for the project are requested.

(c) *Rehabilitation and Betterment loans.* If Reclamation makes a Rehabilitation and Betterment loan (pursuant to the R&B Act of October 7, 1949, as amended, 43 U.S.C. 504) to a project that was authorized under Federal reclamation law prior to the submittal of the loan request, by or for the district, Reclamation:

(1) Considers the loan as a loan for maintenance, including replacements that cannot be financed currently;

(2) Does not consider the loan in determining whether the district has discharged its obligation to repay the construction cost of project facilities used to make project water available for delivery to such land; and

(3) Will not allow such a loan to serve as the basis for reinstating acreage limitations in a district that has completed payment of its construction obligation, nor serve as the basis for increasing the construction obligation of the district and thereby extending the period during which acreage limitations will apply.

(d) *Temporary supplies of water.* If Reclamation announces availability of temporary supplies of water resulting from an unusually large water supply, not otherwise storable for project purposes, or from infrequent and otherwise unmanaged floodflows of short durations a district may request that Reclamation make such supplies available to excess land. If Reclamation determines that such water deliveries would not have an adverse effect on other authorized project purposes, upon approval of the district's request, Reclamation will notify the requesting district of the availability of the temporary supply of water under the following conditions:

(1) The contract for the temporary supply of water will be for 1 year or less;

(2) The acreage limitation provisions of Federal reclamation law will not be applicable to the temporary supply of water;

(3) An applicable price for the water, if any, will be established; and

(4) Such other conditions as Reclamation may include.

(e) *Isolated tracts.* If a landowner requests that Reclamation determine that portions of his or her owned land can be farmed economically only if included in a farming operation that already exceeds an acreage limitation entitlement, and Reclamation makes such a determination, then Reclamation:

(1) Will exempt such land from the ownership limitations of Federal reclamation law;

(2) Will count such land against the landowner's or any lessee's nonfull-cost entitlements; and

(3) Will assess the full-cost rate for any irrigation water delivered if the landowner or any lessee of the isolated tract exceeds applicable nonfull-cost entitlements.

(f) *Indian trust or restricted lands.* Indian trust or restricted lands are excluded from application of the RRA.

**§ 426.16 Small Reclamation projects.**

(a) *Affect of the RRA on loan contracts made under the Small Reclamation Project Act.*

(1) If a district entered into a loan contract under the Small Reclamation

Projects Act of 1956 (43 U.S.C. 422) (SRPA) on or after October 12, 1982, the contract is subject to the provisions of the SRPA, as amended by section 223 of the RRA and as amended by Title III of Public Law 99–546.

(2) If a district entered into a SRPA loan contract prior to October 12, 1982, and the district:

(i) Did not amend the loan contract to conform to the SRPA, as amended by section 223 of the RRA, prior to October 27, 1986, then the provisions of the contract continue in effect.

(ii) Amended the loan contract to conform to the SRPA, as amended by section 223 of the RRA, prior to October 27, 1986, the contract is subject to the increased acreage provisions provided in section 223 of the RRA. Reclamation cannot alter, modify or amend any other provision of the SRPA loan contract without the consent of the non-Federal party.

(b) *Other sections of these regulations that apply to SRPA loans.* No other sections of these regulations apply to SRPA loans, except as specified in § 426.16(d).

(c) *Affect of SRPA loans in determining whether a district has repaid its construction obligations on a water service or repayment contract.* If a district has a water service or repayment contract in addition to an SRPA contract, Reclamation does not consider the SRPA loan:

(1) In determining whether the district has discharged its construction cost obligation for the project facilities;

(2) As a basis for reinstating acreage limitation in a district that has completed payment of its construction cost obligation(s); or

(3) As a basis for increasing the construction obligation of the district and extending the period during which acreage limitation will apply to that district.

(d) *Districts that have a SRPA loan contract and a contract as defined in § 426.2.* If a district has a SRPA loan contract and a contract as defined in § 426.2, the SRPA contract does not supersede the RRA requirements applicable to such contracts.

**§ 426.17 Landholder information requirements.**

(a) *Definitions for purposes of this section:*

*Irrigation season* means the period of time between the district's first and last water delivery in any water year.

*Standard certification or reporting forms* means those forms on which landholders provide complete information about the directly and indirectly owned and leased land in their landholding.

(b) *Who must provide information to Reclamation?* All landholders and other parties involved in the ownership or operation of nonexempt land must provide Reclamation, as required by these regulations or upon request, any records or information, in a form suitable to Reclamation, deemed reasonably necessary to implement the RRA or other provisions of reclamation law.

(c) *Required form submissions.*

(1) Landholders who are subject to the discretionary provisions must submit certification forms.

(2) Landholders who make an irrevocable election must submit the appropriate certification forms with their irrevocable election in the year that they make the election.

(3) Landholders who are subject to prior law must submit reporting forms.

(4) Landholders who qualify under an exemption listed under paragraph (g) of this section need not submit any forms.

(d) *Required information.* Landholders must declare on the appropriate certification or reporting forms all irrigable and irrigation land that they hold directly or indirectly westwide and other information pertinent to their compliance with Federal reclamation law.

(e) *District receipt of forms and information.* Landholders must submit the appropriate, completed form(s) to each district in which they directly or indirectly hold irrigation land.

(f) *Certification or reporting forms for wholly owned subsidiaries.* The ultimate parent legal entity of a wholly owned subsidiary or of a series of wholly owned subsidiaries must file the required certification or reporting forms. The ultimate parent legal entity must disclose all direct and indirect landholdings of its subsidiaries as required on such forms.

(g) *Exemptions from submitting certification and reporting forms.*

(1) A landholder is exempt from submitting the certification and reporting forms only if:

(i) The landholder's district has Category 1 status, as specified in § 426.17(h), and the landholder is a:

(A) Qualified recipient whose total landholding westwide is 240 acres or less as provided for in § 426.17(i);

(B) Limited recipient who first received any irrigation water:

(*1*) On or before October 1, 1981, and whose total direct and indirect landholding westwide is 80 acres or less as provided for in section 426.17(i); or

(*2*) After October 1, 1981, and whose total direct and indirect landholding westwide is 5 acres or less; or

(C) Prior law recipient whose total direct and indirect landholding westwide is 40 acres or less.

(ii) The landholder's district has Category 2 status, as specified in § 426.17(h), and the landholder is a:

(A) Qualified recipient whose total direct and indirect landholding westwide is 80 acres or less;

(B) Limited recipient whose total direct and indirect landholding westwide is 5 acres or less; or

(C) Prior law recipient whose total direct and indirect landholding westwide is 40 acres or less.

(2) Wholly owned subsidiaries need not submit certification or reporting forms provided the ultimate parent legal entity has properly filed and has disclosed all direct and indirect landholdings of its subsidiaries as required on such forms.

(3) In determining whether certification or reporting is required under paragraph (g):

(i) Class 1 equivalency factors as determined in § 426.10 shall not be used; and

(ii) Landholders need not count involuntarily acquired excess acreage that they hold indirectly.

(h) *District categorization.* For purposes of this section each district has Category 2 status, unless the district applied for and the regional director granted the district Category 1 status. Category 1 districts must meet the following criteria:

(1) District conformance by contract with the discretionary provisions;

(2) The district must have entered into a partnership agreement with Reclamation which can include but is not limited to the development of integrated resources management plans, the development and implementation of specific water conservation standards for the district, or the development of specific measurable efficiencies for the district; and

(3) The district's financial obligations to the United States are not delinquent.

(i) *Application of Category 1 status.* The specific forms thresholds, up to the levels allowed in § 426.17(g)(1)(i), will be specified within the partnership agreement made between the district and Reclamation. The agreement will include a provision for periodic review of the achievements of the district under the partnership. The regional director may withdraw the Category 1 status at any time if the district fails to accomplish the specific actions stated within the partnership agreement.

(j) *Submissions by landholders holding land in both a Category 1 district and a Category 2 district.* If a landholder's entire landholding,

westwide, is not located in Category 1 districts, then the landholder must submit forms under the Category 2 certification or reporting requirements in all districts.

(k) *Notification requirements for landholders whose ownership or leasing arrangements change after submitting forms.* If a landholder's ownership or leasing arrangements change in any way:

(1) During the irrigation season, the landholder must:

(i) Notify the district office, either verbally or in writing within 15 calendar days of the change; and

(ii) Submit new forms to all districts in which the landholder holds nonexempt land, within 30 calendar days of the change.

(2) Outside of the irrigation season, then, the landholder must submit new certification or reporting forms to all districts in which nonexempt land is held prior to any irrigation water delivery following such changes.

(l) *Notification requirements for landholders whose ownership or leasing arrangements have not changed.* If a landholder's ownership or leasing arrangements have not changed since last submitting a standard certification or reporting form, the landholder can satisfy the annual certification or reporting requirements by submitting a verification form instead of the standard form. On that form the landholder must verify that the information contained on the last submitted standard certification or reporting form remains accurate and complete.

(m) *Actions that Reclamation takes if required submission(s) are not made.*

(1) If a landholder does not submit required certification or reporting form(s), then:

(i) The landholder is not eligible to receive and must not accept delivery of irrigation water in any water year prior to submission of the required certification or reporting form(s) for that water year; and

(ii) Eligibility will be regained only after all required certification or reporting forms are submitted to the district.

(2) If one or more part owners of a legal entity do not submit certification or reporting forms as required:

(i) The entire entity will be ineligible to receive irrigation water until such forms are submitted; or

(ii) If the documents forming the entity provide for the part owners' interest to be separable and alienable, then only that portion of the land attributable to the noncomplying part owners will be ineligible to receive irrigation water.

(n) *Actions taken by Reclamation if a landholder makes false statements on the appropriate certification or reporting forms.* If a landholder makes a false statement on the appropriate certification or reporting form(s) Reclamation can prosecute the landholder pursuant to the following statement which is included in all certification and reporting forms:

> Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction. False statements by the landowner or lessee will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

(o) *Information requirements and Office of Management and Budget approval.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance Nos. 1006–0005 and 1006–0006. The information is being collected to comply with sections 206, 224(c) and 228 of the RRA. These sections require that, as a condition to the receipt of irrigation water each landholder in a district which is subject to the acreage limitation provisions of Federal reclamation law, as amended and supplemented by the RRA, will furnish to his or her district annually a certificate/report which indicates that he or she is in compliance with the provisions of Federal reclamation law. The information collected on each landholding will be summarized by the district and submitted to Reclamation in a form prescribed by Reclamation. Completion of these forms is required to obtain the benefit of irrigation water.

(p) *Protection of forms pursuant to the Privacy Act of 1974.* The Privacy Act of 1974 (5 U.S.C. 552) protects the information submitted in accordance with certification and reporting requirements. As a condition to execution of a contract, Reclamation requires the inclusion of a standard contract article which provides for district compliance with the Privacy Act of 1974 and 43 CFR Part 2, Subpart D, in maintaining the landholder certification and reporting forms.

### § 426.18 District responsibilities.

A district that delivers irrigation water to nonexempt land under a contract with the United States must:

(a) Provide information to landholders concerning the requirements of Federal reclamation law and these regulations;

(b) Provide Reclamation, as required by these regulations or upon request, and in a form suitable to Reclamation, records and information as Reclamation may deem reasonably necessary to implement the RRA and other provisions of Federal reclamation law;

(c) Be responsible for payments to Reclamation of all appropriate charges specified in these regulations. Districts must collect the appropriate charges from each landholder based on the landholder's status, landholdings, and entitlements, and must not average the costs over the entire district, unless the charges prove uncollectible from the responsible landholders;

(d) Distribute, collect, and review landholder certification and reporting forms;

(e) File and retain landholder certification and reporting forms. Districts must retain superseded landholder certification and reporting forms for 6 years; thereafter, districts may destroy such superseded forms, except:

(1) Districts must keep on file the last fully completed standard certification or reporting form, in addition to the current verification form; or

(2) If Reclamation specifically requests a district to retain superseded forms beyond 6 years.

(f) Comply with the requirements of the Privacy Act of 1974, with respect to landholder certification and reporting forms;

(g) Annually summarize information provided on landholder certification and reporting forms on separate summary forms provided by Reclamation and submit these forms to Reclamation on or before the date established by the appropriate regional director;

(h) Withhold deliveries of irrigation water to any landholder not eligible to receive irrigation water under the certification or reporting requirements or any other provision of Federal reclamation law and these regulations; and

(i) Return to Reclamation, for deposit as a general credit to the Reclamation fund, all revenues received from the delivery of water to ineligible land.

### § 426.19 Assessment of administrative costs.

(a) *Assessment of administrative costs for delivery of water to ineligible land.* Reclamation will assess a district administrative costs as described in § 426.19(e) if the district delivers irrigation water to land that was

ineligible because the landholders did not submit certification or reporting forms prior to the receipt of irrigation water in accordance with § 426.17; or to ineligible excess land as provided in § 426.11.

(1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water in violation of § 426.17, or for each landholder that received irrigation water on ineligible land as specified above.

(2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.

(3) The assessment in § 426.19(a) will be applied independently of the assessment specified in § 426.19(b).

(b) *Assessment of administrative costs when form corrections are not made.* Reclamation will assess a district for the administrative costs described in § 426.19(e), unless the district provides Reclamation with requested reporting or certification form corrections within 60-calendar days of the date of Reclamation's written request. If Reclamation receives the corrections within 60-calendar days, Reclamation will consider the requirements of § 426.17(b) satisfied.

(1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water and for whom the district does not provide corrected forms within the applicable 60-calendar day time period.

(2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.

(3) The assessment in § 426.19(b) will be applied independently of the assessment specified in § 426.19(a).

(c) *Party responsible for paying assessments.* Districts are responsible for payment of Reclamation assessments described under § 426.19(a) and (b).

(d) *Disposition of assessments.* Reclamation will deposit to the general fund of the United States Treasury, as miscellaneous receipts, administrative costs assessed and collected under § 426.19(a) and (b).

(e) *Amount of the assessment.* The administrative costs assessment required under § 426.19(a) and (b) is set at $260. Reclamation will review the associated costs at least once every 5 years, and will adjust the assessment amount, if needed, to reflect new cost data. Notice of the revised assessment for administrative costs will be published in the **Federal Register** in December of the year the data are reviewed.

**§ 426.20 Interest on underpayments.**

(a) *Definition of underpayment.* For the purposes of this section *underpayment* means the difference between what a landholder owed under Federal reclamation law and what that landholder paid.

(b) *Collection of interest on underpayments.* If a landholder has incurred an underpayment, Reclamation will collect from the appropriate district such underpayment with interest. Interest accrues from the original payment due date until the district pays the amount due. The original payment due date is the date the district should have paid the United States for water delivered to the landholder.

(c) *Underpayment interest rate.* The Secretary of the Treasury determines the interest rate charged the district based on the weighted average yield of all interest-bearing marketable issues sold by the Department of the Treasury during the period of underpayment.

**§ 426.21 Public participation.**

(a) *Notification of contract actions.* Except for proposed contracts having a duration of 1 year or less for the sale of surplus water or interim irrigation water, Reclamation will:

(1) Provide notice of proposed irrigation or amendatory irrigation contract actions 60-calendar days prior to contract execution by publishing announcements in general circulation newspapers in the affected area;

(2) Issue announcements in the form of news releases, legal notices, official letters, memoranda, or other forms of written material; and

(3) Directly notify individuals and entities who made a timely written request for such notice to the appropriate Reclamation regional or local office.

(b) *Notification if parties to contract negotiations modify a proposed contract.* In the event that modifications are made to a proposed contract the regional director must:

(1) Provide copies of revised proposed contracts to all parties who requested copies of the proposed contract in response to the initial notice; and

(2) Determine whether or not to republish the notice or to extend the comment period. The regional director must consider, among other factors:

(i) The significance of the impact(s) of the modification to possible affected parties; and

(ii) The interest expressed by the public over the course of contract negotiations.

