

# Federal Register

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  3. The important elements of typical Federal Register documents.
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- 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:** May 18 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

### SALT LAKE CITY, UT

- WHEN:** May 9 at 9:00 am  
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**Presidential Documents**

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**Title 3—****Memorandum of April 14, 1995****The President****Certification Regarding Use of the Exchange Stabilization Fund and Federal Reserve in Relation to the Economic Crisis in Mexico****Memorandum for the Secretary of the Treasury**

On January 31, 1995, I approved a program of assistance to Mexico, in the form of swap facilities and securities guarantees in an amount not to exceed \$20 million, using the Exchange Stabilization Fund (the "ESF program").

By virtue of the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and section 406 of the Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance Military Readiness Act of 1995 (Public Law 104-6), I hereby certify that:

- (1) There is no projected cost (as defined in the Federal Credit Reform Act of 1990) to the United States from the proposed swap transaction.
- (2) All loans, credits, guarantees, and currency swaps to Mexico from the Exchange Stabilization Fund or the Federal Reserve System are adequately backed to ensure that all United States funds are repaid.
- (3) The Government of Mexico is making progress in ensuring an independent central bank.
- (4) Mexico has in effect a significant economic reform effort.
- (5) The Executive Branch has provided the documents requested by House Resolution 80 adopted March 1, 1995, and described in paragraphs (1) through (28) of that Resolution. All documents identified as responsive to the Resolution have been provided to the entire House of Representatives. Pursuant to the terms of the Resolution, the Executive Branch has not provided those documents as to which the Executive Branch has informed the House that it would be inconsistent with the public interest to provide the documents to the House. Pending arrangements for safekeeping of classified material in a House facility, classified documents have been provided to the House by making them available at Executive Branch facilities. Each agency, including the Federal Reserve Board, has advised the House of the procedures employed by that agency to provide the documents requested by House Resolution 80.

I have been informed that the Board of Governors of the Federal Reserve System has provided the documents requested by House Resolution 80 and described in paragraphs (1) through (28) of that Resolution.

I hereby delegate to you the reporting requirement contained in section 406 of Public Law 104-6. You are authorized and requested to report this certification immediately to the Speaker of the House and appropriate congressional committees, as defined in section 407 of Public Law 104-6.

I also hereby delegate to you the reporting requirement contained in section 403 of Public Law 104-6.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,  
*Washington, April 14, 1995.*

[FR Doc. 95-9852

Filed 4-17-95; 3:54 pm]

Billing code 4810-31-M

# Rules and Regulations

Federal Register

Vol. 60, No. 75

Wednesday, April 19, 1995

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

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## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

#### 7 CFR Chapter II

RIN 0584-AB53

#### Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Homelessness/Migrancy as Nutritional Risk Conditions

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

**SUMMARY:** This final rule amends regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to comply with the mandate of section 204 of the Child Nutrition Amendments of 1992, enacted on August 14, 1992. Consistent with that legislation, and as proposed on April 6, 1994, this rulemaking adds homelessness and migrancy to the predisposing nutritional risk conditions for the WIC Program.

For purposes of the WIC Program's nutritional risk priority system, this rule allows State agencies to place individuals certified for WIC solely due to homelessness or migrancy in Priorities IV, V, VI, or, at their option, Priority VII. The use of Priority VII for service to certified participants who might regress in nutritional status without continued provision of supplemental foods would remain a State agency option.

The intended effect of this rule is to allow categorical and income-eligible homeless or migrant individuals, who lack any other documented nutritional or medical condition, to receive WIC Program assistance.

This final rule also responds to two provisions of section 204 of the Healthy Meals for Healthy Americans Act of 1994 by making technical changes in the

WIC Program rules without prior notice and comment. The name of the Program is changed from the Special Supplemental Food Program for Women, Infants, and Children to the Special Supplemental Nutrition Program for Women, Infants, and Children. Also, in light of modifications in the statutory definition of "nutritional risk", the Department has reclassified as "direct" nutritional risk factors certain medical and health conditions previously identified as "predisposing" nutritional risk factors.

**DATES:** This rule is effective on April 19, 1995. This rule must be implemented not later than April 19, 1996.

**FOR FURTHER INFORMATION CONTACT:** Contact Barbara Hallman, Supplemental Food Programs Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 542, Alexandria, Virginia 22302, (703) 305-2730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, William E. Ludwig, Administrator of the Food and Consumer Service has certified that this rule will not have a significant impact on a substantial number of small entities. WIC local agency participant caseloads may potentially increase and thereby increase local food vendor business. The net effect on State and local agencies is expected to be minimal.

##### Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

##### Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires

intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and 48 FR 29114 June 24, 1983).

##### Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of this preamble. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

In the WIC Program, the administrative procedures are as follows: (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9; and (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and (4) procurement by State and local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

##### References and Notice Provisions

1. Chavin, Kristal, Seabron, and Guigli; *The Reproductive Experience of Women Living in Hotels for the Homeless in New York City*; New York State Journal of Medicine, 1987.

2. The Homeless Families Program newsletter, Home Again, February edition, 1994.

3. National Advisory Council on Maternal, Infant, and Fetal Nutrition, *1992 Biennial Report on the Special Supplemental Food Program for Women, Infants, and Children (WIC) and on the Commodity Supplemental Food Program (CSFP)*.

4. 1992 Recommendations of the National Advisory Council on Migrant Health; *Farmworkers Health for the Year 2000*.

5. Technical Paper No. 12 prepared for USDA/FNS by Awal Dad Khan; *Homeless Mothers and Children: What is the Evidence for Nutritional Risk?*, 1991.

6. United States Conference of Mayors survey, *A Status Report on Hunger and Homelessness in America's Cities*, 1993.

The Department adopts as final, two technical Program changes in response to provisions of Pub. L. 103-448, the Healthy Meals for Healthy Americans Act of 1994. Section 204(w)(1)(A) of Pub. L. 103-448 changed the name of the Special Supplemental Food Program for Women, Infants, and Children to the Special Supplemental Nutrition Program for Women, Infants, and Children.

Secondly, in section 204(a) of Pub. L. 103-448, Congress redefined the Program term "nutritional risk". Before the amendment, alcoholism, drug addiction, homelessness and migrancy were identified as conditions that predisposed persons to "inadequate nutritional patterns or nutritionally related medical conditions, \* \* \*" 42 U.S.C. § 1758(b)(8). Section 204(a) of Pub. L. 103-448 amended this definition to indicate that alcoholism and drug abuse will henceforth be considered conditions that directly affect nutritional health. Homelessness and migrancy are still considered predisposing conditions. In light of this change, the Department, at 7 CFR 246.7(e)(2)(iv), is reclassifying those medical and health conditions identified in the regulation as similar to alcoholism and drug abuse as "direct" risk factors.

Pursuant to 5 U.S.C. 553(b)(3)(A), "notice and public procedure thereon" are not required prior to the implementation of a final rule if those procedures are "unnecessary". We view the term unnecessary in this context as meaning that if a statutory provision requires a particular regulatory result or if a regulatory change only clarifies an already existing regulation and the change will have no real effect on the public, notice and comment are unnecessary. Both of the regulatory changes made herein as final rules in response to section 204 of Pub. L. 103-448 qualify for exemption from notice and comment procedures because those procedures are "unnecessary", as that term is used in 5 U.S.C. 553(b)(3)(A).

### Background

Homelessness is not a new issue, but the plight of the homeless has captured much public attention in the last several years as the nature and number of homeless have changed. Homelessness is variably defined as a housing problem, an employment problem, a problem brought on by the deinstitutionalization of mentally ill persons, a symptom of the breakdown of family traditions and/or of an

inadequate social welfare system, or any combination of these factors (Rossi and Wright, 1987). According to a 1993 *Status Report on Hunger and Homelessness in America's Cities*, released by the United States Conference of Mayors, it is suggested that as many as seven million people were homeless during some part of the 1980s, and the problem is more than ten times as widespread as previously acknowledged. City officials participating in the Mayors' Conference identified unemployment and/or underemployment, poverty, and the high cost of housing as the major causes of hunger and homelessness.

The homeless of today defy the traditional definitions and notions of shiftless, skid row vagrants for whom alcoholism was their nemesis. Today's homeless population contains a sizeable number of women and children—over one-third of the total homeless population in America (Wright, 1988; Breakey, 1989; Bassuk and Rosenberg, 1990). Studies show forty-three percent of today's homeless are families, and an increasing number of the "new homeless" include economically displaced individuals who have lost their jobs, exhausted their resources, and recently entered into the ranks of the homeless and consider their condition to be temporary. It is clear that the homeless population is heterogeneous and includes many subgroups. The Homeless Families Program (HFP), a joint initiative of the Robert Wood Johnson Foundation and the Department of Housing and Urban Development, urges that informed public policy resist the temptation to simplify the complex issue of homelessness and distinguish homeless families from single unattached adults. HFP asserts that the demographics, causes of homelessness, length of time homeless, and health issues differ significantly between these subgroups.

There is very little data on the health and/or nutritional status of migrants. However, that which does exist reveals an extremely bleak and disturbing picture, e.g., infant mortality rates are considerably higher than the general U.S. population; incidence of malnutrition is higher than among any subpopulation in the nation; and rates of parasitic disease among migrant children are many times higher than among the general population. Public hearings before the National Advisory Council on Migrant Health, of the Department of Health and Human Services (DHHS), have indicated that housing is the number one need of this subpopulation. As stated in the preamble of this rule's proposed version

dated April 6, 1994, studies suggest that migrants suffer many of the circumstances and conditions afflicting the homeless.

The changing nature of the homeless and the chronic conditions of migrants have necessitated a re-examination of the causes, circumstances, and approaches to addressing the needs of both these vulnerable groups. Because of the increased nutritional risks associated with homelessness and migrancy, the National Advisory Council on Maternal, Infant, and Fetal Nutrition recommended in its 1992 Report to the President and Congress that Section 17(b)(8) of the Child Nutrition Act of 1966 (CNA), 42 U.S.C. 1786(b)(8), be amended to include homelessness and migrancy as predisposing nutritional risk conditions for the WIC Program. Congress and the President accepted this recommendation and, in section 204 of the Child Nutrition Amendments of 1992, Public Law 102-342, specifically identified homelessness and migrancy as predisposing nutritional risk conditions for purposes of WIC Program eligibility.