(c) *Information that Reclamation will include in published announcements.* Each published announcement will include, as appropriate:

(1) A brief description of the proposed contract terms and conditions being negotiated;

(2) Date, time, and place of meetings, workshops, or hearings;

(3) The address and telephone number to which inquiries and comments may be addressed to Reclamation; and

(4) The period of time during which Reclamation will accept comments.

(d) *Public availability of proposed contracts.* Anyone can get copies of a proposed contract from the appropriate regional director or his or her designated public contact when the proposed contracts become available for review and comment, as specified in the published announcement.

(e) *Opportunities for public participation.*

(1) Reclamation can provide, as appropriate: Meetings, workshops, or hearings to provide local information. Advance notice of meetings, workshops, or hearings will be provided to those parties who make timely written request for such notice. Request for notice of meetings, workshops, or hearings should be sent to the appropriate Reclamation regional or local office.

(2) Reclamation or the district can invite the public to observe any contract proceedings.

(3) All public participation procedures will be coordinated with those involved with National Environmental Policy Act compliance, if Reclamation determines that the contract action may or will have ''significant'' environmental effects.

(f) *Individuals authorized to negotiate the terms of contract proposals.* Only persons authorized to act on behalf of the district may negotiate the terms and conditions of a specific contract proposal.

(g) *Agency use of comments submitted during the period provided for comment or made at hearings.*

(1) Reclamation will review and summarize for use by the contract approving authority testimony presented at any public hearing or any written comments submitted to the appropriate Reclamation officials at locations and within the comment period, as specified in the advance published announcement.

(2) Reclamation will make available to the public all written correspondence regarding proposed contracts under the terms and procedures of the Freedom of Information Act (5 U.S.C. 552), as amended.

**§ 426.22 Recovery of operation and maintenance (O&M) costs.**

(a) *General.* All new, amended, and renewed contracts shall provide for payment of O&M costs as specified in this section.

(b) *Amount of O&M costs a district must pay if it executes a new or renewed contract.* If a district executes a new or renewed contract after October 12, 1982, then that district must pay all of the O&M costs that Reclamation allocates to irrigation.

(c) *Amount of O&M costs a district must pay if it amends its contract to conform to the discretionary provisions.* If a district has a contract executed prior to October 12, 1982, and the district amends the contract after October 12, 1982, as provided for in § 426.3(a)(2) to conform to the discretionary provisions, then the following must be complied with:

(1) The district must pay all of the O&M costs that Reclamation allocates to irrigation;

(2) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (c)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(3) The district will not be required to pay an increased amount toward the construction costs of a project as a condition of the district's agreeing to a contract amendment pursuant to paragraph (c) of this section.

(d) *Amount of O&M cost a district must pay if it amends its contract to provide supplemental or additional benefits.* If a district amends its contract after October 12, 1982, to provide supplemental or additional benefits, as provided for in § 426.3(a)(3), then each year the district must pay:

(1) All of the O&M costs that Reclamation allocates to irrigation;

(2) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (d)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(3) Any increases in the amount paid annually toward the construction costs of a project that the United States requires the district to pay as a condition of agreeing to provide the district with supplemental and additional benefits.

(e) *Amount of O&M a district pays under an existing contract.* For a district whose existing contract was executed prior to October 12, 1982, the district must pay all of the O&M costs allocated by Reclamation to irrigation unless specifically provided to the contrary by the terms of the contract.

(f) *Amount of O&M that Reclamation charges an irrevocable elector.*

(1) Regardless of any terms to the contrary within an existing contract with a district, a landholder who makes an irrevocable election, as provided for in § 426.3(f) must pay, annually, his or her proportionate share of all O&M costs allocated by Reclamation to irrigation. The irrevocable elector's proportionate share is based upon the ratio of:

(i) The amount of land in the district held by the irrevocable elector that received irrigation water to the total amount of land in the district that received irrigation water; or

(ii) The amount of irrigation water in the district received by the irrevocable elector to the total amount of irrigation water that the district delivered.

(2) The district or districts in which the irrevocable elector's landholding is located must collect from the irrevocable elector an amount equal to the irrevocable elector's proportionate share of all O&M costs allocated by Reclamation to irrigation and meet the following requirements:

(i) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year, then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (f)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(ii) Such collections must be forwarded to the United States.

(g) *Amount of O&M that Reclamation charges if a landholder is subject to full-cost pricing.* In those districts subject to prior law if a landholder is subject to full-cost pricing the district must ensure that all O&M costs are included in any full-cost assessment, regardless of whether the landholder is subject to the discretionary provisions. The revenues from such full-cost assessments must be collected and submitted to the United States.

**§ 426.23 Agency decisions and appeals.**

(a) *Initial agency decisions.*

(1) Decisionmaker for initial agency decisions:

(i) The appropriate regional director makes any initial agency decision that these regulations require or authorize; or

(ii) If the initial agency decision is likely to involve districts, or landholders with landholdings located in more than one region, the Commissioner designates one regional director to make that decision.

(2) *Notice to affected parties.* A regional director will notify parties, that are potentially affected by his or her initial decision, in writing.

(3) *Effective date for initial agency decisions.* A regional director's initial decision takes effect immediately, unless the regional director otherwise specifies, or the decision involves the termination of water deliveries. A decision to terminate water delivery can take effect no sooner than 10 calendar days after the regional director makes his or her initial decision.

(b) *Reconsideration of initial agency decision.*

(1) *Requests for reconsideration.* Any district or landholder whose rights and interests are directly affected by a regional director's initial decision can submit a written request for reconsideration of the regional director's decision. The regional director must receive requests for reconsideration of an initial decision from districts and landholders, who:

(i) Received notification of a regional director's decision by mail, within 30 calendar days from the date of the initial decision; or

(ii) Did not receive notification of the initial decision by mail, within 90 calendar days from the date of the initial decision.

(2) *Requests for stay of the initial agency decision pending reconsideration.*

(i) The regional director will stay his or her initial decision if the requesting party:

(A) Submits a request for stay in writing to the regional director, with, or in advance of, the request for reconsideration, and states the grounds upon which the party requests the stay; and

(B) Demonstrates that the harm which a district or landholder would suffer if the regional director does not grant the stay outweighs the interest of the United States in having the initial decision take effect pending reconsideration.

(ii) The initial decision will be automatically stayed pending the regional director's review of the initial agency decision, unless the regional director:

(A) Acts upon the request for a stay within 15 calendar days of the request; and

(B) Informs, by certified mail, the requesting party or parties of his or her decision within 1 business day after he or she rules on the request for a stay.

(iii) A regional director's decision on a request for a stay is not appealable.

(c) *Reclamation's final action.*

(1) *If no party requested a reconsideration of the initial decision.* If the regional director does not receive a request for reconsideration within the time frames specified in § 426.23(b)(1), the initial decision becomes Reclamation's final action on the 91st day after the date of the initial decision.

(2) *If a party requested reconsideration of the initial decision.* If the regional director receives a timely request for reconsideration, the regional director will make a ruling on a request for reconsideration of an initial agency decision within 30 calendar days of receipt of the request, and will inform the requesting parties of his or her ruling by certified mail. This ruling will constitute Reclamation's final action.

(i) The date of Reclamation's final action will be the date of mailing the regional director's ruling to the requesting party or parties.

(ii) The regional director will establish the effective date of Reclamation's final action.

(d) *Appeal of Reclamation's final actions.*

(1) *Reclamation's final actions that cannot be appealed.* An initial agency decision that becomes Reclamation's final action as a result of a failure by an affected party to request reconsideration as provided in § 426.23(b)(1) cannot be further appealed.

(2) *Reclamation's final actions that can be appealed.* A party that timely requested reconsideration of the agency's initial decision may appeal Reclamation's final action to the Secretary of the Interior by writing to the Director, Office of Hearings and Appeals (OHA), U.S. Department of the Interior. For an appeal to be timely, OHA must receive the appeal within 30-calendar days from the date of Reclamation's final action.

(3) *Rules that govern the appeal process.* Except for the authority of regional directors to grant stays of their determinations under § 426.23(d)(4), 43 CFR part 4, subpart G, and other provisions of 43 CFR part 4, where applicable, govern the appeal process.

(4) *Requests for stay of Reclamation's final action pending appeal.* An appellant can request that the regional director who was responsible for Reclamation's final action stay that action pending an appeal as specified in § 426.23(d)(2). The procedures and time frames set forth in § 426.23(b)(2) for requests for stays of initial agency decisions apply to requests for stays of final Reclamation actions. If the regional director fails to act on the appellant's stay within 15 calendar days of its receipt, then Reclamation's final action will automatically be stayed pending final action by OHA. A regional director's decision on a request for a stay cannot be appealed.

(e) *Effective date of an appealed decision.* Reclamation can apply decisions made by a regional director or by OHA under § 426.23 (c) and (d) as of the date of the initial agency decision. If, during the appeal process, irrigation water has been delivered to land subsequently found to be ineligible, for other than RRA forms submittal violations, the compensation rate may be applied to such deliveries retroactively.

(f) *Accrual of interest on underpayments during reconsideration or appeal.* Interest on any underpayments, as provided in § 426.20, continues to accrue during the reconsideration of an initial agency decision or an appeal of Reclamation's final action or judicial review of final agency action. Underpayment interest accrual will continue even during a stay under § 426.23 (b)(2) or (d)(4).

(g) *Status of appeals made prior to the effective date of these regulations.* (1) Appeals to the Commissioner of a regional director's determination which were decided by the Commissioner or his or her delegate prior to the effective date of these regulations are hereby validated.

(2) Appeals to the Commissioner of determinations made by a regional director and appeals to OHA, which are pending on appeal as of the effective date of these regulations will be processed and decided in accordance with the regulations in effect immediately prior to the effective date of these regulations.

(h) *Addresses.* All requests for reconsideration, stays, appeals, or other communications to the United States under this section must be addressed as follows:

(1) *Regional directors,* at their current mailing addresses, which may be obtained by writing or calling the Office of the Commissioner, Bureau of Reclamation, 1849 C Street NW., MS–7060–MIB, Washington, DC 20240, telephone (202) 208–4157; or by writing or calling the Program Analysis Office, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225, telephone (303) 236–3292.

(2) *Director, Office of Hearings and Appeals,* Department of the Interior, 4015 Wilson Boulevard, Room 1103, Ballston Tower No. 3, Arlington, VA 22203.

### § 426.24 Reclamation audits.

Reclamation has the authority to conduct reviews of a district's administration and enforcement of and landholder compliance with Federal reclamation law and these regulations. These reviews may include, but are not limited to:

(a) Water district reviews;

(b) In-depth reviews; and

(c) Audits.

### § 426.25 Severability.

If any provision of these regulations or the application of these rules to any person or circumstance is held invalid, then the sections of these rules or their applications which are not held invalid will not be affected.

Part 427 is added as follows:

## PART 427—WATER CONSERVATION RULES AND REGULATIONS

Sec.

427.1 Purpose.
427.2 Conservation Plan Requirements.
427.3 Incentives.
427.4 Technical Guidelines and Criteria.

**Authority:** 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590y et seq.; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390b, 43 U.S.C. 390jj, 390ww, 43 U.S.C. 422a et seq., and 43 U.S.C. 440.

### § 427.1 Purpose.

These rules and regulations prescribe the requirements for preparation and submittal of water conservation plans prepared by water districts and other entities that contract with the United States for a supply or storage of water under Federal reclamation law, the Small Reclamation Projects Act, the Water Conservation and Utilization Act, or the Warren Act.

### § 427.2 Conservation Plan Requirements.

(a) *Submission requirements.* All water districts and other entities that contract with the United States for a supply or storage of water under Federal reclamation law, the Small Reclamation Projects Act, the Water Conservation and Utilization Act, or the Warren Act must submit water conservation plans for approval by the appropriate Regional

director at least once every 5 years, except:

(1) Districts that receive only irrigation water and deliver the water to less than 2000 acres of land,

(2) Districts that receive only municipal and industrial water and deliver the water to fewer than 3,300 people,

(3) Districts that receive any combination of irrigation water, municipal and industrial water, or water for other uses and receive an average annual water supply of less than 2,000 acre-feet from all Federal reclamation projects combined,

(4) Districts whose only contract is a temporary contract of 1 year or less,

(5) The Central Utah Water Conservancy District, Utah, and each petitioner of Central Utah Project water, which must comply only with the requirements of section 207 of the Central Utah Project Completion Act (Titles II through III of Pub. L. 102–575, 106 Stat. 4605, 4616), provided the district and petitioners have met the requirements of section 207 of the Act. If the district or a petitioner of Central Utah Project water also receives water from any other Federal reclamation project, that entity is subject to the requirements of § 427.2 with respect to the non-Central Utah Project water,

(6) Districts receiving water from the Central Valley Project, California, so long as criteria for evaluating water conservation plans have been developed, published, and are in effect under section 3405(e) of the Central Valley Project Improvement Act (Title XXXIV of Pub. L. 102–575, 106 Stat. 4706, 4713), or

(7) Districts that have met the requirements of these regulations by meeting the alternative standards or performance requirements of a State or Federal water conservation program as approved and notified in writing by the regional director.

(b) *Required Elements of a Water Conservation Plan.* A water conservation plan must set forth definite goals for improvements in the management and efficient use of water. The plan must also identify those actions that are necessary and appropriate for achieving the plan's stated goals. The plan must establish a reasonable time schedule for implementing the identified actions and for meeting the plan's goals. The plan must also establish appropriate criteria for measuring progress toward meeting the plan's goals and include an assessment of progress achieved to date. At a minimum the plan must include the following actions:

(1) A water measurement and accounting system designed to measure and account for all water conveyed through the district's distribution system to water users. The system must include metering or measuring devices at each agricultural water delivery turnout and each municipal and industrial water delivery service connection;

(2) A water pricing structure for district water users designed to encourage increased efficiency of water use;

(3) An information/education program for water users designed to promote increased efficiency of water use; and

(4) Designation of a district water conservation coordinator.

### § 427.3 Incentives.

(a) Reclamation will provide technical and financial assistance to districts and entities developing and implementing water conservation plans, as funding and staff availability permits. Reclamation will also establish voluntary partnerships with districts and entities in a collaborative effort to improve the management of water and associated resources in the Western United States, and to assist districts and entities in achieving their water conservation goals. However, if Reclamation does not provide technical or financial assistance, for whatever reason, the district is not relieved of its responsibility for the development and implementation of an adequate water conservation plan.

(b) Reclamation will consider a district's progress in development and implementation of water conservation plans when prioritizing the allocation of future discretionary Reclamation program benefits. Except in unusual circumstances, future discretionary benefits will be unavailable to a district or entity that does not have an approved plan or is not adequately implementing an approved plan. These discretionary benefits may include:

(1) Discretionary funds including, but not limited to, drought relief funds, drought assistance, loans and/or grants under various statutory authorities, construction funding, and technical planning assistance;

(2) Discretionary programs or benefits including, but not limited to, temporary supplies of water under 43 U.S.C. 390oo, temporary or short-term contracts, and Warren Act contracts; and

(3) Facilitating water transfers to or by a district, accommodating changes in the place or type of use of water, or assisting in the identification of beneficiaries that may be willing to fund conservation activities.

### § 427.4 Technical Guidelines and Criteria.

(a) Reclamation has developed Technical Guidelines and Criteria for Water Conservation Plans (Guidelines and Criteria). These Guidelines and Criteria describe the standards and process which Reclamation will use to evaluate district water conservation plans, describe the schedule and process for submitting plans, provide information on environmental compliance, suggest specific plan elements, and identify water conservation measures for evaluation and inclusion in district water conservation plans.

(b) The Guidelines and Criteria may be obtained from any Bureau of Reclamation regional office. The addresses of the regional offices may be obtained by writing or calling the Office of the Commissioner, Bureau of Reclamation, 1849 C Street N.W., MS–7060–MIB, Washington, D.C. 20240, telephone (202) 208–4157; or by writing or calling the Program Analysis Office, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225, telephone (303) 236–3292.

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# Part III

# Department of Health and Human Services

## Food and Drug Administration

**21 CFR Part 20**

**Protecting the Identities of Reporters of Adverse Events and Patients; Preemption of Disclosure Rules; Final Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 20**

**[Docket No. 93N–0334]**

## Protecting the Identities of Reporters of Adverse Events and Patients; Preemption of Disclosure Rules

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its public information regulations to help ensure that the identities of those who report adverse events associated with human drugs, biologics, and medical devices, and the identities of patients are held in confidence and not disclosed by FDA or by manufacturers that possess these reports. This final rule preempts the establishment or continuation in effect of any State or local law, rule, regulation, or other requirement that requires or permits disclosure of such identities. This action is being taken to maintain the agency's ability to collect information about safety risks of FDA-regulated products and is vital to the protection of the public health.

**DATES:** This final rule will become effective on July 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2831.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of June 3, 1993 (58 FR 31596), FDA announced the availability of a new form for reporting adverse events and product problems associated with human drug products, biological products, medical devices, and other FDA-regulated products. The new form was part of MedWatch, FDA's new Medical Products Reporting Program, which is intended to facilitate the reporting of adverse events and product problems for all FDA-regulated products by the entire health care community (manufacturers, distributors, user facilities, and health care professionals).

The MedWatch program features two versions of the form for reporting adverse events and product problems. One version, FDA Form 3500A, is used by manufacturers, distributors, and user facilities to report adverse events as required under Federal statutes or FDA regulations. The other version, FDA Form 3500, is available for use by health professionals, such as physicians, physician assistants, pharmacists, and nurses, for voluntary reporting.

FDA uses adverse event reports from health professionals and industry to identify possible problems in marketed products. Based on the reports, the agency evaluates the seriousness of the health hazard, takes corrective action if necessary, and communicates that action to the health professional community. Corrective action can be in the form of labeling changes, such as the addition of new precautions, boxed warnings for serious hazards, and product recalls or withdrawals. FDA may also elect to notify health professionals, industry, and others of important information through Medical Alerts, Safety Alerts (for medical devices), the FDA Medical Bulletin, and ''Dear Doctor'' or ''Dear Health Professional'' letters.

The success of the MedWatch program depends in large part on voluntary reporting of adverse events from health professionals, either directly to the agency or to other entities who report to the agency. As stated in the preamble to the proposed rule of January 27, 1994 (59 FR 3944) (the January 1994 proposal), voluntary reporting has revealed significant adverse events and drug interactions associated with products that could not be identified during preapproval testing. For example, voluntary reporting contributed to the removal of the antibiotic temafloxacin (Omniflox) from the market and to the development of warning labeling for latex products. Voluntary reporting also led to research concerning the danger of concurrent use of the antihistamine terfenadine (Seldane) when taken with either the antifungal ketoconazole or the antibiotic erythromycin.

To ensure meaningful reporting under the MedWatch program, the agency proposed to enhance safeguards for protecting the identities of persons who voluntarily submit adverse event reports, as well as the identities of the patients experiencing those adverse events, to FDA and to manufacturers (59 FR 3944 at 3946 to 3947). The January 1994 proposal would also protect the voluntary reporting system through a regulation that preempts the establishment or continuation in effect of any State or local law, rule, regulation, or other requirement that requires or permits disclosure of such identities.

This document makes final the requirements published in the January 1994 proposal.

### II. Comments on the Proposed Rule

FDA received 31 comments on the January 1994 proposal. In general, the comments supported the proposed rule, although some comments suggested expanding the rule to include mandatory adverse event reports, and other comments sought additional protection from disclosure.

*A. General Comments*

1. Three comments suggested that FDA revise the rule to prevent persons who receive adverse event reports from disclosing those reports to other parties. The comments noted that the proposed rule was silent on such disclosures.

FDA declines to accept the comments' suggestion. The agency notes that, under the rule, persons receiving adverse event reports would be those who have obtained consent to disclosure under § 20.63(f)(1)(i) (21 CFR 20.63(f)(1)(i)), are engaged in medical malpractice litigation involving the voluntary reporter (§ 20.63(f)(1)(ii)), or have requested disclosure under § 20.63(f)(1)(iii). Consequently, a person receiving the adverse event report under this rule would either have obtained consent for the disclosure from both the voluntary reporter and subject, or, in the case of medical malpractice litigation, already would have disclosed, through court documents, information surrounding the adverse event.

FDA has amended the rule, however, to state that voluntary reports that are made available to the subject of an adverse event under § 20.63(f)(1)(iii) will not include the names of any other individuals, including that of the voluntary reporter. This change provides further protection against disclosure in the small number of circumstances where the voluntary reporter is not a physician or health care professional known to the patient. FDA believes this clarification will encourage adverse event reporting and does not deny critical information to the subject of the report because the subject will ordinarily know the name of the physician who has performed the procedure or prescribed medication.

2. One comment would revise the rule by adding a new paragraph to declare that the production of adverse event reports containing identifying information, during the discovery phase in litigation, does not constitute ''disclosure'' under the rule if all parties to the litigation agree that the party receiving the adverse event report will not record the identifying information, will not attempt to contact the persons identified in the report, and will remove identifying information from any

adverse event report that the party copies.

FDA declines to amend the rule as suggested by the comment. The mechanism described by the comment would be inappropriate due to wide variations among state court procedures, and the resulting inconsistencies in applying such a mechanism would discourage, rather than encourage, health care professionals from reporting adverse events. The intent of the rule is to ensure that individuals who are not the reporters or other persons identified in the reports do not have access in any way to the identifying information, except in specifically described circumstances. Allowing such individuals to view the identifying information in the context of discovery would not achieve this purpose and would discourage voluntary reporting.

3. One comment said FDA should seek statutory changes to prevent the release of information in addition to issuing a rule.

The agency disagrees that statutory changes are necessary. As stated in the preamble to the January 1994 proposal and elsewhere in this document, FDA believes it has sufficient legal authority to preempt State and local laws, rules, regulations, and other requirements that would permit or require the disclosure of the identities of health care professionals who voluntarily report adverse events and the patients or other individuals named in those reports. Although Congress did not expressly preempt State law in this area, the agency finds Federal preemption to be appropriate because such State or local laws, rules, regulations, or other requirements would impede FDA's ability to monitor product safety after approval to ensure that human drug products, biologics, and medical devices are safe and effective for their intended uses. (See 59 FR 3944 at 3948 to 3949). Thus, under principles of preemption law, congressional intent to preempt State law can be inferred.

4. One comment focused on nuclear medicine and said that FDA should not disclose adverse event reports to the Nuclear Regulatory Commission (NRC) because NRC publishes reports of ''misadventure,'' and such reports often include the physician's and patient's names. The comment said that FDA should assume sole jurisdiction over nuclear medicine.

FDA declines to accept the comment. The agency notes that current regulations (21 CFR 20.85) already establish conditions on disclosures to other Federal government departments and agencies and that ''[a]ny disclosure * * * shall be pursuant to a written agreement that the record shall not be further disclosed by the other department or agency except with the written permission of the Food and Drug Administration.'' As for assuming sole jurisdiction over nuclear medicine, the issue of NRC and FDA jurisdiction goes beyond the scope of this rulemaking.

5. One comment asserted that the rule would actually make more information available to the public because it would make an entire adverse event report available. The comment claimed that such disclosure would be contrary to the goal of protecting confidentiality and recommended that FDA instead expand § 20.111 (21 CFR 20.111), pertaining to data and information submitted voluntarily to FDA, to protect adverse event reports held by manufacturers from disclosure and to preempt State and local laws and regulations.

FDA believes the comment misinterprets the rule. Section 20.111 describes the types of data and information submitted voluntarily to FDA that are available for public disclosure. In general, under § 20.111(c)(3), adverse reaction reports, product experience reports, consumer complaints, and ''other similar data and information'' shall be disclosed except for certain identifying information. The identifying information that is deleted from the record varies, depending on whether the information was submitted by a consumer, the product's manufacturer, or a third party. For example, if a consumer submitted the record, the agency would not disclose the identity of the consumer. If a manufacturer submitted the record, the agency would not disclose the identity of the person using the product or any third party involved in the report or the manufacturer's identity. (See § 20.111(c)(3)(i) through (c)(3)(iii)).

In contrast, § 20.63 establishes exemptions from disclosure requirements. These exemptions are to be read in conjunction with any conditions imposed under § 20.111. Specifically, § 20.63(f) would authorize the agency and manufacturers possessing adverse event reports to withhold the names of voluntary reporters and other persons identified in such reports, regardless of whether a consumer, manufacturer, or other party submitted a voluntary report.

Furthermore, § 20.63(f) permits identities to be disclosed under three limited exceptions: (1) The voluntary reporter and the person identified in the report (or the person's legal representative) consent, in writing, to disclosure; (2) a court orders disclosure during medical malpractice litigation involving the voluntary reporter and the person experiencing the adverse event; and (3) the individual who is the subject of the report requests the report. These exceptions are reasonable and practical because it would make little sense to withhold the identities of the parties named in an adverse event report if those same parties consent to disclosure or are engaged in litigation or, in cases where the party requesting the report was the subject of the report, must already be aware that he or she is identified in a report.

Thus, while the final rule arguably discloses more information (in the form of identifying information) than § 20.111, that additional information is disclosed to persons who either submitted the voluntary report, have consented to disclosure, or know that a report pertaining to their own adverse experience exists. Furthermore, while § 20.111 describes data and information that are available for disclosure, § 20.63(f) establishes exemptions to disclosure. A preemption provision, which essentially establishes another exception to disclosure, would be more appropriate in § 20.63.

6. The January 1994 proposal referred to voluntary reporters submitting adverse event reports. Proposed § 20.63(f) also stated that it did not affect disclosure of the identities of reporters required by statute or regulation to make adverse event reports and that disclosure of identities of such reporters would be ''governed by the applicable statutes and regulations.'' Seven comments asked FDA to expand the rule to include mandatory adverse event reports required by the Safe Medical Devices Act or other statutes. The comments said that persons who are required to submit adverse event reports should enjoy the same protection offered by the rule to those who voluntarily submit reports. One comment even claimed that, under the rule, voluntary reports enjoyed greater protection than mandatory reports, and this difference could deter compliance with mandatory adverse event reporting requirements.

The agency does not believe it can or should expand the rule as requested by these comments. The policy and final rule are intended to protect voluntary reporting. FDA assumes that those subject to mandatory reporting requirements established by Congress or by Federal regulation comply with those requirements and will continue to do so. The agency also notes that different standards for treatment of disclosure of required and voluntary information is an established part of disclosure law.

(See *Critical Mass Energy Project* v. *NRC*, 644 F.Supp. 344 (D.D.C. 1986), vacated and remanded, 830 F.2d 278 (D.C. Cir. 1987), summary judgment granted, 731 F.Supp. 554 (D.D.C. 1990), rev'd & remanded, 931 F.2d 939 (D.C. Cir. 1991), vacated & reh'g en banc granted, 942 F.2d 799 (D.C. Cir. 1991), vacated, 975 F.2d 871 (D.C. Cir. 1992) (en banc), cert. denied, 113 S.Ct. 1579 (1993).)

*B. Comments on Specific Provisions in the Proposal*

7. Proposed § 20.63(f) would prohibit disclosure of the names and any identifying information, including the reporter's address or the name or address of the reporter's institution, that would lead to the identification of the reporter or the persons named in a voluntary adverse event report, by FDA or by a manufacturer possessing such reports in response to any request.

Four comments would amend § 20.63(f) to prohibit adverse event reports from being admissible into evidence unless the facility, individual, or physician who made the report knew that the report contained false information. The comments said such a prohibition would be consistent with section 519(b)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(b)(3)) regarding mandatory reports from device user facilities.

The agency declines to accept the comments' suggestion. In general, § 20.63(f) is intended to protect against the disclosure of information that would identify a voluntary reporter or a person who may have experienced an adverse event. This policy is designed to encourage voluntary adverse event reporting by health care professionals and others. The agency's policy regarding disclosure of voluntarily submitted adverse event reports has been, and continues to be, that such reports are publicly available after deletion of identifying information. (See § 20.111(c); see also 39 FR 44602 at 44628 to 44629, December 24, 1974 (rejecting comments seeking to limit dissemination of adverse reaction reports and consumer complaints).) This is consistent with the agency's obligations under the Freedom of Information Act, and the agency, therefore, declines to revise the rule to limit disclosure of adverse event reports.

8. Two comments would expand § 20.63(f) to include demands and orders to disclose adverse event reports. The comments explained that a person seeking an adverse event report could do so by request to the agency or manufacturer or, in other contexts, demand or seek a judicial order requiring the agency or manufacturer to provide the reports.

FDA agrees and has modified the rule accordingly.

9. As noted earlier, proposed § 20.63(f) would not affect disclosure of the identities of reporters required by statute or regulation to make adverse event reports and expressly stated that disclosure of the identities of such reporters ''is governed by the applicable statutes and regulations.'' Three comments suggested that FDA modify § 20.63(f) to refer to ''federal statutes and regulations'' because, as written, the rule could arguably be interpreted as being inapplicable to disclosures required by State law or regulation.

FDA agrees and has modified the rule accordingly.

10. One comment asked FDA to clarify the rule's relationship to existing FDA regulations governing information exchanges between the agency and manufacturers.

The rule does not affect information exchanges between FDA and manufacturers. Nor does the rule alter or diminish any regulatory requirements for manufacturers regarding submission of adverse event reports. The rule is directed to requests by third parties for adverse event reports.

11. The proposed rule created three exceptions to the policy against disclosing the identities of the voluntary reporter and the person who experienced the adverse event. Proposed § 20.63(f)(1)(i) contained the first exception and would allow the identities to be disclosed if both the voluntary reporter and the person identified in the report (or that person's legal representative) consented, in writing, to disclosure.

Two comments requested that FDA modify or delete the provision. The comments asserted that the provision could prompt third parties to request or demand that FDA or a manufacturer seek consent from the voluntary reporter or the person identified in the report because the agency and the manufacturer would know their identities. The comments would either delete the provision or modify the rule to contain a specific prohibition against courts and State agencies seeking to have FDA or manufacturers obtain consent from the voluntary reporter or patient.

In response to these comments, FDA has amended § 20.63(f)(1)(i) to state that the agency and manufacturers shall not be required to seek consent on behalf of requesters. As stated in § 20.63(f) and also in § 20.111, the identities of the voluntary reporter and any other person named in an adverse event report shall not be disclosed by FDA or by manufacturers except in limited situations. If third parties could request or demand that FDA or manufacturers seek consent from the voluntary reporter and/or person named in the report, the practical effect would be to eliminate the protection given by FDA's regulations. In addition, the administrative burden of such procedures, in response to third party requests, would detract from agency resources devoted to investigation and assessment of adverse event reports. Consequently, FDA has not in the past and will not entertain such requests, and the burden of seeking consent from the voluntary reporter and the person identified in the adverse event report will continue to rest on the party requesting the adverse event report and identifying information.

12. Proposed § 20.63(f)(1)(ii) would permit disclosure of the identities of the voluntary reporter and a person named in an adverse event report ''pursuant to a court order in the course of medical malpractice litigation involving both the person who experienced the reported adverse event and the voluntary reporter.''

Three comments would delete § 20.63(f)(1)(ii). According to the comments, the provision would encourage plaintiffs to name multiple defendants in medical malpractice cases in order to obtain the identities of persons in an adverse event report.

FDA declines to delete the provision as requested. The agency does not share the comments' underlying assumption that the possible existence of a voluntary adverse event report will prompt plaintiffs to bring a malpractice suit against every person who might have submitted a voluntary adverse event report, especially when the only information that the plaintiff would gain, under § 20.63(f)(1)(ii), would be his or her own name and the name of the voluntary reporter. If a plaintiff did engage in such tactics, some jurisdictions might consider it to constitute an abuse of process and impose sanctions against the plaintiff or the plaintiff's attorneys.