### The Homelessness/Migrancy as Nutritional Risk Conditions Proposed Rule

A proposed rule on homelessness/migrancy as predisposing nutritional risk conditions was published for comment on April 6, 1994 at 59 FR 16146. The rule proposed to place individuals certified for WIC due solely to homelessness or migrancy in Priority VII, along with previously certified participants who might regress in nutritional status without continued provision of supplemental foods. While the use of Priority VII for this latter group of individuals would have remained a State agency option, State agencies would have been required to use Priority VII for homeless or migrant individuals who are certified solely due to their homelessness or migrancy. Because income-eligible homeless and migrant individuals with documentable nutritional deficiencies or medical conditions would already be certified for WIC Program assistance, the intended effect of the proposed rule was to appropriately place income-eligible homeless or migrant individuals, without a documented nutritional or medical condition, in a lower priority than individuals, including the homeless and migrants, with documented risk conditions.

### Comments on the Proposed Rule

In the April 1994 proposed version of this rule, the Department cited various

studies which support including homelessness and migrancy as predisposing nutritional risk conditions. Such studies suggest there is a high likelihood of various health-related problems associated with homelessness and migrancy. However, despite a decade of active advocacy of homeless issues, there is very little systematic and reliable information available on the health and nutritional status of the homeless or any of its subgroups. Nevertheless, WIC State agencies have gained an impressive amount of practical knowledge and experience from which the Department benefits in planning its outreach efforts. This practical knowledge, as demonstrated in the comments received from both public and private homeless advocacy groups on the proposed rule, was instrumental in formulating the final rule.

A total of 43 comment letters were received from both public and private individuals, groups, and State and local agencies. All except one commenter agreed that homelessness and migrancy should be considered predisposing nutritional risk conditions for the WIC Program. However, most commenters opposed the proposed placement in Priority VII of individuals certified for WIC based solely on their migrancy or homelessness. Those who objected to this provision suggested that the many risk conditions associated with homelessness and migrancy, as cited in the proposed rule, warrant a higher placement of homeless and migrant persons in WIC's nutritional risk priority system, even though they may not show signs of such risks at the time of certification. The common suggestion of commenters was that State agencies should be allowed to determine which priority best suits the needs of its homeless and migrant community. Second, many commenters claimed that, in times of limited funding, States could not serve participants certified for Priority VII and therefore, the intended beneficiaries of this rule—homeless and migrant individuals who are at nutritional risk solely due to their homelessness or migrancy—would not receive WIC services. Third, several commenters mentioned the difficulty of contacting homeless or migrant individuals placed on waiting lists during times of funding shortages, who frequently do not have mailing addresses or telephones, to inform them of caseload availability. In fear of losing the opportunity to serve this vulnerable and mobile population, commenters suggested that homeless and migrant individuals be provided benefits at the earliest opportunity. The

aforementioned three reasons comprised the major objections or opposition to the proposed rule. In addition to these comments, one commenter suggested that WIC's nutritional risk definition be amended to include homelessness and migrancy among the listed conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

The Department appreciates the comments of all those who responded to the proposed rule, and values their commitment to providing the best possible WIC service to the homeless and migrant community. The Department has carefully and thoughtfully considered all of the comments submitted in response to the proposed rule. We believe the revisions that have been made in the final rule, in response to the comments received, improve both the acceptability and quality of the rule.

#### **Priority Placement of Individuals Certified Solely Due to Homelessness/Migrancy**

In response to the many commenters who objected to the required placement in Priority VII of homeless and migrant individuals certified at nutritional risk solely due to their homelessness/migrancy, and who preferred that State agencies be granted the discretion to place such individuals in a higher priority, the Department has made a partial concession to this preference. Pregnant, breastfeeding, or postpartum women, infants, and children who are certified for WIC solely due to their homelessness/migrancy may be placed in Priority IV, V, and VI, based on their respective category. Alternatively, Priority VII may be used to serve any of the above mentioned categorically eligible homeless or migrant individuals, at the discretion of the State agency. For instance, a homeless or migrant pregnant or breastfeeding woman may be placed either in Priority IV, or she could be placed in Priority VII if the State agency chose to use Priority VII to serve all homeless or migrant individuals whose only nutritional risk condition was homelessness or migrancy.

WIC's nutritional risk priority system was developed to prioritize service according to the seriousness of demonstrated nutritional risk conditions. As stated in the proposed rule, given the facts revealed through studies on the homeless and migrants, there is a high likelihood that these groups are already being served by the WIC Program by virtue of other documented nutritional risk(s). The Department strongly stands by the logic

and fairness of the WIC priority system, which advocates serving individuals with documented nutritionally related medical risk conditions before persons with dietary risk only or persons likely to regress to a former risk. To serve applicants with no documentable medical or nutritional risk condition, even when their lifestyle may predispose them to risk conditions, before someone with verifiable nutritionally-related risk conditions, would be contrary to the purpose and intent of WIC's service priority system. Finally, the Department recognizes the limitations of the services it can provide to address the many needs of homeless and migrant individuals. Although it is clear that WIC services can contribute to improving the nutrition and health of these vulnerable groups, such services cannot change their homeless or migrant circumstances. Homelessness and migrancy are socio-economic conditions which require more than the provision of supplemental foods and nutrition services to change the individual's circumstances. In addition, as stated earlier, the homeless are a heterogeneous group with a wide range of characteristics, circumstances, and needs. The definition of a homeless individual, as specified in section 17(b)(15) of the CNA, 42 U.S.C. 1786(b)(15), covers a wide range of circumstances and includes persons who are temporarily living with relatives or friends, individuals housed in a shelter which serves meals and can offer nutrition education, or individuals whose nighttime residence is not designed or ordinarily used as a regular sleeping accommodation. These examples or conditions reflect the diversity in the homeless population as defined by WIC legislation.

The Department reminds those commenters who stressed the importance of seizing the opportunity to provide services to homeless and migrant applicants, that section 246.7(e)(2)(iii)(A) of the WIC regulations already requires State agencies to establish criteria for identifying categories of persons at special nutritional risk who require expedited services. In addition, this provision of the Program regulations requires that migrant farmworkers and their family members who soon plan to leave the jurisdiction of the local agency be considered as special nutritional risk applicants. Added to these provisions by this final rule is the allowance for States, at 246.7(d)(4), to include homeless individuals in their criteria for expedited services, along with migrant farmworkers and their family members.

In response to those commenters who suggested that WIC add homelessness and migrancy to the list of predisposing nutritional risk conditions at section 246.7(e)(2)(iv), the following changes are made. This final rule designates homelessness and migrancy as predisposing nutritional risk conditions, and redesignates conditions currently listed at section 246.7(e)(2)(iv) as direct nutritional risks (chronic infections, alcohol or drug abuse, mental retardation in women, lead poisoning, history of high-risk pregnancies or factors associated with high-risk pregnancies such as smoking; conception before 16 months postpartum; history of low birth weight, premature births, or neonatal loss; adolescent pregnancy; or current multiple pregnancies in pregnant women, or congenital malformations in infants or children, or infants born of women with alcohol or drug abuse histories or mental retardation). The redesignation of these currently listed predisposing conditions to a new status as direct risks is a technical change the impact of which will only affect recordkeeping. It was done to reflect two realities. First, section 204(a) of Pub. L. 103-448 revised the legislative definition of "nutritional risk" by adding a new subparagraph that includes conditions that directly affect the nutritional health of a person, such as alcoholism or drug abuse. Therefore, consistent with the legislation, this final rule removes the aforementioned conditions, along with alcoholism and drug abuse, from the predisposing category and more appropriately groups them as conditions that directly affect a person's nutritional health. The revision of the definition of nutritional risk in Pub. L. 103-448 further delineates nutritional risk conditions by retaining homelessness and migrancy as examples of conditions that predispose persons to inadequate dietary patterns or nutritionally related medical conditions. Homelessness and migrancy are now the only examples of conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions that remain in the CNA. Second, in addition to the legislative directive, the change was made to reflect current practices, which in the Department's estimation, is appropriate. Most if not all State agencies classify the aforementioned conditions as direct nutritionally related medical risk conditions.

**Definition of Homelessness/Migrancy**

In the April 1994 proposed version of this rule the Department proposed that it keep the current definitions of both a

"homeless individual" and "migrant farmworker" outlined in section 246.2, and asserted that both should accommodate all individuals Congress intended to include in their references to homelessness and migrancy in section 204 of the Child Nutrition Amendments of 1992, Public Law 102-342. No commenters opposed this. Therefore, these definitions will remain as currently stated in section 246.2 for purposes of this final rule.

**WIC Priority System**

The current WIC nutritional risk priority system was designed to ensure that persons at greatest health and nutritional risk are served first with available program funds. The priority system therefore follows a logical order of progression to determine priority for service. Applicants with documented nutritionally related medical conditions are served first, followed by those at nutritional risk due to inadequate dietary patterns. Finally, and as a State agency option, previously certified participants whose nutritional status might regress without continued provision of supplemental foods are certified in Priority VII.

This final rule requires State agencies to include pregnant, breastfeeding or postpartum women, infants, and children who are certified at nutritional risk solely because of their homelessness or migrancy in one of the respective priorities (Priority IV through VI, or VII) of the WIC nutritional risk priority system. State agencies must indicate in their State Plans which Priority(ies) they will use to certify pregnant, breastfeeding or postpartum women, infants, and children at nutritional risk solely because of their homelessness or migrancy. State agencies may also continue to use Priority VII to identify certified participants who might regress in nutritional status without continued provision of supplemental foods. State agencies must implement the provisions of this rule by no later than October 1, 1995.

The Department does not intend for State agencies to use administrative shortcuts in certifying homeless and migrant individuals. The Department fully expects that homeless and migrant applicants will receive all the normal and necessary health assessments that are routinely performed to determine the presence of a medical or nutritional risk which would determine their proper priority placement, and assist in identifying other health and social services to which such individuals may be referred.

**Change in Name of Program**

Section 204(w)(1) of Pub. L. 103-448, changed the name of the WIC Program from the "Special Supplemental Food Program for Women, Infants, and Children" to the "Special Supplemental Nutrition Program for Women, Infants, and Children". This final rule implements that statutory change.

**List of Subjects in 7 CFR Part 246**

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR Chapter II and Part 246 are amended as follows:

1. In 7 CFR Chapter II (consisting of Parts 210-299) all references to "the Special Supplemental Food Program for Women, Infants, and Children" are revised to read "the Special Supplemental Nutrition Program for Women, Infants, and Children".

**PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN**

2. The authority citation for Part 246 continues to read as follows:

**Authority:** 42 U.S.C. 1786.

4. In § 246.7, paragraphs (e)(2)(ii), (e)(2)(iv), the introductory text of paragraph (e)(4) and paragraph (e)(4)(vii) are revised to read as follows:

**§ 246.7 Certification of participants.**

- \* \* \* \* \*
- (e) \* \* \*
- (2) \* \* \*

(ii) Other documented nutritionally related medical conditions, such as clinical signs of nutritional deficiencies, metabolic disorders, pre-eclampsia in pregnant women, failure to thrive in an infant, chronic infections in any person, alcohol or drug abuse or mental retardation in women, lead poisoning, history of high risk pregnancies or factors associated with high risk pregnancies (such as smoking; conception before 16 months postpartum; history of low birth weight, premature births, or neonatal loss; adolescent pregnancy; or current multiple pregnancy) in pregnant women, or congenital malformations in infants or children, or infants born of women with alcohol or drug abuse histories or mental retardation.

\* \* \* \* \*

(iv) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical

conditions, such as homelessness or migrancy.

\* \* \* \* \*

(4) *Nutritional risk priority system.* The competent professional authority shall fill vacancies which occur after a local agency has reached its maximum participation level by applying the following participant priority system to persons on the local agency's waiting list. Priorities I through VI shall be utilized in all States. The State agency may, at its discretion, expand the priority system to include Priority VII. The State agency may set income or other sub-priority levels within any of these seven priority levels. The State agency may expand Priority III, IV, or V to include high-risk postpartum women. The State agency may place pregnant or breastfeeding women and infants who are at nutritional risk solely because of homelessness or migrancy in Priority IV; children who are at nutritional risk solely because of homelessness or migrancy in Priority V; and postpartum women who are at nutritional risk solely because of homelessness or migrancy in Priority VI, *OR*, the State agency may place pregnant, breastfeeding or postpartum women, infants, and children who are at nutritional risk solely because of homelessness or migrancy in Priority VII.

\* \* \* \* \*

(vii) *Priority VII.* Individuals certified for WIC solely due to homelessness or migrancy and, at State agency option, and in accordance with the provisions of paragraph (e)(1)(iii) of this section, previously certified participants who might regress in nutritional status without continued provision of supplemental foods.

\* \* \* \* \*

Dated: April 11, 1995.

**William E. Ludwig,**

*Administrator, Food and Consumer Service.*

[FR Doc. 95-9657 Filed 4-18-95; 8:45 am]

BILLING CODE 3410-30-U

**Food Safety and Inspection Service**

**9 CFR PARTS 318, 381 and 391**

[Docket No. 94-033F]

RIN 0583-AB87

**Reduction of Accreditation Fees for FSIS Accredited Laboratories**

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Confirmation of interim rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is confirming the interim regulations amending provisions of the Federal meat and poultry products inspection regulations to reduce the fees charged participants in the Agency's voluntary Accredited Laboratory Program (ALP). Non-Federal analytical laboratories are qualified under the ALP to conduct analyses of official meat and poultry samples. The payment by laboratories of annual accreditation fees that cover the costs of the ALP is mandated by the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Farm Bill), as amended. FSIS determined late last year that reduced ALP administrative expenditures for fiscal year 1995 would enable the Agency to charge a smaller accreditation fee than it did last year. Since the amount of the laboratory accreditation fee is set forth in the regulations, the regulations had to be changed before the Agency could charge a different fee. To meet fee billing deadlines, FSIS found it necessary to publish the fee reduction rule on an interim basis.

The Agency also took the opportunity to make some editorial corrections to the regulations.

**EFFECTIVE DATE:** April 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jess Rajan, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 516A, Annex Building, 300 12th Street SW., Washington DC 20250-3700, (202) 205-0679.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 1327 (7 USC 138f) of the Food, Agriculture, Conservation, and Trade Act of 1990 (PL 101-624), as amended, known as the 1990 Farm Bill, requires USDA to charge a nonrefundable accreditation fee for laboratories seeking accreditation by the Secretary under the authority of the FMIA or PPIA. The fee is required to be in an amount that offsets the cost of the ALP administered by FSIS under the authority of the FMIA and PPIA.

Fees are billed annually on a per-accreditation basis at a rate that is established by regulation (9 CFR 391.5). The ALP regulations define an accreditation to be a determination by FSIS that a laboratory is qualified to analyze official samples of meat and poultry products for the presence and amount of four food chemistry analytes or a determination that a laboratory is qualified to analyze official samples of product for the presence and amount of one of several classes of chemical

residue. The per-accreditation fee for fiscal year 1994 was \$3,500.

FSIS projected late last year that the expenses of administering the ALP during fiscal year 1995 would be less than the expenses for fiscal year 1994. The reduction came about because of management savings and, to a lesser extent, a smaller enrollment in the ALP than anticipated. The Agency determined that the smaller overall cost of running the program meant that it could reduce the fee per accreditation. The Agency determined that, for fiscal year 1995, the fee for original accreditations and renewals would be \$2,500.

In order to meet billing deadlines for accreditation renewals, avoid rebates for renewals paid for at the old rate, and avoid unnecessary administrative burdens on the Government and industry, the Agency found it necessary to promulgate an interim rule with request for comments on December 27, 1994 (59 FR 66446), effective the same date. The interim rule amended the administrative provisions of the Federal meat and poultry inspection regulations to change the fee. Also, some editorial corrections were made to the ALP regulations.

The interim rule provided a 30-day comment period ending January 26, 1995. During this period one comment was received from a trade association favoring the fee reduction.

**Executive Order 12866**

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule reduces the accreditation fees for non-Federal analytical chemistry laboratories accredited under the Federal Meat and Poultry Products Inspection Acts and regulations promulgated thereunder.

States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any requirements with respect to federally inspected premises and facilities, and operations of such establishments, that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions are also preempted under the FMIA and PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat or poultry products that are in addition to, or different than,

those imposed under the FMIA or the PPIA, as well as preempted from imposing, under the PPIA for poultry products, certain storage and handling requirements. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat or poultry products that are misbranded or adulterated under the FMIA or PPIA or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. States and local jurisdictions may also make requirements or take other actions, that are consistent with the FMIA and PPIA, with respect to any other matters regulated under the FMIA and PPIA.

Under the FMIA and the PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA or PPIA. These States may, however, impose more stringent requirements on such State-inspected products and establishments.

This final rule will have no retroactive effect and applicable administrative procedures must be exhausted before any judicial challenge to the application of these provisions. Those administrative procedures are set forth in 9 CFR §§ 306.5, 318.21(h), 381.35, and 381.153(h).

#### Effect on Small Entities

Most of the entities accredited by FSIS that will be affected by this final rule are large, independent laboratories or official meat packing establishments or States that own or operate accredited laboratories.

There are currently approximately 150 laboratories in the FSIS accredited laboratory program. About three quarters of these are large entities, with respect to the volume of business, or part of such entities as large business corporations, State universities, or State governments. These laboratories provide analytical services to large and small establishments for analysis of official samples.

Participation in the Agency's Accredited Laboratory Program is voluntary. The principal burden of the final rule on laboratories will be the fee charged for FSIS accreditation (\$2,500 per accreditation, of which a laboratory may have more than one) and the minimal billing and accounting costs. This fee is substantially lower than the fee previously charged.

Some large laboratories have multiple accreditations for food chemistry and chemical residues, while many small

laboratories are accredited only for food chemistry. Thus, smaller laboratories (small entities) tend to pay smaller amounts of accreditation fees than large laboratories. Balanced against these costs are the revenues from analyzing official samples, which are likely to be greater because firms can be expected to pass much of the costs of obtaining accreditation to clients, and the enhancement of income from other services provided by the laboratories because of their status as "accredited by FSIS." As a result, the net effect of this rulemaking on both small and large laboratories will not be significant. The user-fee costs for having official samples analyzed by accredited laboratories are passed on to the establishments doing business with accredited laboratories, or absorbed by the official establishment if the establishment has an in-house accredited laboratory. Establishments using the laboratories benefit from the earlier marketing of product released from official retention. Because of the accreditation fee reduction authorized by this final rule, the overall benefits to the meat and poultry industry, including both small and large establishments, from using accredited laboratories can be expected to increase very modestly.

It is possible that some small laboratories that are not now participating in the ALP may choose to apply for the program because of the lower fee. If they did so, a larger number of accredited laboratories would be available for use by official establishments, including small establishments, than there are at present.

For these reasons, the net effects of the final rule, though beneficial, are not likely to be significant on a substantial number of small entities.

#### List of Subjects

##### 9 CFR Part 318

Meat inspection, Laboratory accreditation.

##### 9 CFR Part 381

Poultry and poultry products inspection, Laboratory accreditation.

##### 9 CFR 391

Fees and charges for inspection services, Laboratory accreditation fees.

#### Final Rule

For the reasons discussed in the preamble:

##### § 318.21 [Amended]

1. In part 318, the revisions of § 318.21(c)(3)(ix)(A)(1), (A)(2), (B), and

(C) published December 27, 1994 (59 FR 66446), are confirmed as final.

##### § 381.153 [Amended]

2. In part 381, the revisions of § 381.153(c)(3)(ix)(A)(1), (A)(2), (B), and (C) published December 27, 1994 (59 FR 66446), are confirmed as final.

##### § 391.5 [Amended]

3. In part 391, the revision of § 391.5 published December 27, 1994 (59 FR 66446), is confirmed as final.

Done at Washington, DC, on: April 12, 1995.

**Michael R. Taylor,**

*Acting Under Secretary for Food Safety.*

[FR Doc. 95-9592 Filed 4-18-95; 8:45 am]

BILLING CODE 3410-DM-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 94-NM-123-AD; Amendment 39-9172; AD 95-06-02]

#### **Airworthiness Directives; Boeing Model 747 Series Airplanes, Excluding Airplanes Equipped With Pratt & Whitney PW4000 and General Electric CF6-80C2 Series Engines**

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a typographical error that appeared in the applicability statement of the above-captioned airworthiness directive (AD) that was published in the **Federal Register** on March 14, 1995 (60 FR 13618). A typographical error in the applicability statement of the AD resulted in a reference to airplane line numbers that are inaccurate.

**DATES:** Effective April 13, 1995.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of April 13, 1995 (60 FR 13618, March 14, 1995).

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2776; fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:** Airworthiness Directive (AD) 95-06-02, amendment 39-9172, applicable to certain Boeing Model 747 series

airplanes, was published as a final rule in the **Federal Register** on March 14, 1995 (60 FR 13618). As published, that final rule contained a typographical error in the applicability statement.