FDA also notes that if a plaintiff knew that a report specific to his or her adverse event existed, the plaintiff would obtain more substantive information regarding the adverse event under § 20.63(f)(1)(iii).

13. One comment would delete § 20.63(f)(1)(ii). The comment stated that § 20.63(f)(1)(ii) was unnecessary because a person who experienced an adverse event could obtain a copy of the

adverse event report under § 20.63(f)(1)(iii).

The agency disagrees with the comment. The two provisions serve different purposes. Many adverse event reports contain little or no identifying information about the person who experienced the reported adverse event, and the person who experienced the adverse event may be unaware that he or she had been the subject of an adverse event report. Thus, under § 20.63(f)(1)(ii), if a person who experienced an adverse event were engaged in medical malpractice litigation, he or she could seek a court order to obtain identifying information, and thus determine whether he or she had been the subject of an adverse event report. In contrast, § 20.63(f)(1)(iii) presumes that the individual requesting a report already knows that a report exists and that the individual is ''the subject of the report.''

14. Two comments sought clarification of § 20.63(f)(1)(ii), particularly the ''identities'' that would be disclosed. The comments indicated that § 20.63(f)(1)(ii) could be interpreted as permitting disclosure of the identities of all persons experiencing an adverse event who were named in a report by the voluntary reporter. The comments suggested revising the provision to limit disclosure to the identities of the voluntary reporter and the person experiencing the adverse report provided that both were parties in the malpractice litigation.

FDA agrees that the identities of persons who experienced an adverse event but are not parties to the medical malpractice litigation should not be disclosed and has revised the rule accordingly.

15. Proposed § 20.63(f)(1)(iii) would permit disclosure of a voluntarily-submitted adverse event report to an individual who is the subject of the report.

One comment would modify the provision to require notice to the voluntary reporter.

FDA believes that an individual who is the subject of an adverse event report should be entitled to the report without prior notice to the voluntary reporter. Additionally, providing notice to the voluntary reporter would confer little benefit because there is no mechanism to allow the voluntary reporter to withdraw or amend a voluntarily submitted adverse event report once it has been submitted. Furthermore, as stated above, the suggested change is unnecessary in light of the agency's revision to the rule, which clarifies that the report will be disclosed to the subject of the report without inclusion of any other names, including that of the voluntary reporter.

16. One comment would make reports inadmissible as evidence unless the facility or reporter knew that the information contained in the report was false. Another comment would revise § 20.63(f)(1)(iii) to state that, ''The report shall be disclosed to the individual who is the subject of the report upon request in any litigation regarding the adverse event referred to in the report and in which the individual is a party.'' The comment asserted that manufacturers should not have to assume the burden of responding to a potentially large number of requests from patients for adverse event reports.

FDA disagrees with the comments. As stated above, the agency believes that an individual who is the subject of an adverse event report should be entitled to the report itself. Such access to the report should not be conditioned on the existence of false information in the report or on litigation.

17. One comment would revise § 20.63(f)(1)(iii) to state that, ''The report, but not the identity of the voluntary reporter or of any other person named in the report, shall be disclosed to the individual who is the subject of the report upon request.'' The comment claimed that this change would be consistent with the protection of identities under § 20.63(f)(1)(i) and (f)(1)(ii).

The agency agrees with the comment and has amended the rule to state that the report will exclude the identities of other persons. As mentioned earlier, this additional protection for the voluntary reporter is unlikely to limit the information available to most subjects of adverse event reports because they are likely to know already the identity of the voluntary reporter. FDA agrees that the identities of any other persons named in the report should also be protected in order to maintain their privacy or preserve the confidentiality of any relationships between the voluntary reporter and other persons. Therefore, the agency has revised § 20.63(f)(1)(iii) to exclude the identities of any other person, aside from the person requesting the report, named in an adverse event report.

## III. Descriptiom of the Final Rule

The final rule creates a new § 20.63(f) to prevent FDA and manufacturers of human drug products, biologics, or medical devices from disclosing the names and any information that would identify the voluntary reporter or any other person named in a voluntarily-submitted adverse event report. The rule interprets ''information'' as including ''the name, address, institution, or any other information that would lead to the identities of the reporter or person identified in the report.'' The rule does not apply to the identities of reporters required by statutes (such as the Safe Medical Devices Act or the National Childhood Vaccine Injury Act) to submit reports to FDA and does not alter any disclosure requirements under those statutes.

The final rule also creates three exceptions to the prohibition against disclosure. Under § 20.63(f)(1)(i), the identities may be disclosed to a third party if both the voluntary reporter and the person who is identified in the report consent, in writing, to disclosure. As stated above, persons who seek disclosure of such identities have the burden of obtaining consent; the agency will not seek such consent itself. Under § 20.63(f)(1)(ii), identities may be disclosed pursuant to a court order in the course of medical malpractice litigation involving both the person who experienced the adverse event and the voluntary reporter. Section 20.63(f)(1)(iii) would make the report, except for the identities of any other persons identified in the report, available to the individual who is the subject of the report, upon request.

Section 20.63(f)(2) preempts the establishment or continuation in effect of any State or local law, rule, regulation, or other requirement that permits or requires disclosure of the identities of the voluntary reporter or other person identified in an adverse event report, except as otherwise provided by § 20.63(f)(1).

## IV. Legal Authority

### *A. Principles of Preemption Law*

Under the Supremacy Clause of the Constitution (U.S. Constitution, Art. VI, clause 2), State laws that interfere with or are contrary to Federal law are invalid. (See *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824).) Federal preemption can be express (stated by Congress in the statute) or implied.

Implied preemption can occur in several ways. Preemption may be found ''where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulation'' (*Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713 (1985), quoting *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)), or where ''the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject'' (*Rice* v. *Santa Fe Elevator*

*Corp*., 331 U.S. 218, 230 (1947); see *Hines* v. *Davidowitz*, 312 U.S. 52 (1941)).

Federal preemption may also be found where Federal law conflicts with State law. Such conflict may be demonstrated either when ''compliance with both federal and state [law] is a physical impossibility'' (*Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142–143 (1963)), or when State law ''stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'' (*Hines* v. *Davidowitz*, 312 U.S. at 67). State law is also preempted if it interferes with the methods by which a Federal law is designed to reach its goals. (See *International Paper Co.* v. *Ouellette*, 479 U.S. 481, 494 (1987); *Michigan Canners & Freezers Ass'n* v. *Agricultural Marketing & Bargaining Bd.*, 467 U.S. 461, 477–478 (1984).)

Additionally, '''a federal agency acting within the scope of its congressionally delegated authority may preempt state regulation' and hence render unenforceable state or local laws that are otherwise not inconsistent with federal law'' (*City of New York* v. *FCC*, 486 U.S. 57, 63–64 (1988) (quoting *Louisiana Public Service Comm'n* v. *FCC*, 476 U.S. 355, 368 (1986)). ''Federal regulations have no less preemptive effect than federal statutes'' (*Fidelity Federal Savings and Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141, 153 (1982)).

When an agency's intent to preempt is clearly and unambiguously stated, a court's inquiry will be whether the preemptive action is within the scope of that agency's delegated authority (*Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691, 700 (1984); Fidelity Federal Savings, 458 U.S. at 154). If the agency's choice to preempt ''represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute [the regulation will stand] unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned (''*United States* v. *Shimer*, 367 U.S. 374, 383 (1961)). In *Hillsborough County*, the Supreme Court stated that FDA possessed the authority to promulgate regulations preempting local laws that compromise the supply of plasma and could do so (*Hillsborough County*, 471 U.S. at 721). FDA believes it has similar authority to preempt State and local laws, rules, regulations, and other requirements that compromise the adverse reporting systems that are essential to postmarketing surveillance and protection of the public health.

*B. Conflicts Between State Disclosure Laws and Federal Law*

Conflicts between State and local disclosure laws and Federal laws and regulations on adverse event reporting justify FDA's preemption of State and local law. Although Congress did not expressly preempt State law in this area, FDA finds preemption is appropriate because such State and local laws significantly interfere with the methods by which the Federal laws and regulations achieve their goals.

FDA is the Federal agency charged with protecting citizens by helping ensure that human drug products, biologics, and medical devices are safe and effective for their intended uses. To further this purpose, Congress established elaborate mechanisms for the Federal government to permit the marketing of new drugs, biologics, and medical devices and to monitor the safety of these products after their approval. (See 21 U.S.C. 355 and 360; 42 U.S.C. 262.) Pursuant to these statutory provisions, FDA has established an extensive regulatory scheme to monitor the safety and effectiveness of human drug products, biologics, and medical devices. (See 21 CFR 310.305, 314.80, 600.80, and 803.1 through 803.36.)

State and local rules of civil procedure, rules of evidence, and other laws and regulations that permit discovery or require disclosure of a voluntary reporter's or patient's identity hinder FDA's monitoring scheme. While other FDA regulations may preserve the confidentiality of some voluntary reporters and the patients identified in an adverse event report, the same report, when in a manufacturer's possession, may be subject to State and local disclosure laws. Such possible disclosure will deter voluntary reporting by health professionals directly to manufacturers. In addition, the threat of disclosure may chill the willingness of reporters to provide information to FDA because the agency may share details about a report with a manufacturer in order to investigate the report further. Thus, this final rule preempts State and local disclosure laws, rules, regulations, and other requirements in order to eliminate obstacles to increased and enhanced voluntary adverse event reporting by health professionals. FDA has determined that the public health value of such reporting outweighs the individual needs of plaintiffs to discover the identities of a voluntary reporter or a patient, other than the plaintiff, who is the subject of the report.

The final rule focuses solely on protecting the identities of the voluntary reporter, the patient, and any other person identified in the report. The final rule does not preempt State or local laws that require disclosure of the substance of adverse event reports. FDA does not believe that disclosure of the substance of adverse event reports will impede its ability to collect such information. Indeed, FDA routinely releases the full substance of all voluntary adverse event reports upon request after deleting identifying information. (See § 20.111(c)(3)(iii).) The final rule also does not affect an individual's ability to obtain specific information about reports concerning his or her own reaction to a product, particularly when the individual is a plaintiff in a medical malpractice lawsuit and a court grants discovery of the plaintiff's records.

*C. Legal Authority for the Final Rule*

As discussed in the preamble to the proposed rule, there are various statutory provisions that authorize FDA to collect information about regulated products after the products are being legally marketed. These statutory authorities establish FDA's mandate to obtain information about the safety and effectiveness of drugs, devices, and biological products in order to determine whether continued use of these products presents an unreasonable risk to consumers. Through preemption of conflicting State and local rules that permit or require disclosure of voluntary reporter and patient identities, this rule removes an obstacle to full and accurate reporting of adverse events, and enhances the agency's ability to implement the surveillance authorities assigned to FDA.

Under section 505(k) of the act (21 U.S.C. 355(k)), an applicant who has an approved new drug application (NDA) or abbreviated new drug application (ANDA) ''shall establish and maintain such records, and make such reports * * * of data relating to clinical experience and other data or information, received or otherwise obtained by such applicant with respect to such drug'' as required by regulations or order. Under section 505(e) of the act, failure to establish a system for adverse event reports or to make reports required by regulation or order constitutes grounds for withdrawing approval of the NDA or ANDA. Under these provisions of the act as well as others, such as the misbranding and adulteration provisions, FDA promulgated regulations requiring specified drug adverse event reporting (21 CFR 314.80, 310.305). (See 50 FR 11478, March 21, 1985). As stated in the proposed rule, the voluntary system of

adverse event reporting that generates and supplements these required submissions is critical to the agency's post-market monitoring capabilities.

For medical devices, section 519 of the act requires manufacturers, distributors, and device user facilities to submit certain adverse event reports to FDA and authorizes the agency to require, by regulation, reports to assure that a medical device is not adulterated or misbranded and ''to otherwise assure its safety and effectiveness.'' As stated in the preamble to the proposed rule, in addition to reports required by the Safe Medical Devices Act, FDA maintains a voluntary device problem reporting program. (See 59 FR 3944 at 3945.) Voluntary medical device reports have been an important part of FDA's postmarketing surveillance system for medical devices and have prompted the agency to take action on several occasions. For example, in 1991, voluntary reports to FDA resulted in an alert to health professionals to potentially fatal hypersensitivity to latex products. A voluntary report from a physician about two patients who experienced blindness after the use of an ophthalmic device during eye surgery resulted in an FDA investigation and the recall and removal of the device from the market. This final rule is intended to ensure that such voluntary medical device reporting continues.

Furthermore, sections 505(k) and 519 of the act provide that regulations and orders issued with respect to postmarketing reporting requirements for drugs and devices ''shall have due regard for the professional ethics of the medical profession and the interests of patients * * * '' (21 U.S.C. 355(k) and 360i). The confidentiality of the physician-patient relationship is a basic tenet of medical ethics. The final rule, which protects both patient and reporter identities, is in furtherance of and consistent with these requirements of the act.

Additional authority to regulate adverse event reporting for biologics can be found in section 351 of the Public Health Service Act (the PHS act). Section 351 of the PHS act provides regulatory authority over biologics, and, pursuant to this section and other statutory authorities, the agency promulgated general adverse experience reporting requirements for licensed biological products, as well as requirements for manufacturers or collection facilities to report deaths related to complications in blood collection or transfusion. (See §§ 600.80 and 606.170(b) (21 CFR 600.80 and 606.170(b)); 59 FR 54034, October 27, 1994).)

The number and the quality of required reports that FDA receives from manufacturers and distributors ultimately depend upon voluntary reporting by health professionals. As FDA explained in the proposed rule, manufacturers and distributors cannot report adverse events if they do not find out about them from the health professionals who observed or were advised of the events. Disclosure of patient or reporter identities serves as a significant disincentive for voluntary reporting by health professionals; preemption of State and local disclosure rules that permit or require such disclosure eliminates an impediment to agency oversight of the postmarketing safety of products under its jurisdiction. The final rule, therefore, which is necessary to implement postmarketing surveillance statutory authorities, is also authorized under the general rulemaking authority set forth in section 701(a) of the act (21 U.S.C. 371(a)).

## V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) 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.

## VI. Executive Order 12612: Federalism

FDA has examined the effects of this final rule on the relationship between the Federal government and the States, as required by Executive Order 12612 on ''Federalism.'' The agency concludes that preemption of State or local rules that permit disclosure of the identities of the voluntary reporter or persons identified in an adverse event report for human drug products, biologics, and medical devices is consistent with this Executive Order.

Executive Order 12612 recognizes that Federal action limiting the discretion of State and local governments is appropriate ''where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope'' (section 3(b)). The constitutional basis for FDA's authority to regulate the safety and efficacy of human drug products, biologics, and medical devices is the statutes created by Congress to regulate products affecting the public health. Congress's decision to vest FDA with the authority to establish a regulatory scheme to monitor the safety of these products demonstrates Congress' view that the safety of human drug products, biologics, and medical devices is a problem of national scope (21 U.S.C. 355(k) and 42 U.S.C. 262)).

Executive Order 12612 expressly contemplates preemption where there is a conflict of State and Federal authority under a Federal statute. (See section 4(a).) State and local rules of civil procedure, rules of evidence, and other rules and regulations that permit or require disclosure of the identities of those who report adverse events associated with human drug products, biologics, and medical devices impede FDA's ability to monitor the safety and efficacy of these products. The guarantee of confidentiality of the reporters' and patients' names is necessary to assure meaningful reporting of adverse events. Additionally, Congress specified that Federal regulations issued to monitor the safety of drug products ''shall have due regard for the professional ethics of the medical profession and the interests of patients.'' (See 21 U.S.C. 355(k) and 360i.) State and local rules and regulations that permit or require disclosure of the identities conflict with this requirement by jeopardizing confidentiality and the physician-patient relationship.

Executive Order 12612 also requires that any Federal preemption be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated (section 4(c)). The final rule is narrowly drawn and focuses solely on protecting the identities of the reporter and patient and other individuals named in the report. The final rule does not preempt State and local laws that require disclosure of the substance of the adverse event reports.

As required by sections 3(a) and 4(e) of Executive Order 12612, FDA consulted the appropriate State officials and organizations and gave States an opportunity to participate in the proceedings to preempt State and local laws. This opportunity came through publication of the January 1994 proposal and through notice sent to each State's Attorney General. The agency received no comments from any State regarding the contents or the concepts expressed in the January 1994 proposal.

Thus, FDA concludes that the policy expressed in this final rule has been assessed in light of the principles, criteria, and requirements in Executive Order 12612; that this policy is not inconsistent with that Order; that this policy will not impose additional costs or burdens on the States; and that this policy will not affect the States' ability

to discharge traditional State governmental functions.

**VII. Analysis of Impacts**

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The final rule would preempt the establishment or continuation in effect of any State or local law, rule, regulation, or other requirement requiring or permitting disclosure of the identities of persons reporting adverse events associated with the use of human drugs, biological drug products, and medical devices and patients' identities. Thus, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

*List of Subjects in 21 CFR Part 20*

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

## PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

**Authority:** Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

2. Section 20.63 is amended by adding new paragraph (f) to read as follows:

**§ 20.63 Personnel, medical, and similar files, disclosure of which constitutes a clearly unwarranted invasion of personal privacy.**

* * * * *

(f) The names and any information that would identify the voluntary reporter or any other person associated with an adverse event involving a human drug, biologic, or medical device product shall not be disclosed by the Food and Drug Administration or by a manufacturer in possession of such reports in response to a request, demand, or order. Information that would identify the voluntary reporter or persons identified in the report includes, but is not limited to, the name, address, institution, or any other information that would lead to the identities of the reporter or persons identified in a report. This provision does not affect disclosure of the identities of reporters required by a Federal statute or regulation to make adverse event reports. Disclosure of the identities of such reporters is governed by the applicable Federal statutes and regulations.

(1) *Exceptions*. (i) Identities may be disclosed if both the voluntary reporter and the person identified in an adverse event report or that person's legal representative consent in writing to disclosure, but neither FDA nor any manufacturer in possession of such reports shall be required to seek consent for disclosure from the voluntary reporter or the person identified in the adverse event report or that person's legal representative; or

(ii) Identities of the voluntary reporter and the person who experienced the reported adverse event may be disclosed pursuant to a court order in the course of medical malpractice litigation involving both parties; or (iii) The report, excluding the identities of any other individuals, shall be disclosed to the person who is the subject of the report upon request.

(2) *Preemption*. No State or local governing entity shall establish or continue in effect any law, rule, regulation, or other requirement that permits or requires disclosure of the identities of the voluntary reporter or other person identified in an adverse event report except as provided in this section.

Dated: March 24, 1995

**William B. Schultz,**

*Deputy Commissioner for Policy.*

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Part IV

# Office of Management and Budget

**Security of Federal Automated Information; Notice**

## OFFICE OF MANAGEMENT AND BUDGET

### Security of Federal Automated Information

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Proposed revision of OMB Circular No. A–130 Appendix III.

**SUMMARY:** The Office of Management and Budget (OMB) is proposing to revise Appendix III of Circular No. A–130, ''Security of Federal Automated Information Systems.'' This is the third stage of revisions to Circular No. A–130, ''Management of Federal Information Resources.'' The first stage addressed information management policy (Section 8a) and Appendix I, ''Federal Agency Responsibilities for Maintaining Records About Individuals'' (June 25, 1993). That revision focussed on information exchanges with the public. The second revision addressed agency management practices for information systems and information technology (Section 8b) (July 25, 1994). That revision was intended to (1) promote agency investments in information technology that improve service delivery to the public, reduce burden on the public, and lower the cost of Federal programs administration, and (2) encourage agencies to use information technology as a strategic resource to improve Federal work processes and organization.

This proposal is intended to guide agencies in securing information as they increasingly rely on an open and interconnected National Information Infrastructure. It stresses management controls such as individual responsibility, awareness and training, and accountability, rather than technical controls. For example, it would require agencies to assure that risk-based rules of behavior are established, that employees are trained in them, and that the rules are enforced. The proposal would also better integrate security into program and mission goals, reduce the need for centralized reporting of paper security plans, emphasize the management of risk rather than its measurement and revise government-wide security responsibilities to be consistent with the Computer Security Act.

**DATES:** Persons who wish to comment on the proposed revision to OMB Circular No. A–130, Appendix III should submit their comments no later than June 2, 1995.

**ADDRESSES:** Comments should be addressed to: Information Policy and Technology Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

*Electronic Availability and Comments.* This document is available on the Internet via anonymous File Transfer Protocol (FTP) from the National Institute of Standards and Technology (NIST) Computer Security Resource Clearinghouse at csrc.ncsl.nist.gov as /pub/secplcy/a130app3.txt (do not use any capital letters in the file name) or via the World Wide Web from http://csrc.ncsl.nist.gov/secplcy as a130app3.txt. The clearinghouse can also be reached using dial-in access at 301–948–5717. For those who do not have file transfer capability, the document can be retrieved via mail query by sending an electronic mail message to docserver@csrc.ncsl.nist.gov with no subject and with send a130app3.txt as the first line of the body of the message. Comments may be sent via electronic mail to a130@a1.eop.gov (note that the address contains the number 1 not the letter L) and will be included as part of the official record. For assistance using FTP, mail query, or electronic mail, please contact your system administrator.

**FOR FURTHER INFORMATION CONTACT:** Ed Springer, Information Policy and Technology Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, D.C. 20503. Telephone: (202) 395–3785.

**SUPPLEMENTARY INFORMATION:** Since December 30, 1985, Appendix III of Office of Management and Budget (OMB) Circular No. A–130, ''Security of Federal Automated Information Systems,'' has defined a minimum set of controls for the security of Federal automated information systems. That Appendix, and its predecessor, Transmittal Memorandum No. 1 to OMB Circular No. A–71, (July 27, 1978), defined controls that were effective in a centralized processing environment which ran primarily custom-developed application software.

Today's computing environment is significantly different. It is characterized by open, widely distributed processing systems which frequently operate with commercial off-the-shelf software. This shift has increased both risks and vulnerabilities. Greater risks result from increasing quantities of valuable information being committed to Federal systems, and from agencies being critically dependent on those systems to perform their missions. Greater vulnerabilities exist because virtually every Federal employee has access to Federal systems, and because these systems now interconnect with outside systems.

In part because of these trends, Congress enacted the Computer Security Act of 1987. That Act requires agencies to improve the security of Federal computer systems, plan for the security of sensitive systems, and provide mandatory awareness and training in security for all individuals with access to computer systems.

To assist agencies in implementing the Computer Security Act, OMB issued Bulletin No. 88–16, ''Guidance for Preparation and Submission of Security Plans for Federal Computer Systems Containing Sensitive Information'' (July 6, 1988), and OMB Bulletin No. 90–08, ''Guidance for Preparation of Security Plans for Federal Computer Systems That Contain Sensitive Information'' (July 9, 1990). This proposed revision of Appendix III to OMB Circular A–130 incorporates and updates the policies set out in those Bulletins.

The report of the National Performance Review, ''Creating a Government That Works Better and Costs Less: Reengineering Through Information Technology'' (September 1993), recommends that Circular A–130 be revised to: (1) Require an information security plan to be part of each agency's strategic IT plan; (2) require that computer security be identified as a material weakness in the Federal Managers' Financial Integrity Act report, if security does not meet established thresholds; (3) require awareness and training of employees and contractors; (4) require that agencies improve planning for contingencies; and (5) establish and employ formal emergency response capabilities. Those recommendations are incorporated in this proposed revision.

Since its establishment by the Computer Security Act, the Computer System Security and Privacy Advisory Board has recommended changes in Circular A–130 to: (1) Require that agencies establish computer emergency response teams and (2) link oversight of Federal computer security activities more closely to the oversight established pursuant to the Federal Managers' Financial Integrity Act (FMFIA). The proposed Appendix incorporates both of those recommendations.

Subsequent to issuance of Bulletin 90–08, OMB, the National Institute of Standards and Technology (NIST), and the National Security Agency (NSA) met with 28 Federal departments and agencies to review their computer

security programs. In February 1993, the three agencies issued a report (''Observations of Agency Computer Security Practices and Implementation of OMB Bulletin No. 90–08'') which summarized those meetings and proposed several changes in OMB Circular A–130 as next steps to improving the Federal computer security program. Those proposed changes are incorporated in the proposed Appendix.

Where an agency processes information which is controlled for national security reasons pursuant to an Executive Order or statute, security measures required by appropriate directives should be included in agency systems. Those policies, procedures and practices will be coordinated with the U.S. Security Policy Board as directed by the President.

**The Proposed Appendix**

The Appendix proposes to reorient the Federal computer security program to better respond to a rapidly changing technological environment. It establishes government-wide responsibilities for Federal computer security and requires Federal agencies to adopt a minimum set of management controls.

These management controls are directed at individual information technology users in order to reflect the distributed nature of today's technology. For security to be most effective, the controls must be part of day-to-day operations. This is best accomplished by planning for security not as a separate activity, but as part of overall planning.

''Adequate security'' is defined as ''security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information.'' This definition explicitly emphasizes the risk-based policy for cost-effective security established by the Computer Security Act.

The Appendix would no longer require the preparation of formal risk analyses. In the past, substantial resources have been expended doing complex analyses of risks to systems, with limited tangible benefit in terms of improved security for the systems. Rather than continue to try to precisely measure risk, security efforts are better served by generally assessing risks and taking actions to manage them. While complex risk analyses need not be performed, the need to determine adequate security will require that a risk-based approach be used. This approach should include a consideration of the major factors in risk management: the value of the system or application, threats, vulnerabilities, and the effectiveness of current or proposed safeguards.

*Automated Information Security Programs*

Agencies are required to establish controls to assure adequate security for all information processed, transmitted, or stored in Federal automated information systems. This proposal emphasizes management controls affecting individual users of information technology. Technical and operational controls are linked to management controls regarding user behavior. Four interrelated management controls are proposed: assigning responsibility for security, security planning, periodic review of security controls, and management authorization.

The Appendix requires that these management controls be applied in two areas of management responsibility: one for general support systems and one for major applications. The terms ''general support system'' and ''major application'' were used in OMB Bulletin Nos. 88–16 and 90–08. A general support system is ''an interconnected set of information resources under the same direct management control which shares common functionality.'' Such a system can be, for example, a local area network (LAN) including smart terminals that support a branch office, an agency-wide backbone, a communications network, a departmental data processing center including its operating system and utilities, a tactical radio network, or a shared information processing service organization. Normally, the purpose of a general support system is to provide processing or communications support.

A major application is a use of information and information technology to satisfy a specific set of user requirements that requires special management attention to security due to the risk and magnitude of harm resulting from the loss, misuse or unauthorized access to or modification of the information in the application. All Federal information requires some level of protection. However, certain applications, because of the information in them, require special management oversight and should be treated as major. Adequate security for other applications should be provided by security of the general support systems in which they operate.

The focus of OMB Bulletins No. 88–16 and 90–08 was on identifying and securing both general support systems and applications which contained sensitive information. The Appendix proposes to establish security controls in all general support systems, under the presumption that all contain some sensitive information, and focus extra security controls on a limited number of particularly high risk or major applications.

*Discussion of the Appendix's Major Provisions.*

The following discussion is provided to aid reviewers in understanding the changes in emphasis proposed in the Appendix.

a. *General Support Systems.* The following controls are required in all general support systems:

(1) *Assign Responsibility for Security.* For each system, an individual should be a focal point for assuring there is adequate security within the system, including ways to prevent, detect, and recover from security problems. That responsibility should be assigned to an official trained in the technology used in the system and in providing security for such technology.

(2) *Security Plan.* The Computer Security Act requires that security plans be developed for all Federal computer systems that contain sensitive information. Given the expansion of distributed processing since passage of the Act, the presumption in the Appendix is that all general support systems contain some sensitive information and therefore require security plans.

Current guidance on security planning is contained in OMB Bulletin 90–08. The Appendix will supersede Section 6 of Bulletin 90–08. The Appendix also expands the coverage of security plans to address rules of individual behavior as well as technical security. Consistent with OMB Bulletin 90–08, the Appendix directs NIST to update and expand security planning guidance and issue it as a Federal Information Processing Standard (FIPS). In the interim, agencies should continue to use OMB Bulletin No. 90–08 as guidance for the technical portion of their security plans.

The Appendix continues the requirement that independent advice and comment on the security plan for each system be sought. The intent of this requirement is to improve the plans, foster communication between managers of different systems, and promote the sharing of security expertise.

The following specific security controls should be included in the security plan for a general support system:

(a) *Rules.* An important new requirement for security plans is the establishment of a set of rules of

behavior for individual users of each general support system. These rules should clearly delineate responsibilities of and expectations for all individuals with access to the system. In addition, they should state the consequences of non-compliance. The rules should be in writing and will form the basis for security awareness and training.

The development of rules for a system must take into consideration the needs of all parties who use the system. Rules should be as stringent as necessary to provide adequate security. Therefore, the acceptable level of risk for the system must be established and should form the basis for determining the rules.

Rules should cover such matters as work at home, dial-in access, connection to the Internet, use of copyrighted software, unofficial use of government equipment, the assignment and limitation of system privileges, and individual accountability. Often rules will address technical security controls in the system. For example, rules regarding password use should be consistent with technical password features in the system. In addition, the rules should specifically address restoration of service as a concern of all users of the system.

(b) *Awareness and Training.* The Computer Security Act requires mandatory periodic training for everyone with access to Federal computer systems. This includes contractors, employees of other agencies, and members of the public. The Appendix proposes to enforce such mandatory awareness and training by requiring its completion prior to granting access to the system. Each new user, in some sense, introduces a risk to all other users of a general support system. Therefore, each user should be versed in acceptable behavior—the rules of the system—before being allowed to use the system. Awareness and training should also inform the individual how to get help in the event of difficulty with using or security of the system.

Awareness and training should be tailored to what a user needs to know to use the system securely, given the nature of that use. Awareness and training may be presented in stages, for example as more access is granted. In some cases, the awareness and training should be in the form of classroom instruction. In other cases, interactive computer sessions or well-written and understandable brochures may be sufficient, depending on the risk and magnitude of harm.

Over time, attention to security tends to atrophy. In addition, changes to a system may necessitate a change in the rules or user procedures. Therefore, individuals should periodically have refresher training to assure that they continue to understand and abide by the applicable rules.

To assist agencies, the Appendix proposes that NIST, with assistance from the Office of Personnel Management (OPM), update its existing awareness and training guidance. It also proposes that OPM assure that its rules for computer security training for Federal civilian employees are effective.

(c) *Personnel Controls.* It has long been recognized that the greatest harm comes from authorized users engaged in improper activities, whether intentional or accidental. In every general support system, a number of technical, operational, and management controls are used to prevent and detect harm. Such controls include individual accountability, ''least privilege,'' and separation of duties.

Individual accountability consists of holding someone responsible for his or her actions. In a general support system, accountability is normally accomplished by identifying and authenticating users of the system and subsequently tracing actions on the system to the user who initiated them.

Least privilege is the practice of restricting a user's access (to data files, to processing capability, or to peripherals) or type of access (read, write, execute, delete) to the minimum necessary to perform his or her job.

Separation of duties is the practice of dividing the steps in a critical function among different individuals. For example, one system programmer can create critical operating system code, while another authorizes its implementation. Such a control keeps a single individual from subverting a critical process.