The applicability statement indicated that the airplanes affected by the AD were, in part, those having line numbers 969 through 922, inclusive. However, the correct line numbers are 969 through 992, inclusive. These correct line numbers appeared in the notice of proposed rulemaking (NPRM), which preceded the final rule.

This document corrects the reference to the line numbers cited in the applicability statement on page 13619, middle column, of the March 14, 1995 **Federal Register** of AD 95-06-02, to read as follows:

"Applicability: Model 747 series airplanes, line numbers 1 through 967 inclusive, and 969 through 992 inclusive; excluding airplanes equipped with Pratt & Whitney PW4000 or General Electric CF6-80C2 series engines; certificated in any category."

Since no other part of the regulatory information has been changed, the final rule is not being republished.

Issued in Renton, Washington on April 13, 1995.

**John J. Hickey,**

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

[FR Doc. 95-9623 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-13-U

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 30

#### Foreign Option Transactions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is authorizing option contracts on the Three-month Euroaira Interest Rate futures contract traded on the London International Financial Futures and Options Exchange (LIFFE) to be offered or sold to persons located in the United States. This Order is issued pursuant to: (1) Commission rule 30.3(a), 17 CFR 30.3(a), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the Commission's Order issued on September 5, 1989, 54 FR 37636 (September 12, 1989) authorizing

certain option products traded on LIFFE to be offered or sold in the United States.

**EFFECTIVE DATE:** May 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Warren Gorlick, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

**SUPPLEMENTARY INFORMATION:** The Commission has issued the following Order:

Order Under Commission Rule 30.3(a) Permitting Option Contracts on the Three-Month Euroaira Interest Rate Futures Contract Traded on the London International Financial Futures and Options Exchange to be Offered or Sold in the United States Thirty Days after Publication of this Notice in the **Federal Register** Absent Further Notice.

By Order issued on September 5, 1989 (Initial Order), the Commission authorized, pursuant to Commission rule 30.3(a),<sup>1</sup> certain option products traded on the London International Financial Futures and Option Exchange (LIFFE) to be offered or sold in the United States. 54 FR 37636 (September 12, 1989). Among other conditions, the Initial Order specified that:

Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, \* \* \* no offer or sale of any LIFFE option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order.

By letter dated March 14, 1995, LIFFE represented that it would be introducing an option contract based on the Three-Month Euroaira Interest Rate futures contract on May 16, 1995.<sup>2</sup> LIFFE has requested that the Commission supplement its Initial Order authorizing the offer and sale in the United States of options on the Long Gilt, U.S. Treasury Bond, German Government Bond, Three-Month Sterling Interest Rate, Three-Month Eurodollar Interest Rate futures contracts, options on Sterling and Dollar-Mark currencies; a Supplemental Order, 55 FR 7705 (March 5, 1990), authorizing the offer and sale in the United States of options on the Three-Month Euro-Deutschemark Interest Rate futures contract; a Supplemental Order, 57 FR 1374 (January 14, 1992), authorizing the offer and sale in the United States of options

<sup>1</sup> Commission rule 30.3(a), 17 CFR 30.3(a), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

<sup>2</sup> Letter from N.E. Carew, LIFFE, to Jane C. Kang, Commission.

on the Italian Government Bond futures contract; and a Supplemental Order, 57 FR 40603 (September 4, 1992)

authorizing the offer and sale in the United States of options on the Three-Month Euro Swiss Franc Interest Rate futures contract; by also authorizing LIFFE's option contract on the Three-Month Euroaira Interest Rate futures contract to be offered or sold to persons in the United States. Upon due consideration, and for the reasons previously discussed in the Initial Order, the Commission believes that such an authorization should be granted.

Accordingly, pursuant to Commission rule 30.3(a) and the Commission's Initial Order issued on September 5, 1989, and subject to the terms and conditions specified therein, the Commission hereby authorizes LIFFE's option contract on the Three-Month Euroaira Interest Rate futures contract to be offered or sold to persons located in the United States thirty days after publication of this Order in the **Federal Register**, unless prior to that date the Commission receives any comments which may result in a determination to delay the effective date of the Order pending review of such comments. Under such circumstances the Commission will provide notice.

#### Contract Specifications—Options on Three-Month Euroaira ("EUROLIRA") Interest Rate Futures Contract

##### Underlying Interest

One (1) Euroaira futures contract.

##### Delivery/Expiry Months

March, June, September, December.

##### Deliver Day/Exercise Day/Expiry Day

Exercise by 17.00 on any business day. Delivery on the first business day after the exercise day. Expiry at 12.30 on the Last Trading Day.

##### Last Trading Day

11.00 Last Trading Day of the Euroaira futures contract.

##### Quotation

Multiples of 0.01 (i.e. 0.01%).

##### Minimum Price Fluctuation (Tick Size and Value)

0.01 (ITL 25,000)

##### Trading Hours

07.57-16.10

##### Contract Standard

Assignment of 1 Euroaira futures contract for the delivery month at the exercise price.

##### Exercise Price Intervals

0.25 (i.e., 0.25%) e.g., 91.00, 91.25, 91.50 etc.

##### Introduction of New Exercise Prices

Thirteen exercise prices will be listed for new series. Additional exercise prices will be introduced on the business day after the Euroaira

futures contract settlement price comes within 0.12 of the fourth highest or lowest existing exercise price.

**Option Price**

The contract price is payable by the buyer to the seller on exercise or expiry of the option, not at the time of the purchase. Positions are marked to market daily, as with futures positions.

**List of Subjects in 17 CFR Part 30**

Commodity futures, Commodity options, Foreign transactions.

Accordingly, 17 CFR Part 30 is amended as set forth below:

**PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS**

1. The authority citation for Part 30 continues to read as follows:

**Authority:** Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to Part 30 is amended by adding the following entry after the existing entries for the "London International Financial Futures and Options Exchange" to read as follows:

**Appendix B—Option Contracts Permitted To Be Offered or Sold in the U.S. Pursuant to § 30.3(a)**

Exchange	Type of contract	FR date and citation
* * * *	* * * *	* * * *
London International Financial Futures and Options Exchange.	Option Contract on Three-Month Euroaira ("Euroaira") Interest Rate Futures Contract.	199___; ___ FR ___
* * * *	* * * *	* * * *

Issued in Washington, D.C. on April 14, 1995.

**Jean A. Webb,**

*Secretary to the Commission.*

[FR Doc. 95-9636 Filed 4-18-95; 8:45 am]

BILLING CODE 6351-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Parts 343 and 385**

[Docket No. RM91-12-000]

[Order No. 578]

**Alternative Dispute Resolution**

Issued April 12, 1995.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is issuing a Final Rule to implement the Alternative Dispute Resolution Act of 1990 (ADRA). To implement its policy in support of alternative dispute resolution, the Commission is amending its Rules of Practice and Procedure to add regulations adopting provisions authorized in the ADRA and to establish procedures for approving ADR in particular proceedings.

In particular, the new rules: Adopt guidelines for applying ADR techniques and definitions from the ADRA; establish procedures for submitting, reviewing, and monitoring proposals to use ADR in specific proceedings; incorporate the provisions of the ADRA regarding binding arbitration proceedings, arbitral awards, and review of arbitration results; and adopt the provisions of the ADRA regarding confidentiality in ADR proceedings established under the new rules. The Commission is also amending its Rules of Practice and Procedure to modify existing regulations and to add new regulations with respect to the submission and review of offers of settlement. Finally, the Commission is consolidating almost all of its regulations dealing with the use of ADR in oil pipeline rate proceedings into its Rules of Practice and Procedure.

**EFFECTIVE DATE:** May 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208-1269.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin

board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

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Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

**I. Introduction**

The Federal Energy Regulatory Commission (Commission) is issuing a Final Rule to implement the Alternative Dispute Resolution Act of 1990 (ADRA).<sup>1</sup> To implement its policy in support of alternative dispute resolution, the Commission is amending Subparts E and F of Part 385 of its Rules of Practice and Procedure<sup>2</sup> to add regulations adopting provisions authorized in the ADRA and to establish procedures for approving ADR in particular proceedings.

In particular, new Rule 604 adopts guidelines for applying ADR techniques and definitions from the ADRA and establishes procedures for submitting, reviewing, and monitoring proposals to

<sup>1</sup> 5 U.S.C. 571-83 (1988), as amended by Pub. L. 102-354, 106 Stat. 944 (Aug. 26, 1992).

<sup>2</sup> 18 CFR Part 385.

use ADR in specific proceedings. New Rule 605 incorporates the provisions of the ADRA regarding binding arbitration proceedings, arbitral awards, and review of arbitration results. New Rule 606 adopts the provisions of the ADRA regarding confidentiality in ADR proceedings established under proposed new Rules 604 and 605. The Commission is amending Subparts E, F, and G of Part 385 of its Rules of Practice and Procedure to modify existing regulations and to add new regulations with respect to the submission and review of offers of settlement. Finally, the Commission is consolidating almost all of § 343.5 of its regulations, dealing with the use of ADR in oil pipeline rate proceedings, into Part 385.<sup>3</sup>

The Commission's purpose in adopting these new rules and amendments is to provide optional opportunities for regulated entities and other parties who come before the Commission to simplify and expedite their proceedings. We stress that all of these newly authorized procedures are purely voluntary on the part of the parties affected by them, and are *in addition to* all previously authorized procedures and informal practices that parties have used or had available for use. We encourage regulated entities and other parties to try these new procedures and experiment with them. They are intended to alleviate the costs and other burdens of regulatory litigation.

The Commission will continue to seek means of further streamlining and expediting its litigatory processes, including any revisions or supplements to today's new rules that may in the future appear appropriate. We welcome suggestions on how to refine these rules after they have gone into practice.

## II. Background

The ADRA amended Chapter 5 of Title 5, United States Code, by adding a new subchapter to provide explicit statutory authorization allowing federal agencies to use ADR techniques in lieu of litigation to resolve a dispute in the agency's administrative programs when all the participants to the dispute voluntarily agree to its use. ADR methods include the use of a neutral, an individual who functions to aid the participants in resolving the controversy. The ADRA provides that ADR methods may include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation,

factfinding, minitrials, and arbitration, or any combination of these.<sup>4</sup>

The ADRA requires each agency to adopt a policy that addresses the use of alternative means of dispute resolution and case management in connection with the agency's administrative actions. The Commission will fulfill this requirement with this rulemaking proceeding and through revisions to its regulations with respect to the matters under the Commission's substantive jurisdiction.<sup>5</sup> As required by the ADRA, the Commission has consulted with the Administrative Conference of the United States (ACUS) and reviewed the ACUS guidance to agencies in developing their ADR policies and in implementing those policies.<sup>6</sup>

The Congress further encouraged the use of ADR procedures in the Energy Policy Act of 1992. Section 1802(e) of that Act directed the Commission to establish appropriate ADR procedures, including required negotiations and voluntary arbitration, early in oil pipeline proceedings as a method preferable to adjudication in resolving disputes related to rates. The Commission did so by issuing Order No. 561, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992 on October 22, 1993.<sup>7</sup> Additionally, Vice President Gore's National Performance Review recommended that federal agencies expand their use of ADR techniques.