Nevertheless, in some instances, individuals may be given the ability to bypass technical and operational controls in order to perform system administration and maintenance functions. Screening such individuals in positions of trust will supplement technical, operational, and management controls, particularly where the risk and magnitude of loss or harm is high.

(d) *Incident Response Capability.* Security incidents, whether caused by viruses, hackers, or software bugs, are becoming more common. When faced with a security incident, an agency should be able to respond in a manner that both protects its own information and helps to protect the information of others who might be affected by the incident. To address this concern, agencies should establish formal incident response mechanisms. Awareness and training for individuals with access to the system should include how to use the system's incident response capability.

To be fully effective, incident handling must also include sharing information concerning common vulnerabilities and threats with those in other systems. Agencies should coordinate assistance and sharing through the Forum of Incident Response & Security Teams (FIRST).

The Appendix also directs the Department of Justice to develop guidance on pursuing legal remedies in the case of serious incidents.

(e) *Continuity of Support.* Inevitably, there will be service interruptions. Agency plans should assure that there is an ability to recover and provide service sufficient to meet the minimal needs of users of the system. Moreover, manual procedures are generally NOT a viable back-up option. When automated support is not available, many functions of the organization will effectively cease. Therefore, it is important to take cost-effective steps to manage any disruption of service.

Decisions on the level of service needed at any particular time and on priorities in service restoration should be made in consultation with the users of the system and incorporated in the system rules. Experience has shown that recovery plans that are periodically tested are substantially more viable than those that are not. Moreover, untested plans may actually create a false sense of security.

(f) *Technical Security.* Agencies should assure that each system appropriately uses effective security products and techniques, consistent with standards and guidance from NIST. Often such techniques will correspond with system rules of behavior such as in the proper use of password protection.

The Appendix directs NIST to continue to issue computer security guidance to assist agencies in planning for and using technical security products and techniques. Until such guidance is issued, however, the planning guidance included in OMB Bulletin 90–08 can assist in determining techniques for effective security in a system and in addressing technical controls in the security plan.

(g) *System Interconnection.* In order for a community to effectively manage risk, it must control access to and from other systems. The degree of such control should be established in the rules of the system and all participants should be made aware of any limitations on outside access. Technical controls to accomplish this should be put in place in accordance with guidance issued by NIST.

There are varying degrees of how connected a system is. For example, some systems will choose to isolate themselves, others will restrict access such as allowing only e-mail connections or remote access only with advanced authentication, and others will be fully open. The management decision to interconnect should be based on the availability and use of technical and non-technical safeguards and consistent with the acceptable level of risk defined in the system rules.

(3) *Review of Security Controls.* The security of a system will degrade over time, as the technology evolves and as people and procedures change. Reviews should assure that management, operational, personnel, and technical controls are functioning effectively. Security controls may be reviewed by an independent audit or a self review. The type and rigor of review or audit should be commensurate with the acceptable level of risk that is established in the rules for the system and the likelihood of learning useful information to improve security. Technical tools such as virus scanners, vulnerability assessment products (which look for known security problems, configuration errors, and the installation of the latest patches), and penetration testing can assist in the on-going review of different facets of systems. However, these tools are no substitute for a formal management review at least every three years. Indeed, for some high-risk systems with rapidly changing technology, three years will be too long.

Depending upon the risk and magnitude of loss or harm that could result, weaknesses identified during the review of security controls should be reported as deficiencies in accordance with OMB Circular No. A–123, ''Management Accountability and Control'' and the Federal Managers' Financial Integrity Act. In particular, if a basic management control such as assignment of responsibility, a workable security plan, or management authorization are missing, then consideration should be given to identifying a deficiency.

(4) *Authorize Processing.* The authorization of a system to process information, granted by a management official, provides an important quality control. By authorizing processing in a system, a manager accepts the risk associated with it. Authorization is not a decision that should be made by the security staff. Some agencies refer to this authorization as an accreditation.

Both the security official and the authorizing management official have security responsibilities. In general, the security official is closer to the day-to-day operation of the system and will direct or perform security tasks. The authorizing official will normally have general responsibility for the organization supported by the system.

Management authorization should be based on an assessment of management, operational, and technical controls. Since the security plan establishes the security controls, it should form the basis for the authorization, supplemented by more specific studies as needed. In addition, the periodic review of controls should also contribute to future authorizations. Some agencies perform ''certification reviews'' of their systems periodically. These formal technical evaluations lead to a management accreditation, or ''authorization to process.'' Such certifications (such as those using the methodology in FIPS Pub 102 ''Guideline for Computer Security Certification and Accreditation'') can provide useful information to assist management in authorizing a system, particularly when combined with a review of the broad behavioral controls envisioned in the security plan required by the Appendix.

b. *Controls in Major Applications.* Certain applications require special management attention due to the risk and magnitude of loss or harm that could occur. For such applications, the controls of the support system(s) in which they operate are likely to be insufficient. Therefore, additional controls specific to the application are required. Since the function of applications is the direct manipulation and use of information, controls for securing applications should emphasize protection of information and the way it is manipulated.

(1) *Assign Responsibility for Security.* By definition, major applications are high risk and require special management attention. Major applications usually support a single agency function and often are supported by more than one general support system. It is important, therefore, that an individual be assigned responsibility to assure that the particular application has adequate security. To be effective, this individual should be knowledgeable in the information processed by the application and in the management, operational, and technical controls used to protect the application.

(2) *Application Security Plans.* Security for each major application should be addressed by a security plan specific to the application. The plan should include controls specific to protecting information and should be developed from the application manager's perspective. To assist in assuring its viability, the plan should be shown to the manager of the primary support system which the application uses for advice and comment. This recognizes the critical dependence of the security of major applications on the underlying support systems they use.

(a) *Application Rules.* Rules of behavior should be established which delineate the responsibilities and expected behavior of all individuals with access to the application. The rules should state the consequences of inconsistent behavior. Such rules should include, for example, limitations on changing data, searching data bases, or divulging information.

(b) *Specialized Awareness and Training.* Awareness and training should vary depending on the type of access allowed and the risk that access represents to the security of information in the application. This training will be in addition to that required for access to a support system.

(c) *Personnel Security.* For most major applications, management controls such as individual accountability requirements, separation of duties enforced by access controls, or limitations on the processing privileges of individuals, are generally more cost-effective personnel security controls than background screening. If adequate audit or access controls (through both technical and non-technical methods) cannot be established, then it may be cost-effective to screen personnel.

(d) *Contingency Planning.* Normally the Federal mission supported by a major application is critically dependent on the application. Manual processing is generally NOT a viable back-up option. Managers should plan for how they will perform their mission and/or recover from the loss of existing application support in the event of an emergency. Experience has demonstrated that testing a contingency plan significantly improves its viability. Indeed, untested plans may create a false sense of ability to recover in a timely manner.

(e) *Technical Controls.* Technical security controls, for example software edits that limit data that can be entered into certain files, should be built into each application. Often these controls will correspond with the rules of behavior for the application. Under the current Appendix, application security is focused on the process by which sensitive, custom applications are developed. Given the increasing reliance on commercial off-the-shelf software, that process is not addressed in detail in this Appendix. However, some custom-developed applications will remain. For them the technical

security controls defined in OMB Bulletin No. 90–08 will continue, until that guidance is replaced by NIST's security planning guidance.

(f) *Information Sharing.* Assure that information which is shared with Federal organizations, State and local governments, and the private sector is appropriately protected relative to the protection provided when the information is within the application. Controls on the information may stay the same or vary when the information is shared with another entity. For example, the primary user of the information may require a high level of availability while the secondary user does not, and can therefore relax some of the controls designed to maintain the availability of the information. At the same time, however, the information shared may require a level of confidentiality that should be extended to the secondary user. This may require agreements to protect such information prior to its being shared.

(g) *Public Access Controls.* Permitting public access to a Federal application is an important method of improving information exchange with the public. At the same time, it introduces risks to the Federal application. To mitigate these risks, additional controls should be in place as appropriate. These controls are in addition to controls such as ''firewalls'' that are put in place for security of the general support system.

In general, it is more difficult to apply conventional controls to public access systems, because many of the users of the system may not be subject to individual accountability policies. In addition, public access systems may be a target for mischief because of their higher visibility and published access methods.

Official records need to be protected against loss or alteration. Official records in electronic form are particularly susceptible since they can be relatively easy to change or destroy. Therefore, official records should be segregated from information made directly accessible to the public. There are different ways to segregate records. Some agencies and organizations are creating dedicated information dissemination systems (such as bulletin boards or World Wide Web servers) to support this function. These systems can be on the outside of secure gateways which protect internal agency records from outside access.

In order to secure applications that allow direct public access, conventional techniques such as least privilege (limiting the processing capability as well as access to data) and integrity assurances (such as checking for viruses, clearly labeling the age of data, or periodically spot checking data) should also be used. Additional guidance on securing public access systems is available from NIST Computer Systems Laboratory Bulletin ''Security Issues in Public Access Systems'' (May, 1993).

(3) *Review of Application Controls.* At least every three years, a review or audit of the security controls for each major application should be performed. Such reviews should verify that responsibility for the security of the application has been assigned, that a viable security plan for the application is in place, and that a manager has authorized the processing of the application. A deficiency in any of these controls should be considered a deficiency pursuant to the Federal Manager's Financial Integrity Act and OMB Circular No. A–123, ''Management Accountability and Control.''

The review envisioned here is different than the system test and certification process required in the current Appendix. That process, however, remains useful for assuring that technical security features are built into custom-developed software applications. While the controls in that process are not specifically called for in the new Appendix, they remain in Bulletin No. 90–08, and are recommended in appropriate circumstances as technical controls.

(4) *Authorize Processing.* A major application should be periodically authorized by the management official responsible for the function supported by the application. The intent of this requirement is to assure that the senior official whose mission will be adversely affected by security weaknesses in the application periodically assesses and accepts the risk of operating the application. The authorization should be based on the application security plan and any review(s) performed on the application. It should also take into account the risks from the general support systems used by the application.

4. *Assignment of Responsibilities.* The Appendix assigns government-wide responsibilities to agencies that are consistent with their missions and the Computer Security Act.

a. *Department of Commerce.* The Department of Commerce, through NIST, is assigned the following responsibilities consistent with the Computer Security Act.

(1) Develop and issue security standards and guidance.

(2) Review and update, with assistance from OPM, the guidelines for security awareness and training issued in 1988 pursuant to the Computer Security Act to assure they are effective.

(3) Replace and update the technical planning guidance in the appendix to OMB Bulletin 90–08.

(4) Provide agencies with guidance and assistance concerning effective controls for systems when interconnecting with other systems, including the Internet. Such guidance on, for example, so-called ''firewalls'' is becoming widely available and is critical to agencies as they consider how to interconnect their communications capabilities.

(5) Coordinate agency incident response activities. This is already underway through the Forum for Incident Response Teams (FIRST).

(6) Assess security vulnerabilities in new information technologies and apprise Federal agencies of such vulnerabilities. The intent of this new requirement is to help agencies understand the security implications of technology before they purchase and field it. In the past, there have been too many instances where agencies have acquired and implemented technology, then found out about vulnerabilities in the technology and had to retrofit security measures. This activity is intended to help avoid such difficulties in the future.

b. *Security Policy Board.* The Security Policy Board is assigned responsibility for national security policy coordination in accordance with appropriate Presidential directive.

c. *Department of Defense.* The Department, through the National Security Agency, should provide technical advice and assistance to NIST, including work products such as technical security guidelines, which NIST can draw upon for developing standards and guidelines for protecting sensitive information in Federal computers.

Also, the Department, through the National Security Agency, should assist NIST in evaluating vulnerabilities in emerging technologies. Such vulnerabilities may present a risk to national security information as well as to unclassified information.

d. *Office of Personnel Management.* In accordance with the Computer Security Act, the Office of Personnel Management should review its regulations concerning computer security training and assure that they are effective.

In addition, OPM should assist the Department of Commerce in the review and update of its computer security awareness and training guidelines. OPM worked closely with NIST in developing

the current guidelines and should work with NIST in revising those guidelines.

e. *General Services Administration.* The General Services Administration should provide agencies guidance for addressing security considerations when acquiring information technology products or services. This continues the current requirement.

In addition, where cost-effective GSA should establish government-wide contract vehicles for agencies to use to acquire certain security services. Such vehicles already exist for providing system back-up support and conducting security analyses.

GSA should also provide appropriate security services to assist Federal agencies to the extent that provision of such services is cost-effective. This includes providing, in conjunction with the Department of Defense and the Department of Commerce, appropriate services which support Federal use of the National Information Infrastructure (e.g., use of digital signature technology).

f. *Department of Justice.* The Department of Justice should provide guidance to Federal agencies on legal remedies available to them when serious security incidents occur. Such guidance should include ways to report incidents and cooperate with law enforcement.

In addition, the Department should pursue appropriate legal actions on behalf of the Federal government when serious security incidents occur.

5. *Reports.* The Appendix requires agencies to provide two reports to OMB:

The first is a requirement that agencies report security deficiencies and material weaknesses within their FMFIA reporting mechanisms as defined by OMB Circular No. A–123, ''Management Accountability and Control,'' and take corrective actions in accordance with that directive.

The second, defined by the Computer Security Act, requires that a summary of agency security plans be included in the five-year information resources management plan required by the Paperwork Reduction Act.

Accordingly, Appendix III of Circular A–130 is proposed to be revised to read as set forth below.

**Sally Katzen.**

## Appendix III—To OMB Circular No. A–130, Security of Federal Automated Information

*1. Purpose*

This Appendix establishes a minimum set of controls to be included in Federal automated information security programs; assigns Federal agency responsibilities for the security of automated information; and links agency automated information security programs and agency management control systems established in accordance with OMB Circular No. A–123. The Appendix revises procedures formerly contained in Appendix III to OMB Circular No. A–130 (50 FR 52730; December 24, 1985), and incorporates requirements of the Computer Security Act of 1987 (P.L. 100–235) and responsibilities assigned in applicable national security directives.

*2. Definitions*

The term:

a. ''adequate security'' means security commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information. This includes assuring that systems and applications used by the agency operate effectively and provide appropriate confidentiality, integrity, and availability, through the use of cost-effective management, personnel, operational, and technical controls.

b. ''application'' means the use of information resources (information and information technology) to satisfy a specific set of user requirements.

c. ''general support system'' or ''system'' means an interconnected set of information resources under the same direct management control which share common functionality. A system normally includes hardware, software, information, data, applications, and people. A system can be, for example, a local area network (LAN) including smart terminals that supports a branch office, an agency-wide backbone, a communications network, a departmental data processing center including its operating system and utilities, a tactical radio network, or a shared information processing service organization (IPSO).

d. ''major application'' means an application that requires special attention to security due to the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of the information in the application. Note: All Federal information requires some level of protection. Certain applications, because of the information in them, however, require special management oversight and should be treated as major. Adequate security for other applications should be provided by security of the systems in which they operate.

3. *Automated Information Security Programs.* Agencies should implement and maintain a program to assure that adequate security is provided for all agency information collected, processed, transmitted, stored, or disseminated in general support systems and major applications.

Each agency's program should implement policies, standards and procedures which are consistent with government-wide policies, standards, and procedures issued by the Office of Management and Budget, the Department of Commerce, the General Services Administration and the Office of Personnel Management (OPM). Different or more stringent requirements for securing national security information should be incorporated into agency programs as required by appropriate national security directives. At a minimum, agency programs should include the following controls in their general support systems and major applications:

a. Controls for general support systems.

(1) *Assign Responsibility for Security.* Assign responsibility for security in each system to an official knowledgeable in the information technology used in the system and in providing security for such technology.

(2) *System Security Plan.* Plan for the security of each general support system as part of the organization's information resources management (IRM) planning process. The security plan should be consistent with guidance issued by the National Institute of Standards and Technology (NIST). Independent advice and comment on the security plan should be solicited prior to the plan's implementation. A summary of the security plans should be incorporated into the 5-year IRM plan required by the Paperwork Reduction Act (44 U.S.C. Chapter 35) and Section 8(b) of this circular. Security plans should include:

(a) *Rules of the System.* Establish a set of rules of behavior concerning use of, security in, and the acceptable level of risk for the system. The rules should be based on the needs of the various users of the system. The security required by the rules should be only as stringent as necessary to provide adequate security for information in the system. Such rules should clearly delineate responsibilities and expected behavior of all individuals with access to the system. They should also include appropriate limits on interconnections to other systems and should define service provision and restoration priorities. Finally, they should be clear about the consequences of behavior not consistent with the rules.

(b) *Awareness and Training.* Ensure that all individuals are aware of their security responsibilities and trained in how to fulfill them before allowing them access to the system. Such awareness and training should assure that individuals are versed in the rules of the system, be consistent with guidance issued by NIST and OPM, and apprise individuals about available assistance and technical security products and techniques. Behavior consistent with the rules of the system and periodic refresher training should be required for continued access to the system.

(c) *Personnel Controls.* Screen all individuals who are authorized to bypass technical and operational security controls of the system (e.g., LAN administrators or system programmers) commensurate with the risk and magnitude of loss or harm they could cause. Such screening should occur prior to the individuals' being authorized to bypass controls and periodically thereafter.

(d) *Incident Response Capability.* Ensure that there is a capability to provide help to users when a security incident occurs in the system and to share information concerning common vulnerabilities and threats. This capability should coordinate with those in other organizations and should assist the agency in pursuing appropriate legal action, consistent with Department of Justice guidance.

(e) *Continuity of Support.* Establish and periodically test the capability to continue providing service within a system based upon the needs and priorities of the participants of the system.

(f) *Technical Security.* Ensure that cost-effective security products and techniques are appropriately used within the system.

(g) *System Interconnection.* Obtain written management authorization based upon the acceptance of risk to the system prior to connecting with other systems. Where connection is authorized, controls should be established which are consistent with the rules of the system and in accordance with guidance from NIST.

(3) *Review of Security Controls.* Periodically review the security controls in each system commensurate with the acceptable level of risk for the system established in its rules, especially when significant modifications are made and at least every 3 years. Depending on the potential risk and magnitude of harm that could occur, consider identifying a deficiency pursuant to OMB Circular No. A–123, ''Management Accountability and Control'' and the Federal Managers' Financial Integrity Act (FMFIA), if there is no assignment of security responsibility, no security plan or no authorization to process in a system.

(4) *Authorize Processing.* Ensure that a management official authorizes in writing the use of each general support system based on implementation of its security plan before beginning or significantly changing processing in the system. Use of the system should be reauthorized at least every three years.

b. Controls for Major Applications.

(1) *Assign Responsibility for Security.* Assign responsibility for security of each major application to a management official knowledgeable in the nature of the information processed by the application and in the management, operational, and technical controls used to protect it. This official should assure that effective security products and techniques are appropriately used in the application and should be contacted when a security incident occurs concerning the application.

(2) *Application Security Plan.* Plan for the adequate security of each major application, taking into account the security of all systems in which the application will operate. The plan should be consistent with guidance issued by NIST. Advice and comment on the plan should be solicited from the official responsible for security in the primary system in which the application will operate prior to the plan's implementation. A summary of the security plans should be incorporated into the 5-year IRM plan required by the Paperwork Reduction Act. Application security plans should include:

(a) *Application Rules.* Establish a set of rules concerning use of and behavior within the application. The rules should be as stringent as necessary to provide adequate security for the application and the information in it. Such rules should clearly delineate responsibilities and expected behavior of all individuals with access to the application. In addition, the rules should be clear about the consequences of behavior not consistent with the rules.

(b) *Specialized Awareness and Training.* Before allowing individuals access to the application, ensure that all individuals receive specialized awareness and training focused on their responsibilities and the application rules. This may be in addition to the awareness and training required for access to a system. Such awareness and training may vary from a notification at the time of access (e.g., for members of the public using an information retrieval application) to formal training (e.g., for an employee that works with a high risk application).

(c) *Personnel Security.* Incorporate controls such as separation of duties, least privilege and individual accountability into the application as appropriate. In cases where such controls cannot adequately protect the application and information in it, screen individuals commensurate with the risk and magnitude of the harm they could cause. Such screening should be done prior to the individuals being authorized to access the application and periodically thereafter.

(d) *Contingency Planning.* Establish and periodically test the capability to perform the agency function supported by the application in the event of failure of its automated support.

(e) *Technical Controls.* Ensure that appropriate security controls are specified, designed into, tested, and accepted in accordance with guidance issued by NIST.

(f) *Information Sharing.* Ensure that information shared from the application is protected appropriately, relative to the protection provided when information is within the application.

(g) *Public Access Controls.* Where an agency's application promotes or permits public access, additional security controls should be added to protect the integrity of the application and the confidence the public has in the application. Such controls should include segregating information made directly accessible to the public from official agency records (e.g., by putting information onto a bulletin board).

(3) *Review of Application Controls.* Perform an independent review or audit of the security controls in each application at least every three years. Consider identifying a deficiency pursuant to the Federal Managers' Financial Integrity Act if there is no assignment of responsibility for security, no security plan, or no authorization to process for the application.

(4) *Authorize Processing.* Ensure that a management official authorizes in writing use of the application by confirming that its security plan as implemented adequately secures the application. Results of the most recent review or audit of controls should be a factor in management authorizations. The application should be authorized prior to operating and re-authorized at least every three years thereafter. Management authorization implies accepting the risk of each system used by the application.

*4. Assignment of Responsibilities*

a. *Department of Commerce.* The Secretary of Commerce should:

(1) Develop and issue appropriate standards and guidance for the security of sensitive information in Federal computer systems.

(2) Review and update guidelines for training in computer security awareness and accepted computer security practice, with assistance from OPM.

(3) Provide agencies guidance for security planning to assist in their development of application and system security plans.

(4) Provide guidance and assistance, as appropriate, to agencies concerning effective controls when interconnecting with other systems.

(5) Coordinate agency incident response activities to promote sharing of incident response information and related vulnerabilities.

(6) Evaluate new information technologies to assess their security vulnerabilities, with technical assistance from the Department of Defense, and apprise Federal agencies of such vulnerabilities as soon as they are known.

b. *Security Policy Board.* The Security Policy Board should:

(1) Act, in accordance with applicable national security directives, to coordinate the security activities of the Federal Government regarding the security of automated information systems that process national security information;

c. *Department of Defense.* The Secretary of Defense should:

(1) Provide appropriate technical advice and assistance (including work products) to the Department of Commerce.

(2) Assist the Department of Commerce in evaluating the vulnerabilities of emerging information technologies.

d. *Office of Personnel Management.* The Director of the Office of Personnel Management should:

(1) Assure that its regulations concerning computer security training for Federal civilian employees are effective.

(2) Assist the Department of Commerce in updating and maintaining guidelines for training in computer security awareness and accepted computer security practice.

e. *General Services Administration.* The Administrator of General Services should:

(1) Assure that the Federal Information Resources Management Regulation provides guidance to agencies on addressing security considerations when acquiring automated data processing equipment (as defined in section 111(a)(2) of the Federal Property and Administrative Services Act of 1949, as amended)

(2) Facilitate the development of contract vehicles for agencies to use in the acquisition of cost-effective security products and services (e.g., back-up services contract).

(3) Provide appropriate security services to meet the needs of Federal agencies to the extent that such services are cost-effective.

f. *Department of Justice.* The Attorney General should:

(1) Provide guidance to agencies on legal remedies regarding security incidents and ways to report and work with law enforcement concerning such incidents.

(2) Pursue appropriate legal actions when security incidents occur.

*5. Correction of Deficiencies and Reports*

a. *Correction of Deficiencies.* Agencies shall correct deficiencies which are identified through the reviews of security for systems and major applications described above.

b. *Reports on Deficiencies.* In accordance with OMB Circular No. A–123, if a deficiency in controls is judged by the agency head to be material when weighed against other agency deficiencies, it should be included in the annual FMFIA report. Less significant deficiencies should be reported and progress on corrective actions tracked at the appropriate agency level.

c. *Summaries of Security Plans.* Agencies shall include a summary of their system security plans and major application plans in the five-year plan required by the Paperwork Reduction Act (44 U.S.C. 3505).