On April 17, 1991, the Commission issued a Notice of Inquiry (NOI) seeking comments on: (1) How best to implement the ADRA, (2) whether changes in the Commission's regulations are necessary or appropriate to facilitate the use of alternative means of dispute resolution, and (3) whether changes in the Commission's regulations governing settlements are necessary or appropriate.<sup>8</sup>

On November 10, 1994, in response to the comments on the NOI, the

<sup>4</sup> See Administrative Conference of the U.S., Sourcebook: Federal Agency Use of Alternative Means of Dispute Resolution (Office of the Chairman, 1987) (Sourcebook) at 44-45.

<sup>5</sup> Under the Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 565 (Aug. 4, 1988) and E.O. No. 12009, 42 FR 46267 (Sept. 15, 1977), the Chair is responsible for the administrative functions of the agency. With respect to those matters, the Commission's ADR policy has developed separately.

<sup>6</sup> Administrative Conference of the U.S., The Administrative Dispute Resolution Act: Guidance for Agency Dispute Resolution Specialists (Office of the Chairman, 1992).

<sup>7</sup> 58 FR 58753 (Nov. 4, 1993), III FERC Stats. & Regs. Preambles ¶ 30,985; *order on reh'g*, Order No. 561-A, 59 FR 40243 (Aug. 8, 1994), III FERC Stats. & Regs. Preambles ¶ 31,000 (July 28, 1994).

<sup>8</sup> 56 FR 18789 (Apr. 24, 1991), IV FERC Stats. & Regs. Notices ¶ 35,523 (1991).

Commission issued a Notice of Proposed Rulemaking (NPR).<sup>9</sup> The NPR discussed at length the application of ADR to Commission proceedings. The specific proposals in the NPR are discussed below, in the context of the comments received thereon.

In response to the NPR, the Commission received 27 comments. The commenters are identified in an Appendix to this Final Rule, and their comments are summarized and discussed below.

## III. ADR Rules

Because the use of ADR complements current settlement practices, the NPR proposed to include the new rules in Subpart F of Part 385 of the Commission's Rules of Practice and Procedure concerning settlements. Specifically, the NPR proposed to amend Rule 601(a) to provide for the convening of conferences to evaluate whether ADR is practicable in a particular proceeding. New Rule 604 was proposed to establish a mechanism for filing proposals to use ADR; new Rule 605 was proposed to adopt the provisions in the ADRA for binding arbitration procedures; and new Rule 606 was proposed to adopt the provisions in the ADRA for confidentiality in ADR proceedings. As the NPR explained, the settlement rules were retained separately so that as many options as possible would be available for expediting resolution of disputes before the Commission.

EEI asks us to confirm that the new rules do not in any way preclude parties from engaging in informal settlement discussions with each other outside the scope of organized ADR activities.<sup>10</sup> We so confirm. We reject all suggestions by PG&E<sup>11</sup> that the Final Rule in any way limits or precludes settlement discussions. The Final Rule does not preclude any other form of informal discourse, negotiation or agreement among any combination of participants on any combination of issues. ADR is an additional alternative.

The NPR explained that, apart from the provisions in proposed Rule 605 for binding arbitration proceedings, the proposed rules did not include separate provisions for the Commission's review of the ultimate outcome of an ADR proceeding. The Commission's intent is that the ultimate outcome of an ADR proceeding, like any other settlement, be subject to Commission review in a

<sup>9</sup> 59 FR 59,715 (November 18, 1994), IV FERC Stats. & Regs. Preambles ¶ 32,510.

<sup>10</sup> EEI at 3.

<sup>11</sup> See PG&E at 3-5.

<sup>3</sup> The provision implementing the statutory requirement for negotiation in oil pipeline rate proceedings remains in § 343.5.

manner that conforms with the Commission's statutory duties using existing procedures for evaluating settlements. As with the outcome of any settlement, the Commission's approval of the outcome of the ADR method used in a particular proceeding will not constitute approval of, or precedent regarding, any principle or issue in that proceeding. To the extent ADR techniques are used to resolve issues in licensing or certificate cases, that resolution will become part of the Commission's evaluation of any license or certificate that might be issued.

The commenters generally support the use of ADR.<sup>12</sup> The Industrials, noting that section 11 of the ADRA provides for an October 1, 1995 sunset provision, ask us to clarify whether the Commission intends for new Rules 604, 605 and 606 to expire on that date.<sup>13</sup> The Missouri PSC suggests a "sunset review" within "the next two to four years."<sup>14</sup>

If and when the ADRA expires, the Commission will review the continued legal viability of the binding arbitration provisions. The other provisions are all independently sustainable, absent ADRA, under the Commission's own organic statutes. All of the Commission's regulations are in any event reviewable at any time to determine whether they can be improved, just as the Final Rule herein adds improvements to previously adopted regulations, and all such regulations can and will be deleted if and when they are determined to be no longer useful or appropriate.

#### A. Initiating the Use of ADR

New Rule 604(a)(1) provides that participants may, subject to the limitations of subparagraph (a)(2) of that section, use ADR to resolve any issue in a pending matter as long as all of the participants agree to using ADR. The NOPR explained that, under the ADRA, any use of ADR proceedings must be voluntary on the part of the participants, and that the Commission is not willing to create different levels of participants for purposes of determining whether the participants support using an ADR proceeding. Thus, the NOPR proposed to require the unanimous consent contemplated by the ADRA.<sup>15</sup>

A number of commenters want to be able to use ADR procedures even if the participants are less than unanimous in requesting such use.<sup>16</sup> Two commenters support the requirement for unanimous request before ADR procedures can be implemented.<sup>17</sup>

Commenters who oppose the requirement for unanimous consent contend that one reluctant participant ought not to be able to frustrate the ability of everyone else in the case to use ADR procedures to resolve their disagreements. They suggest that there is a public interest in using ADR procedures under those circumstances. Some contend that only participants who have a "substantial interest" in the outcome of the case should be able to, in effect, "veto" use of ADR; participants with an "indirect or attenuated interest" should not be able to preclude ADR, but should be free to "opt out" and pursue their own remedies. They characterize this approach as "non-binding ADR." Another variation would be to sever one or more issues so as to use ADR procedures, unanimously requested, to resolve the rest of the issues. Commenters who support the unanimity requirement as proposed in the NOPR stress the importance of protecting the procedural rights of *all* of the parties to a proceeding, not just the big parties or the majority of the parties.

There is considerable merit to the positions expressed on both sides of this issue. ADR cannot work unless the users of it want it to work and want to use it. A single peripheral party ought not to be able to prevent everyone else from using ADR, but significant interests cannot be excluded. It is very difficult to codify a bright line test in the regulations. We will adopt the rule as proposed. We strongly urge all participants and decisional authorities to be flexible and creative in adapting ADR to their needs and to the facts and circumstances of particular cases, and in devising alternative procedures that facilitate informal resolution of most issues by all participants, or of all issues by most participants, while preserving the rights of non-participants to disagree.

at that conference. Thus, the unanimous consent is by those participants who choose to attend a conference convened for the purpose of determining whether to use ADR. As the NOPR indicated, there is an exception for binding arbitration proposals under new Rule 605(a)(5), which requires express consent of all parties in such a proposal.

<sup>16</sup> AGD at 3-4; EEI at 3-4; Electric Generation at 4-5; Northern Distributors at 1-6; ANR and CIG at 3-4; PG&E at 5-6; Transco; and Williams and Northwest at 6.

<sup>17</sup> Natural Gas Supply at 2; Natural Gas Clearinghouse at 8-9.

The NOPR explained that the Commission seeks to encourage parties to consider the use of ADR as a routine part of the Commission's decision-making processes. Accordingly, the NOPR proposed to amend Rule 601(a) by adding the words "or the use of alternative dispute resolution procedures" to specifically provide for a conference to address the possibility of using ADR techniques. The NOPR also proposed to amend Rule 504(b)(7) to conform to the amendment proposed in Rule 601(a). As under the existing rule, a conference could be convened at any time during any proceeding.

The NOPR noted that Rule 601(b)(3) provides that the failure of any party to attend a conference convened under Rule 601(a) constitutes waiver of all objections that party may have to any order or ruling arising out of, or agreement reached at, the conference. That condition would apply as well in the context of a conference at which an agreement to use ADR was reached. Thus, Rule 601(b)(3) would operate to waive an absent party's objections to an ADR proposal reached in the conference if the conference was noticed in advance as a conference addressing the possibility of using ADR.

The Commission proposed an exception for proposals to use binding arbitration under proposed new Rule 605. In those cases, Rule 605(a)(5) would require the express consent of all interested parties to such an agreement. Thus, a party's absence from a conference under Rule 601 would not waive the party's rights to object to the use of binding arbitration under Rule 605.

The PEC Pipeline Group raises the possibility that a participant in a proceeding might seek to disrupt potentially promising settlement discussions by moving to convene a conference to discuss the use of ADR procedures or moving to consolidate proceedings for disposition of a settlement.<sup>18</sup> The regulatory devices in the Final Rule are intended to facilitate resolution of conflicts, not to postpone them. The Commission expects that the appropriate decisional authorities will be able to distinguish between the two and rule accordingly.

Several commenters object to the provisions that failure to attend the conference will in effect constitute waiver of any objection to the use of ADR. Interior asks us to clarify the procedures for objecting to the use of ADR. Commerce and Natural Gas Supply state that some participants may be unable to attend due to financial or

<sup>18</sup> PEC Pipeline Group at 7-8.

<sup>12</sup> See, e.g., American Public Power Association; Consumers Power Company; New England Power Service; and Wisconsin Municipal Group.

<sup>13</sup> Industrials at 8.

<sup>14</sup> Missouri PSC at 6-7.

<sup>15</sup> As discussed below, the NOPR emphasized that under Rule 601(b)(3), any party who fails to attend a conference convened for the purpose of determining whether to use ADR waives any objection to decisions made about an ADR proposal

logistical constraints, or schedule conflicts. Commerce requests that telephone conferences be permitted, and that written objection be accepted upon a showing of good cause for inability to object in person. Supply and EEL would make written objection as effective as personal objection without a showing of good cause for failure to attend in person.<sup>19</sup> All of these commenters stress the importance of receiving timely and accurate notice of the conference.

Rule 601(b)(1) already requires that the participants be given notice of the time and place "of the conference" and "of the matters to be addressed at the conference." We encourage the decisional authorities to make every effort to accommodate the financial, logistical and schedule conflict needs and constraints of the participants, and to be flexible and creative in setting the time, place and format of the conference, including use of telephone or video communication (as that technology becomes more widely available). We do, however, want the participants to make a meaningful effort to communicate with each other, even if only for the purpose of engaging in a dialogue over why they are or are not willing to consider use of ADR procedures to resolve their differences. Therefore, we will not allow participants to block the use of ADR procedures by mailing in a written objection without any discussion with other participants about whether ADR might or might not be useful.

#### *B. Mechanism for Using ADR*

Existing Rule 603 provides procedures for the parties or the Commission to incorporate the use of settlement negotiations in Commission proceedings, while existing Rule 602 provides procedures for the submission and review of written offers of settlement at any time during a proceeding. New Rule 604 provides similar procedures by which participants can use any other ADR method. The mechanism consists of the filing and review of a proposal to use a particular ADR method.

The ADRA lists six factors for an agency to consider when identifying cases in which the use of ADR would not be appropriate. The NOPR proposed to adopt these factors in subparagraph (a)(2) of Rule 604 and to require that they be considered whenever a proposal to use ADR is made. Thus, the new rule provides that the appropriate decisional authority will consider not using ADR if: (1) A definitive resolution is required for precedential value; (2) the matter

involves significant questions of policy requiring additional procedures before final resolution; (3) maintaining established policy is of special importance; (4) the matter significantly affects persons or organizations who are not parties to the proceeding; (5) a full public record of the proceeding is important and the record cannot be provided by dispute resolution; or (6) the Commission must maintain continuing jurisdiction over the matter and dispute resolution would interfere with the Commission's authority to alter the disposition of the matter if circumstances change.

The use of ADR when any of these factors is present is not absolutely prohibited under the rule. New Rule 604(a)(3) provides that ADR may be used if the dispute resolution proceeding can be structured to avoid the identified problem or if other concerns significantly outweigh one or more of the factors.

New Rule 604(a)(4) incorporates the ADRA's provision that the agency's decision to use or not to use an ADR proceeding is not subject to judicial review. New Rule 604(a)(5) provides that settlement agreements reached through the use of ADR will be subject to Rule 602, notice and comment procedures, unless the decisional authority, upon motion or otherwise, orders a different procedure.

Rule 604(b) incorporates various ADRA definitions. "Party" and "participant" are defined in Rule 102.<sup>20</sup> While staff is not included in the definition of "party," it is a "participant." The proposed rules provide for the full participation of parties and staff in the ADR process to the same extent as in the settlement process.

The NOPR explained that the definition of participant in Rule 102 does not expressly identify the additional entities that are permitted to participate in the application procedures in the Commission's rules for a license or exemption to construct, operate, and maintain a hydroelectric project. To ensure that all participants in such hydroelectric proceedings also may participate in any matters concerning ADR under Subpart F of the Commission's regulations, the Commission proposed to adopt a definition of "participant" in Rule 604(b)(8) that includes these entities, which may be state and federal agencies and Indian tribes having statutory roles or a direct interest in the hydroelectric proceedings, as participants in ADR proceedings.

New Rule 604(e)(1) permits the participants to submit a written proposal at any time during a proceeding to use ADR to resolve all or part of any matter in controversy or anticipated to be in controversy in the proceeding. The proposal should be written to avoid procedural disagreements during the ADR proceeding. A written proposal also is needed by the decisional authority to determine the appropriateness of using ADR in the proceeding and whether to suspend action on a matter to give participants the opportunity to resolve their disputes by means of an ADR process. The NOPR explained that, except for the binding arbitration process identified in the ADRA and incorporated in new Rule 605, the Commission does not intend to identify the specific ADR methods available to the parties nor to mandate specific procedures for each type of ADR, but leaves the selection and procedures to the discretion of the participants.

New Rule 604(e)(2) provides that, if a proceeding is pending before an administrative law judge (ALJ), the proposal must be filed with the ALJ. New Rule 604(e)(3) provides that, if a proposal involves binding arbitration, it must be filed with the Secretary for consideration by the Commission. For all other matters, new Rule 604(e)(4) provides that a proposal to use ADR may be filed with the Secretary, who will transmit the proposal to the appropriate decisional authority. New Rule 604(e)(6) allows the participants to modify the ADR proposal once it has been approved and provides that requests to modify must follow the same procedure as proposals for ADR.

Cinergy urges us to convene the ADR conference as quickly as possible, preferably within 20 days of the filing of the motion. We will encourage decisional authorities to expedite this process, but all potentially affected participants must be afforded ample time to consider their positions and make appropriate arrangements.

Cinergy also proposes that the proposal be deemed approved unless an order denying approval is issued within 10 days, rather than the proposed 30 days. While we encourage decisional authorities to act as quickly as possible under the circumstances presented (*e.g.*, if there is clear unanimity among participants), because of the sometimes large number of parties and need for notice, it is not practical to shorten the

<sup>19</sup> EEL at 4; Natural Gas Supply at 2-3.

<sup>20</sup> 18 CFR 385.102 (b) and (c).

period after which ADR will be deemed approved.<sup>21</sup>

Rule 604(c) provides that a neutral may be a permanent or temporary officer or employee of the Federal Government, (including an ALJ), or any other individual who is acceptable to the participants in an ADR proceeding. A neutral may not have any official, financial, or personal conflict of interest with respect to the issues in controversy.<sup>22</sup> The NOPR explained that, if a staff member serves as a neutral, in no event could that person thereafter serve in any other capacity in the proceeding.<sup>23</sup>

Rule 604(c)(3) provides that neutrals may be selected from rosters kept by the Federal Mediation and Conciliation Service, ACUS, and the American Arbitration Association, as well as any other source. Pursuant to proposed Rule 604(c)(2), neutrals will be selected by the participants and will serve at the will of the participants unless the ADR agreement provides otherwise.

Missouri PSC suggests that an ALJ who participates as a neutral should not participate thereafter in a decisional capacity without the written consent of all parties. The short answer is that once an ALJ or any other Commission employee has participated as a neutral in an ADR procedure, they are permanently barred from any role in the decisional process involving that case, with or without consent.

Missouri PSC also suggests that the Commission compile a roster of neutrals familiar with utility regulation. Knowledge of utility law and commercial practice would have obvious relevance to a neutral's ability to function effectively in that role, but the Commission does not wish to put itself in the position of screening and endorsing the qualifications of persons who wish to serve in that capacity. The participants should be free to choose whomever they wish, unencumbered by semi-official rosters.

The Industrials request clarification of the responsibility of the participants for compensating a Commission employee, including an ALJ, who serves as a

neutral.<sup>24</sup> Any Commission employee, including an ALJ, who serves as a neutral does so in his or her official capacity as a federal employee and cannot properly accept any additional compensation of any kind from any participant in the proceeding. With respect to other neutrals, we agree with the Industrials that it would be useful for the participants to clarify matters of compensation in the ADR agreement.

The Industrials ask us to clarify in Rule 604 what authority the neutral has, particularly with respect to such matters as issuing subpoenas, compelling production of documents and issuing protective orders.<sup>25</sup> The Industrials misunderstand the role and posture of the neutral. The neutral's authority to issue orders is derived from the participants, not from the Commission. The participants, in their ADR agreement, are free to authorize or not authorize the neutral to direct production of their documents, issue protective orders, or issue any other order to which they may or may not wish to be bound. The one exception, as the Industrials themselves recognize, is that ALJ's retain all of their delegated authority as presiding officers of the Commission; selection as a neutral does not serve to in any way suspend or diminish their authority. Thus, if the participants want their neutral to exercise judicial-type authority, they can either select an ALJ to serve as their neutral or select an outsider and authorize that person to exercise whatever powers they wish to confer and by which they wish to be bound.<sup>26</sup>

New Rule 604(e)(5) provides for the issuance of an order by the decisional authority approving or denying a proposal filed under Rule 604 or Rule 605. The decisional authority will determine whether ADR would be appropriate for a particular proceeding on a case by case basis, using the guidelines set forth in new Rules 604(a)(2) and (3). A proposal to use ADR will be deemed approved unless the decisional authority issues an order denying approval within 30 days after the proposal is filed.

New Rule 604(f) allows the decisional authority to require status reports on the proceeding at any time. The NOPR explained that this provision is

designed to prevent parties from using ADR as a stalling tactic.

New Rule 604(g) gives the decisional authority, upon motion or otherwise, the authority to terminate an ADR proceeding under Rule 604 or 605 if it appears that ADR is no longer appropriate. New Rule 604(g)(2) provides that a decision to terminate an ADR proceeding is not subject to judicial review because the decision is interlocutory in nature. This is consistent with the existing settlement negotiation procedures in Rules 603 (h) and (i). The NOPR explained that parties may seek Commission review of such a decision under Rule 715 in cases pending before an ALJ or, in all other cases, under Rule 212 as a motion for reconsideration.

Several commenters<sup>27</sup> ask us to define standards for terminating ADR proceedings. We prefer not to provide standards because it is not practical to attempt to anticipate in a generic rule all of the circumstances that might justify termination of such a proceeding. It is best left to case by case determination, based on the peculiar facts and circumstances presented.

EI urges us to encourage greater use of ADR by announcing a policy of adopting whatever result the parties reach without modification unless it would contravene a statutory obligation.<sup>28</sup> Natural Gas Pipeline urges us to overturn the results of an ADR procedure "only under exceptional circumstances." PG&E urges us to accord "substantial deference" to the results of ADR procedures.<sup>29</sup>

The Commission obviously must reserve authority to ensure that decisions reached through ADR procedures are not contrary to the public interest or inconsistent with statutory requirements. Within those broad parameters, the Commission can and will give substantial deference to whatever consensus participants reach through the ADR process.

### C. Arbitration

New Rule 605 incorporates the arbitration provisions as they appear in the ADRA, with a few modifications as discussed below. The NOPR explained that, to the extent participants wish to use a different arbitration procedure, they are free to propose one rather than using the procedure set forth in Rule 605.