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| 0–26 | (869–022–00007–1) | 21.00 | Jan. 1, 1994 |
| 27–45 | (869–026–00008–5) | 14.00 | Jan. 1, 1995 |
| *46–51 | (869–026–00009–3) | 21.00 | Jan. 1, 1995 |
| 52 | (869–022–00010–1) | 30.00 | Jan. 1, 1994 |
| 53–209 | (869–022–00011–0) | 23.00 | Jan. 1, 1994 |
| 210–299 | (869–026–00012–3) | 34.00 | Jan. 1, 1995 |
| 300–399 | (869–022–00013–6) | 16.00 | Jan. 1, 1994 |
| 400–699 | (869–022–00014–4) | 18.00 | Jan. 1, 1994 |
| 700–899 | (869–022–00015–2) | 22.00 | Jan. 1, 1994 |
| 900–999 | (869–022–00016–1) | 34.00 | Jan. 1, 1994 |
| 1000–1059 | (869–022–00017–9) | 23.00 | Jan. 1, 1994 |
| 1060–1119 | (869–026–00018–2) | 15.00 | Jan. 1, 1995 |
| 1120–1199 | (869–026–00019–1 | 12.00 | Jan. 1, 1995 |
| 1200–1499 | (869–022–00020–9) | 30.00 | Jan. 1, 1994 |
| *1500–1899 | (869–026–00021–2) | 35.00 | Jan. 1, 1995 |
| 1900–1939 | (869–022–00022–5) | 15.00 | Jan. 1, 1994 |
| *1940–1949 | (869–026–00023–9) | 30.00 | Jan. 1, 1995 |
| 1950–1999 | (869–026–00024–7) | 40.00 | Jan. 1, 1995 |
| 2000–End | (869–026–00025–5) | 14.00 | Jan. 1, 1995 |
| **8** | (869–022–00026–8) | 22.00 | Jan. 1, 1994 |
| **9 Parts:** | | | |
| 1–199 | (869–022–00027–6) | 29.00 | Jan. 1, 1994 |
| *200–End | (869–026–00028–0) | 23.00 | Jan. 1, 1995 |
| **10 Parts:** | | | |
| 0–50 | (869–026–00029–8) | 30.00 | Jan. 1, 1995 |
| 51–199 | (869–022–00030–6) | 22.00 | Jan. 1, 1994 |
| 200–399 | (869–026–00031–0) | 15.00 | [6] Jan. 1, 1993 |
| 400–499 | (869–026–00032–8) | 21.00 | Jan. 1, 1995 |
| 500–End | (869–022–00033–1) | 37.00 | Jan. 1, 1994 |
| **11** | (869–026–00034–4) | 14.00 | Jan. 1, 1995 |
| **12 Parts:** | | | |
| 1–199 | (869–026–00035–2) | 12.00 | Jan. 1, 1995 |
| *200–219 | (869–026–00036–1) | 16.00 | Jan. 1, 1995 |
| 220–299 | (869–022–00037–3) | 28.00 | Jan. 1, 1994 |
| 300–499 | (869–022–00038–1) | 22.00 | Jan. 1, 1994 |
| 500–599 | (869–022–00039–0) | 20.00 | Jan. 1, 1994 |
| *600–End | (869–026–00040–9) | 35.00 | Jan. 1, 1995 |
| **13** | (869–026–00041–7) | 32.00 | Jan. 1, 1995 |
| **14 Parts:** | | | |
| 1–59 | (869–022–00042–0) | 32.00 | Jan. 1, 1994 |
| 60–139 | (869–022–00043–8) | 26.00 | Jan. 1, 1994 |
| 140–199 | (869–026–00044–1) | 13.00 | Jan. 1, 1995 |
| 200–1199 | (869–026–00045–0) | 23.00 | Jan. 1, 1995 |
| 1200–End | (869–026–00046–8) | 16.00 | Jan. 1, 1995 |
| **15 Parts:** | | | |
| 0–299 | (869–022–00047–1) | 15.00 | Jan. 1, 1994 |
| 300–799 | (869–022–00048–9) | 26.00 | Jan. 1, 1994 |
| 800–End | (869–026–00049–2) | 21.00 | Jan. 1, 1995 |
| **16 Parts:** | | | |
| 0–149 | (869–026–00050–6) | 7.00 | Jan. 1, 1995 |
| 150–999 | (869–022–00051–9) | 18.00 | Jan. 1, 1994 |
| 1000–End | (869–022–00052–7) | 25.00 | Jan. 1, 1994 |
| **17 Parts:** | | | |
| 1–199 | (869–022–00054–3) | 20.00 | Apr. 1, 1994 |
| 200–239 | (869–022–00055–1) | 23.00 | Apr. 1, 1994 |
| 240–End | (869–022–00056–0) | 30.00 | Apr. 1, 1994 |
| **18 Parts:** | | | |
| 1–149 | (869–022–00057–8) | 16.00 | Apr. 1, 1994 |
| 150–279 | (869–022–00058–6) | 19.00 | Apr. 1, 1994 |
| 280–399 | (869–022–00059–4) | 13.00 | Apr. 1, 1994 |
| 400–End | (869–022–00060–8) | 11.00 | Apr. 1, 1994 |
| **19 Parts:** | | | |
| 1–199 | (869–022–00061–6) | 39.00 | Apr. 1, 1994 |
| 200–End | (869–022–00062–4) | 12.00 | Apr. 1, 1994 |
| **20 Parts:** | | | |
| 1–399 | (869–022–00063–2) | 20.00 | Apr. 1, 1994 |
| 400–499 | (869–022–00064–1) | 34.00 | Apr. 1, 1994 |
| 500–End | (869–022–00065–9) | 31.00 | Apr. 1, 1994 |
| **21 Parts:** | | | |
| 1–99 | (869–022–00066–7) | 16.00 | Apr. 1, 1994 |
| 100–169 | (869–022–00067–5) | 21.00 | Apr. 1, 1994 |
| 170–199 | (869–022–00068–3) | 21.00 | Apr. 1, 1994 |
| 200–299 | (869–022–00069–1) | 7.00 | Apr. 1, 1994 |
| 300–499 | (869–022–00070–5) | 36.00 | Apr. 1, 1994 |
| 500–599 | (869–022–00071–3) | 16.00 | Apr. 1, 1994 |
| 600–799 | (869–022–00072–1) | 8.50 | Apr. 1, 1994 |
| 800–1299 | (869–022–00073–0) | 22.00 | Apr. 1, 1994 |
| 1300–End | (869–022–00074–8) | 13.00 | Apr. 1, 1994 |
| **22 Parts:** | | | |
| 1–299 | (869–022–00075–6) | 32.00 | Apr. 1, 1994 |
| 300–End | (869–022–00076–4) | 23.00 | Apr. 1, 1994 |
| **23** | (869–022–00077–2) | 21.00 | Apr. 1, 1994 |
| **24 Parts:** | | | |
| 0–199 | (869–022–00078–1) | 36.00 | Apr. 1, 1994 |
| 200–499 | (869–022–00079–9) | 38.00 | Apr. 1, 1994 |
| 500–699 | (869–022–00080–2) | 20.00 | Apr. 1, 1994 |
| 700–1699 | (869–022–00081–1) | 39.00 | Apr. 1, 1994 |
| 1700–End | (869–022–00082–9) | 17.00 | Apr. 1, 1994 |
| **25** | (869–022–00083–7) | 32.00 | Apr. 1, 1994 |
| **26 Parts:** | | | |
| §§ 1.0-1–1.60 | (869–022–00084–5) | 20.00 | Apr. 1, 1994 |
| §§ 1.61–1.169 | (869–022–00085–3) | 33.00 | Apr. 1, 1994 |
| §§ 1.170–1.300 | (869–022–00086–1) | 24.00 | Apr. 1, 1994 |
| §§ 1.301–1.400 | (869–022–00087–0) | 17.00 | Apr. 1, 1994 |
| §§ 1.401–1.440 | (869–022–00088–8) | 30.00 | Apr. 1, 1994 |
| §§ 1.441-1.500 | (869-022-00089-6) | 22.00 | Apr. 1, 1994 |
| §§ 1.501–1.640 | (869–022–00090–0) | 21.00 | Apr. 1, 1994 |
| §§ 1.641–1.850 | (869–022–00091–8) | 24.00 | Apr. 1, 1994 |
| §§ 1.851–1.907 | (869–022–00092–6) | 26.00 | Apr. 1, 1994 |
| §§ 1.908–1.1000 | (869–022–00093–4) | 27.00 | Apr. 1, 1994 |
| §§ 1.1001–1.1400 | (869–022–00094–2) | 24.00 | Apr. 1, 1994 |
| §§ 1.1401–End | (869–022–00095–1) | 32.00 | Apr. 1, 1994 |
| 2–29 | (869–022–00096–9) | 24.00 | Apr. 1, 1994 |
| 30–39 | (869–022–00097–7) | 18.00 | Apr. 1, 1994 |
| 40–49 | (869–022–00098–4) | 14.00 | Apr. 1, 1994 |
| 50–299 | (869–022–00099–3) | 14.00 | Apr. 1, 1994 |
| 300–499 | (869–022–00100–1) | 24.00 | Apr. 1, 1994 |
| 500–599 | (869–022–00101–9) | 6.00 | [4] Apr. 1, 1990 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 600–End | (869–022–00102–7) | 8.00 | Apr. 1, 1994 |
| **27 Parts:** | | | |
| 1–199 | (869–022–00103–5) | 36.00 | Apr. 1, 1994 |
| 200–End | (869–022–00104–3) | 13.00 | Apr. 1, 1994 |
| **28 Parts:** | | | |
| 1-42 | (869–022–00105–1) | 27.00 | July 1, 1994 |
| 43-end | (869-022-00106-0) | 21.00 | July 1, 1994 |
| **29 Parts:** | | | |
| 0–99 | (869–022–00107–8) | 21.00 | July 1, 1994 |
| 100–499 | (869–022–00108–6) | 9.50 | July 1, 1994 |
| 500–899 | (869–022–00109–4) | 35.00 | July 1, 1994 |
| 900–1899 | (869–022–00110–8) | 17.00 | July 1, 1994 |
| 1900–1910 (§§ 1901.1 to 1910.999) | (869–022–00111–6) | 33.00 | July 1, 1994 |
| 1910 (§§ 1910.1000 to end) | (869–022–00112–4) | 21.00 | July 1, 1994 |
| 1911–1925 | (869–022–00113–2) | 26.00 | July 1, 1994 |
| 1926 | (869–022–00114–1) | 33.00 | July 1, 1994 |
| 1927–End | (869–022–00115–9) | 36.00 | July 1, 1994 |
| **30 Parts:** | | | |
| 1–199 | (869–022–00116–7) | 27.00 | July 1, 1994 |
| 200–699 | (869–022–00117–5) | 19.00 | July 1, 1994 |
| 700–End | (869–022–00118–3) | 27.00 | July 1, 1994 |
| **31 Parts:** | | | |
| 0–199 | (869–022–00119–1) | 18.00 | July 1, 1994 |
| 200–End | (869–022–00120–5) | 30.00 | July 1, 1994 |
| **32 Parts:** | | | |
| 1–39, Vol. I | | 15.00 | [2] July 1, 1984 |
| 1–39, Vol. II | | 19.00 | [2] July 1, 1984 |
| 1–39, Vol. III | | 18.00 | [2] July 1, 1984 |
| 1–190 | (869–022–00121–3) | 31.00 | July 1, 1994 |
| 191–399 | (869–022–00122–1) | 36.00 | July 1, 1994 |
| 400–629 | (869–022–00123–0) | 26.00 | July 1, 1994 |
| 630–699 | (869–022–00124–8) | 14.00 | [5] July 1, 1991 |
| 700–799 | (869–022–00125–6) | 21.00 | July 1, 1994 |
| 800–End | (869–022–00126–4) | 22.00 | July 1, 1994 |
| **33 Parts:** | | | |
| 1–124 | (869–022–00127–2) | 20.00 | July 1, 1994 |
| 125–199 | (869–022–00128–1) | 26.00 | July 1, 1994 |
| 200–End | (869–022–00129–9) | 24.00 | July 1, 1994 |
| **34 Parts:** | | | |
| 1–299 | (869–022–00130–2) | 28.00 | July 1, 1994 |
| 300–399 | (869–022–00131–1) | 21.00 | July 1, 1994 |
| 400–End | (869–022–00132–9) | 40.00 | July 1, 1994 |
| **35** | (869–022–00133–7) | 12.00 | July 1, 1994 |
| **36 Parts:** | | | |
| 1–199 | (869–022–00134–5) | 15.00 | July 1, 1994 |
| 200–End | (869–022–00135–3) | 37.00 | July 1, 1994 |
| **37** | (869–022–00136–1) | 20.00 | July 1, 1994 |
| **38 Parts:** | | | |
| 0–17 | (869–022–00137–0) | 30.00 | July 1, 1994 |
| 18–End | (869–022–00138–8) | 29.00 | July 1, 1994 |
| **39** | (869–022–00139–6) | 16.00 | July 1, 1994 |
| **40 Parts:** | | | |
| 1–51 | (869–022–00140–0) | 39.00 | July 1, 1994 |
| 52 | (869–022–00141–8) | 39.00 | July 1, 1994 |
| 53–59 | (869–022–00142–6) | 11.00 | July 1, 1994 |
| 60 | (869-022-00143-4) | 36.00 | July 1, 1994 |
| 61–80 | (869–022–00144–2) | 41.00 | July 1, 1994 |
| 81–85 | (869–022–00145–1) | 23.00 | July 1, 1994 |
| 86–99 | (869–022–00146–9) | 41.00 | July 1, 1994 |
| 100–149 | (869–022–00147–7) | 39.00 | July 1, 1994 |
| 150–189 | (869–022–00148–5) | 24.00 | July 1, 1994 |
| 190–259 | (869–022–00149–3) | 18.00 | July 1, 1994 |
| 260–299 | (869–022–00150–7) | 36.00 | July 1, 1994 |
| 300–399 | (869–022–00151–5) | 18.00 | July 1, 1994 |
| 400–424 | (869–022–00152–3) | 27.00 | July 1, 1994 |
| 425–699 | (869–022–00153–1) | 30.00 | July 1, 1994 |
| 700–789 | (869–022–00154–0) | 28.00 | July 1, 1994 |
| 790–End | (869–022–00155–8) | 27.00 | July 1, 1994 |
| **41 Chapters:** | | | |
| 1, 1–1 to 1–10 | | 13.00 | [3] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | | 13.00 | [3] July 1, 1984 |
| 3–6 | | 14.00 | [3] July 1, 1984 |
| 7 | | 6.00 | [3] July 1, 1984 |
| 8 | | 4.50 | [3] July 1, 1984 |
| 9 | | 13.00 | [3] July 1, 1984 |
| 10–17 | | 9.50 | [3] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | | 13.00 | [3] July 1, 1984 |
| 19–100 | | 13.00 | [3] July 1, 1984 |
| 1–100 | (869–022–00156–6) | 9.50 | July 1, 1994 |
| 101 | (869–022–00157–4) | 29.00 | July 1, 1994 |
| 102–200 | (869–022–00158–2) | 15.00 | July 1, 1994 |
| 201–End | (869–022–00159–1) | 13.00 | July 1, 1994 |
| **42 Parts:** | | | |
| 1–399 | (869–022–00160–4) | 24.00 | Oct. 1, 1994 |
| 400–429 | (869–022–00161–2) | 26.00 | Oct. 1, 1994 |
| 430–End | (869–022–00162–1) | 36.00 | Oct. 1, 1994 |
| **43 Parts:** | | | |
| 1–999 | (869–022–00163–9) | 23.00 | Oct. 1, 1994 |
| 1000–3999 | (869–022–00164–7) | 31.00 | Oct. 1, 1994 |
| 4000–End | (869–022–00165–5) | 14.00 | Oct. 1, 1994 |
| **44** | (869–022–00166–3) | 27.00 | Oct. 1, 1994 |
| **45 Parts:** | | | |
| 1–199 | (869–022–00167–1) | 22.00 | Oct. 1, 1994 |
| 200–499 | (869–022–00168–0) | 15.00 | Oct. 1, 1994 |
| 500–1199 | (869–022–00169–8) | 32.00 | Oct. 1, 1994 |
| 1200–End | (869–022–00170–1) | 26.00 | Oct. 1, 1994 |
| **46 Parts:** | | | |
| 1–40 | (869–022–00171–0) | 20.00 | Oct. 1, 1994 |
| 41–69 | (869–022–00172–8) | 16.00 | Oct. 1, 1994 |
| 70–89 | (869–022–00173–6) | 8.50 | Oct. 1, 1994 |
| 90–139 | (869–022–00174–4) | 15.00 | Oct. 1, 1994 |
| 140–155 | (869–022–00175–2) | 12.00 | Oct. 1, 1994 |
| 156–165 | (869–022–00176–1) | 17.00 | [7] Oct. 1, 1993 |
| 166–199 | (869–022–00177–9) | 17.00 | Oct. 1, 1994 |
| 200–499 | (869–022–00178–7) | 21.00 | Oct. 1, 1994 |
| 500–End | (869–022–00179–5) | 15.00 | Oct. 1, 1994 |
| **47 Parts:** | | | |
| 0–19 | (869–022–00180–9) | 25.00 | Oct. 1, 1994 |
| 20–39 | (869–022–00181–7) | 20.00 | Oct. 1, 1994 |
| 40–69 | (869–022–00182–5) | 14.00 | Oct. 1, 1994 |
| 70–79 | (869–022–00183–3) | 24.00 | Oct. 1, 1994 |
| 80–End | (869–022–00184–1) | 26.00 | Oct. 1, 1994 |
| **48 Chapters:** | | | |
| 1 (Parts 1–51) | (869–022–00185–0) | 36.00 | Oct. 1, 1994 |
| 1 (Parts 52–99) | (869–022–00186–8) | 23.00 | Oct. 1, 1994 |
| 2 (Parts 201–251) | (869–022–00187–6) | 16.00 | Oct. 1, 1994 |
| 2 (Parts 252–299) | (869–022–00188–4) | 13.00 | Oct. 1, 1994 |
| 3–6 | (869–022–00189–2) | 23.00 | Oct. 1, 1994 |
| 7–14 | (869–022–00190–6) | 30.00 | Oct. 1, 1994 |
| 15–28 | (869–022–00191–4) | 32.00 | Oct. 1, 1994 |
| 29–End | (869–022–00192–2) | 17.00 | Oct. 1, 1994 |
| **49 Parts:** | | | |
| 1–99 | (869–022–00193–1) | 24.00 | Oct. 1, 1994 |
| 100–177 | (869–022–00194–9) | 30.00 | Oct. 1, 1994 |
| 178–199 | (869–022–00195–7) | 21.00 | Oct. 1, 1994 |
| 200–399 | (869–022–00196–5) | 30.00 | Oct. 1, 1994 |
| 400–999 | (869–022–00197–3) | 35.00 | Oct. 1, 1994 |
| 1000–1199 | (869–022–00198–1) | 19.00 | Oct. 1, 1994 |
| 1200–End | (869–022–00199–0) | 15.00 | Oct. 1, 1994 |
| **50 Parts:** | | | |
| 1–199 | (869–022–00200–7) | 25.00 | Oct. 1, 1994 |
| 200–599 | (869–022–00201–5) | 22.00 | Oct. 1, 1994 |
| 600–End | (869–022–00202–3) | 27.00 | Oct. 1, 1994 |
| CFR Index and Findings Aids | (869–022–00053–5) | 38.00 | Jan. 1, 1994 |

## CFR ISSUANCES 1995
## January 1995 Editions and Projected April, 1995 Editions

This list sets out the CFR issuances for the January 1995 editions and projects the publication plans for the **April, 1995** quarter. A projected schedule that will include the **July, 1995** quarter will appear in the first **Federal Register** issue of July.

**For pricing information on available 1994–1995 volumes consult the CFR checklist which appears every Monday in the Federal Register.**

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

### Titles revised as of January 1, 1995:

**Title**

**CFR Index**

**1–2**

**3 (Compilation)**

**4**

**5 Parts:**
1–699
700–1199
1200–End

**6 [Reserved]**

**7 Parts:**
0–26
27–45
46–51
52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1939
1940–1949
1950–1999
2000–End

**8**

**9 Parts:**
1–199
200–End

**10 Parts:**
0–50
51–199
200–399 (Cover only)
400–499
500–End

**11**

**12 Parts:**
1–199
200–219
220–299
300–499
500–599
600–End

**13**

**14 Parts:**
1–59
60–139
140–199
200–1199
1200–End

**15 Parts:**
0–299
300–799
800–End

**16 Parts:**
0–149
150–999
1000–End

### Projected April 1, 1995 editions:

**Title**

**17 Parts:**
1–199
200–239
240–End

**18 Parts:**
1–149
150–279
280–399
400–End

**19 Parts:**
1–140
141–199
200–End

**20 Parts:**
1–399
400–499
500–End

**21 Parts:**
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

**22 Parts:**
1–299
300–End

**23**

**24 Parts:**
0–199
200–219
220–499
500–699
700–899
900–1699
1700–End

**25**

**26 Parts:**
1 (§§ 1.0-1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.440)
1 (§§ 1.441–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)
1 (§§ 1.908–1.1000)
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
2–29
30–39
40–49
50–299
300–499
500–599 (Cover only)
600–End

**27 Parts:**
1–199
200–End (Cover only)

## TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1995

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

| DATE OF FR PUBLICATION | 15 DAYS AFTER PUBLICATION | 30 DAYS AFTER PUBLICATION | 45 DAYS AFTER PUBLICATION | 60 DAYS AFTER PUBLICATION | 90 DAYS AFTER PUBLICATION |
|---|---|---|---|---|---|
| April 3 | April 18 | May 3 | May 18 | June 2 | July 3 |
| April 4 | April 19 | May 4 | May 19 | June 5 | July 3 |
| April 5 | April 20 | May 5 | May 22 | June 5 | July 5 |
| April 6 | April 21 | May 8 | May 22 | June 6 | July 5 |
| April 7 | April 24 | May 8 | May 22 | June 6 | July 6 |
| April 10 | April 25 | May 10 | May 25 | June 9 | July 10 |
| April 11 | April 26 | May 11 | May 26 | June 12 | July 10 |
| April 12 | April 27 | May 12 | May 30 | June 12 | July 11 |
| April 13 | April 28 | May 15 | May 30 | June 12 | July 12 |
| April 14 | May 1 | May 15 | May 30 | June 13 | July 13 |
| April 17 | May 2 | May 17 | June 1 | June 16 | July 17 |
| April 18 | May 3 | May 18 | June 2 | June 19 | July 17 |
| April 19 | May 4 | May 19 | June 5 | June 19 | July 18 |
| April 20 | May 5 | May 22 | June 5 | June 19 | July 19 |
| April 21 | May 8 | May 22 | June 6 | June 20 | July 20 |
| April 24 | May 9 | May 24 | June 8 | June 23 | July 24 |
| April 25 | May 10 | May 25 | June 9 | June 26 | July 24 |
| April 26 | May 11 | May 26 | June 12 | June 26 | July 25 |
| April 27 | May 12 | May 30 | June 12 | June 26 | July 26 |
| April 28 | May 15 | May 30 | June 12 | June 27 | July 27 |