New Rule 605(a) provides that the participants may at any time submit a

<sup>21</sup> The Industrials (at 4) question what happens if the 30th day falls on a weekend or holiday. Consistent with long-established Commission practice, the time period is extended until the day after the weekend or holiday. See Rule 2007(a)(2).

<sup>22</sup> A non-governmental neutral may, however, have a personal conflict of interest provided that the conflict is disclosed to all of the participants and given that disclosure they nonetheless consent to that neutral's service.

<sup>23</sup> The NOPR explained that this is consistent with the Commission's current settlement procedures. Under Rule 603, the settlement judge serves a single function as a mediator or facilitator and cannot be a decisionmaker or advisor in that proceeding.

<sup>24</sup> Industrials at 3.

<sup>25</sup> Industrials at 6-8.

<sup>26</sup> Columbia Gas at 4 suggests adding several more words to subsection 604(c)(1), believing that they may have been inadvertently omitted. There was no omission, and the extra words are unnecessary. Columbia Gas also alleges that there is an inconsistency between subsections (c) and (e) of section 604. Although phrased differently, we believe that both subsections are clear and we do not perceive any substantive inconsistency.

<sup>27</sup> Northwest Users at 4-5; Electric Generation at 7. Electric Generation also urges us to aggressively monitor the status of ADR proceedings. We will monitor them as appropriate.

<sup>28</sup> EI at 3.

<sup>29</sup> PG&E at 6-9.

proposal to use the binding arbitration provisions of Rule 605 to resolve all or part of any matter in controversy before the Commission. New Rule 605(a)(2) requires that a proposal to use binding arbitration follow the procedures outlined in Rule 604(d). New Rule 605(a)(3) requires that the proposal be submitted in writing and contain the information listed in Rule 604(e). Under new Rule 605(a)(4), the arbitration process can be monitored and terminated just as other ADR methods under Rules 604 (f) and (g). To ensure that arbitration is truly voluntary on all sides, new Rule 605(a)(5) provides that the Commission will not require any person to consent to an arbitration proposal as a condition of receiving a contract or benefit. Similarly, no company regulated by the Commission may impose such a condition. New Rule 605(a)(5) further requires that an arbitration proposal under Rule 605 have the express written consent of all parties to the dispute.

Under new Rule 605(b), the participants in an arbitration proceeding are entitled to select the arbitrator. The particular procedure to be used in selecting an arbitrator is not provided; however, the arbitrator is required to meet the requirements of the neutral as described in new Rule 604(d). Rule 605(c) sets forth the arbitrator's duties, including conducting hearings, administering oaths, and issuing subpoenas to compel attendance of witnesses and production of evidence at hearing. As explained in the NOPR, the arbitrator has the power to issue awards but not the authority to issue licenses and certificates.

New Rule 605(d) incorporates the provisions in section 579 of the ADRA that establish basic rules for the conduct of binding arbitration proceedings, including hearings. Rule 605(d)(1) provides that the arbitrator will set the time and place for the hearing and notify the participants. New Rules 605(d)(2) and (3) provide for preparation of a record, if desired, and for presenting evidence. Under new Rule 605(d)(3)(iv), the arbitrator may exclude evidence that is irrelevant, immaterial, unduly repetitious or privileged. New Rule 605(d)(4) prohibits *ex parte* communications with the arbitrator, allowing the arbitrator to impose sanctions for a violation of this prohibition. New Rule 605(d)(5) requires the arbitrator to issue an award within 30 days of the close of the hearing unless the participants and arbitrator agree to a different schedule.

New Rule 605(e) incorporates the ADRA standards for issuing and appealing arbitral awards. The award

will be in writing and include a brief, informal discussion of the factual and legal basis for the award. The prevailing participants will file the award with the Commission and any other relevant agencies and serve all participants. The award becomes final 30 days after it is served on all participants. However, the Commission, upon motion or otherwise, can extend this period for one additional 30-day period upon notice of the extension to all participants. New Rule 605(e)(3) provides that a final award is binding on the participants.

Several commenters<sup>30</sup> ask us to clarify that the terms "arbitrator" and "arbitration" are broad enough to authorize use of a panel of arbitrators and not just a single person. We so confirm; the singular includes the plural.

CIG and ANR ask us to indicate in advance the outer range of potentially acceptable results of the arbitration.<sup>31</sup> It is simply impractical for the Commission to do this, because it would in effect require the Commission to partially prejudge the case before there is an adequate record on which to make such decisions. It would also defeat the purpose of inviting the parties to work out their own solution before the Commission becomes heavily involved in the decisional process.

Columbia Gas asks us to incorporate various interpretations of ADRA in the regulations.<sup>32</sup> ADRA speaks for itself on these matters, and we perceive no need to construe these particular statutory provisions in the regulations, or to address them in this preamble to the regulations. Contrary to Columbia Gas' suggestion, nothing in Rule 605 precludes the filing of an arbitration award with any other agency, regardless of whether such an award is also filed with the Commission. In other words, the award should be filed with whichever agency or agencies it is relevant. Also contrary to Columbia Gas' suggestion, while section 580(a)(1) of ADRA allows the Commission to omit formal findings and conclusions, it does not preclude the Commission from requiring findings and conclusions on its own authority.

In response to PEC Pipeline Group,<sup>33</sup> we clarify that Rule 605(a)(5) does not prevent parties to a settlement from agreeing to the use of future binding arbitration to resolve disputes under a settlement, and does not prevent parties from entering into transportation and

storage arrangements that include an arbitration clause.

New Rule 605(f) provides procedures for the Commission to vacate an award. New Rule 605(f)(1) permits any person to request, within ten days of the filing of an award under Rule 605(e), that the Commission vacate the award and requires that person to provide notice of the request to all participants. Responses to such a request must be filed within ten days after the request is filed. Under new Rule 605(f)(2), the Commission, upon request or otherwise, may vacate an arbitration award before the award becomes final. New Rule 605(e) adopts the ADRA's provision that the award need only discuss informally the factual and legal bases for the award. The NOPR explained that if the participants wish to require that an award include formal findings of fact and conclusions of law, they may do so by adopting a different standard.

New Rule 605(f)(4) adopts the ADRA's provision for monetary relief. Thus, if the Commission vacates an arbitration award, a party to the arbitration proceeding may petition the Commission for an award of the attorney fees and expenses incurred in connection with the arbitration proceeding. The Commission must award the petitioning party those fees and expenses that would not have been incurred in the absence of the arbitration proceeding, unless the Commission finds that special circumstances make the award unjust. As provided by the ADRA, new Rule 605(f)(6) establishes that a decision by the Commission to vacate an arbitration award is not subject to judicial review.

Northwest Users question how extensively arbitration awards will be vacated. They contend that persons who are not parties to the proceeding should not be able to move to vacate an arbitration award, nor should such nonparties be allowed to intervene out of time for that purpose.<sup>34</sup> Electric Generation urges us to articulate a stringent standard for review of arbitration awards, suggesting "manifest injustice."<sup>35</sup> Natural Gas Pipeline suggests that we confine vacature to "exceptional circumstances."<sup>36</sup>

As AGD notes,<sup>37</sup> the Commission has a statutory responsibility to vacate an arbitration award if it contravenes the public interest or is in any other way inconsistent with statutory requirements. The Commission does, however, want to encourage parties to

<sup>30</sup> Cinergy at 3; PGC Pipeline Group at 11.

<sup>31</sup> CIG and ANR at 2-3.

<sup>32</sup> Columbia Gas at 4-6.

<sup>33</sup> PEC Pipeline Group at 12-13.

<sup>34</sup> Northwest Users at 5-7.

<sup>35</sup> Electric Generation at 8.

<sup>36</sup> Natural Gas Pipeline at 7.

<sup>37</sup> AGD at 4.

explore and use ADR procedures, and recognizes that extensive vacature of arbitration awards would discourage parties from using them. The Commission would be very loath to allow last minute interventions to disrupt a settlement or arbitration award after the parties have laboriously reached such a resolution. On balance, given the Commission's statutory responsibilities, decisions on vacature will necessarily have to be made on a case by case basis. We confirm for PEC Pipeline Group<sup>38</sup> that if an arbitration award is vacated the parties return to the *status quo ante* as if the arbitration proceeding had never occurred.

Several commenters asked us to clarify who has to reimburse whom for fees and expenses in the event that an arbitration award is vacated, and who can petition for it.<sup>39</sup> Electric Generation urges us to make the losers reimburse the winners.<sup>40</sup> The PEC Pipeline Group expresses strong opposition to the proposed rule and urges us not to adopt it.<sup>41</sup> The rule is required by the last sentence of section 580(g) of the ADRA, which is unmistakably clear on its face and should assuage the commenters' concerns: "Such fees and expenses shall be paid from the funds of the agency that vacated the award." We have added a sentence to subsection 605(f)(4) to clarify it. All participants to the arbitration proceeding can petition the Commission for reimbursement by the Commission of the fees and expenses they incurred in the arbitration process if the Commission vacates the arbitration award at the end of that process. We confirm to the PEC Pipeline Group that parties may agree to forego the right to petition for fees and expenses, and may also agree in advance on conditions pursuant to which an arbitration award can be reviewed by the Commission.

#### D. Confidentiality

New Rule 606 governs confidentiality in ADR proceedings established under new Rules 604 and 605, and incorporates most of the confidentiality provisions for neutrals and participants that are found in the ADRA. Under new Rule 606(a), confidentiality must be maintained by a neutral unless: (1) All participants in the ADR proceeding and the neutral consent in writing to the disclosure; (2) the communication has already been made public; (3) the communication is required by statute to

be made public; or (4) a court determines, after a balancing of considerations, that disclosure is necessary to prevent a manifest injustice, to help establish a violation of law, or to prevent harm to the public health or safety.

Under new Rule 606(b), a participant in the ADR proceeding must not disclose information concerning any dispute resolution communication unless, pursuant to five of the seven exceptions set out in the ADRA: (1) All participants consent in writing; (2) the communication has already been made public; (3) the communication is required by statute to be made public; (4) a court determines, after balancing considerations, that disclosure is necessary to prevent manifest injustice, establish a violation of law, or prevent harm to the public health or safety; or (5) the communication is relevant to determining the existence or meaning or the enforcement of an agreement or award resulting from the proceeding.

Under new Rule 606(c), any communication disclosed in violation of this section will not be admissible in any proceeding relating to the issues in controversy. New Rule 606(d) provides that the participants may agree to alternative confidentiality procedures for disclosure by a neutral, but should inform the neutral of any modifications prior to the commencement of the ADR procedure. If the neutral is not so informed, the provisions of new Rule 606(a) would apply. Under new Rule 606(e), the participants must be notified of a demand for disclosure, whether by discovery or other legal process. Proposed Rules 606(f) through (i) adopt the remaining provisions of the ADRA, including the provision that nothing in the section would prevent discovery or admissibility of evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.<sup>42</sup>

AGD supports the rule as proposed.<sup>43</sup> Cinergy suggests revisions to subsections 606(a)(4) and (b)(4); we will not make those revisions because, as proposed and adopted, those subsections directly track the language of section 574 of the ADRA.

We have made several revisions in response to the comments of the PEC Pipeline Group.<sup>44</sup> First, we have revised

Rules 606(a)(2) and (b)(2) by inserting the word "otherwise," so that they now read "The dispute resolution communication has otherwise already been made public." Next, we have tightened Rule 606(c) by deleting the latter part of it, so that it now reads "Any dispute resolution communication that is disclosed in violation of paragraphs (a) or (b) of this section shall not be admissible in any proceeding." Third, we have substituted the word "participant" for the word "neutral" in Rule 606(e), so that it now reads "If a demand for disclosure, by way of discovery request or other legal process, is made upon a *participant* before the commencement of the dispute resolution communication, the *participant* will make reasonable efforts to notify the *neutral* and the other *participants* of the demand." (Emphasis added) Finally, we have added a new Rule 606(k), which reads as follows: "Where disclosure is authorized by this section, nothing in this section precludes use of a protective agreement or protective orders."<sup>45</sup>

We have not adopted the other changes suggested by PEC Pipeline Group or by Electric Generation<sup>46</sup> because we do not believe they are warranted. The matters raised by Electric Generation with respect to the Freedom of Information Act are not addressed here because they are beyond the scope of this rulemaking.

## IV. Settlement Rules

### A. Omnibus Settlements

The NOPR explained that the authority of the ALJ and the Commission to consolidate multiple proceedings exclusively under their respective jurisdictions for review in an omnibus settlement is established, respectively, in Rules 503(a), 101(e), and 212. The NOPR proposed to codify current practice and amend Rule 503(a) by adding that the Chief ALJ may order multiple proceedings that are pending before ALJs to be consolidated for settlement, as well as hearing, on any or all matters in issue. The Commission is amending the procedures in Rule 602(b) for the submission of offers of settlement to provide specifically for requests to be filed with the Commission for consolidation or other appropriate procedural relief to enable proceedings pending before ALJs to be

<sup>38</sup> PEC Pipeline Group at 12.

<sup>39</sup> Cinergy at 3; Cig and ANR at 4; *see also* Natural Gas Pipeline at 7.

<sup>40</sup> Electric Generation at 8-9.

<sup>41</sup> PEC Pipeline Group at 10-11.

<sup>42</sup> The NOPR explained that existing Rule 2101 permits a participant to appear in a proceeding in person or by an attorney or other qualified representative, and that existing Rule 2102 provides for suspension or disqualification (temporary or permanent) of representatives when necessary.

<sup>43</sup> AGD at 4-5.

<sup>44</sup> PEC Pipeline Group at 14-16.

<sup>45</sup> New Rule 606(k) should also help alleviate the problem raised by Natural Gas Supply (at 5) with respect to protection of proprietary information related to research and development projects. We have also added to Rule 606(f) the cross-references that Natural Gas Supply requested to sections 385.410 and 388.112.

<sup>46</sup> Electric Generation at 9-10.

transmitted to the Commission for consideration in an omnibus settlement together with proceedings pending before the Commission. The amendment adds new paragraph (b)(3) to permit any participant in a proceeding covered by an offer of settlement submitted under (b)(1) to file a consolidation request when the settlement covers multiple proceedings pending in part before the Commission and in part before one or more ALJs.

The Industrials request that the Commission codify standards for determining when party severance would be appropriate in an omnibus settlement. In particular, they state that "[i]n effect, we believe, the Commission should clarify its new rules providing for the severance of parties to state that severance should be by party, by *contested issue of material fact*." In the alternative, they "recommend that the final rule be clarified to provide that severance of parties should proceed by docket, rather than by omnibus settlement."<sup>47</sup>

The issue of severance, generally, is discussed below. We see no reason to treat severance differently in the context of omnibus settlements than in any other context.

#### B. Uncontested Settlements

Rule 602(g) provides for the certification to the Commission of uncontested settlements filed with an ALJ. If an offer is uncontested, the ALJ is required under Rule 602(g)(1) to certify to the Commission the offer of settlement with the hearing record and any related pleadings. Under the standard set out in Rule 602(g)(3), the Commission may approve an uncontested offer "upon a finding that the settlement appears to be fair and reasonable and in the public interest."

The NOPR explained that the court in *Tejas Power Co. v. FERC* held that the Commission is required to make an independent determination that the settlement is in the public interest.<sup>48</sup> On some issues, an exercise of the Commission's independent review may be required even though the parties may not want to develop a record. In these circumstances, the Commission is entitled to require the development of an adequate record before it can

determine whether an uncontested settlement is in the public interest.

AGD maintains that the Commission should amend its rules to provide that it will act on an uncontested settlement within 45 days after it is certified to the Commission. In the alternative, it asks that an uncontested settlement be treated the same way as an uncontested initial decision under Rules 708 and 712 by its becoming effective within 45 days after transmission to the Commission unless it is stayed by the Commission pending further review.<sup>49</sup>

Natural Gas Pipeline maintains that uncontested settlements should be deemed approved and become effective without a Commission order, absent contrary Commission action, within 30 days after the close of the comment period.<sup>50</sup>

While the Commission attempts as a matter of course to act on uncontested settlements as expeditiously as possible, a time constraint would not be in the public interest because some settlements, even though not contested, are complicated nevertheless. It cannot be assumed that every aspect of every uncontested settlement is consistent with the public interest and in conformity with key Commission policies. We note in this regard, however, that the Commission's goal is to act on uncontested electric and gas rate settlements within 45 days of the close of the comment period or date of certification to the Commission, and to act on contested electric and gas rate settlements within 90 days of those trigger dates. In most cases the Commission has been able to adhere to these goals, particularly with respect to the uncontested cases.

The Industrials maintain that the Commission should review, and not refashion, uncontested settlements. In addition, they claim the Commission cannot order the parties to provide more support for the settlement; they contend the Commission can only reject it or return it to the parties to decide how to fix deficiencies.<sup>51</sup>

The Commission is not limited to rejecting an uncontested settlement or returning it to the parties to decide how to fix it. Of course, the Commission may take both approaches. In addition, the Commission may refashion an uncontested settlement to comport with the public interest and the Commission may conclude that it is in the public interest that there be more support for all or part of an uncontested settlement.

#### C. Contested Settlements

Rule 602(h) provides for processing settlements that are contested in whole or in part by any participant. Rule 602(h)(1) governs the Commission's evaluation and decision of contested settlements. Rule 602(h)(2) sets out the standards that govern the ALJ's evaluation of contested settlements in proceedings before the ALJ and provides for the certification of the settlement to the Commission for a decision on the merits of the contested issues.

As discussed in the NOPR, under Rule 602(h)(1) the Commission may decide the merits of the issues in a contested settlement if the record contains substantial evidence upon which to base a reasoned decision or the Commission determines there is no genuine issue of material fact. Under Rule 602(h)(2), a settlement that is contested by a party and that is before an ALJ may be certified to the Commission for a merits decision if, under Rule 602(h)(2)(ii), no genuine issue of material fact exists. If genuine issues of material fact exist, the ALJ may still certify the contested settlement but only if the following three conditions specified in Rule 602(h)(2)(iii) are met: (1) The parties concur on a motion for omission of the initial decision, (2) the presiding officer determines that the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues, and (3) the parties have an opportunity to avail themselves of their rights with respect to the presentation of evidence and cross-examination of opposing witnesses.

As we explained in the NOPR, the rules permit either the Commission or the ALJ, as appropriate, to sever contested issues from a settlement and resolve them separately.<sup>52</sup> The uncontested issues may be considered under the expedited procedures for Commission review of uncontested settlements, while the contested issues proceed with further review on the merits. In establishing the settlement rules in 1979, the Commission encouraged the parties to a settlement to indicate whether parts of the settlement are severable and to advise the ALJ or the Commission to permit a prompt decision on the uncontested parts of the settlement.<sup>53</sup> This Final Rule amends

<sup>52</sup> Rule 602(h)(1)(iii) and Rule 602(h)(2)(iv). See, e.g., *Tennessee Gas Pipeline Co.*, 31 FERC ¶ 61,308 (1985), in which the Commission approved a settlement in the public interest on issues where the record was sufficient, but severed an issue for later decision where the record was insufficient.

<sup>53</sup> FERC Stats. & Regs. Preambles, 1977-1981 ¶ 30,061, at 30,433.

<sup>47</sup> Industrials at 10.

<sup>48</sup> *Tejas Power Co. v. FERC*, 908 F.2d 998 (D.C. Cir. 1990). Specifically, the court found that the issues in that rate proceeding required the Commission to examine the impact of the settlement and collect evidence that the consumers' interest would be served by the agreement, that the parties had adequate bargaining power to produce an equitable agreement, and that the agreement's terms are acceptable under the Commission's requirements.

<sup>49</sup> AGD at 7-8.

<sup>50</sup> Natural Gas Pipeline at 4.

<sup>51</sup> Industrials at 18-21.

Rule 602(h)(1) (ii) and (iii) and Rule 602(h)(2)(iv) to permit the ALJ or the Commission to sever contesting parties as well, by adding the phrase "contesting parties or" before the discussion beginning with "contested issues".

Natural Gas Clearinghouse<sup>54</sup> maintains that contesting parties should not be involuntarily severed from contested settlements. It contends there are many reasons to reaffirm the no-severing policy of *Arkla*.<sup>55</sup> It argues that an exercise of raw power due to unequal bargaining power is against public policy and violates the *Tejas* decision's emphasis on adequate bargaining power.<sup>56</sup>

The rule merely recognizes that the Commission permits the severing of parties in certain circumstances.<sup>57</sup> Such a policy has been approved by the United States Court of Appeals for the District of Columbia Circuit.<sup>58</sup> Nothing in *Tejas* is to the contrary. *Tejas* merely dealt with the weight to be given to the settling parties' position in a contested settlement where the Commission approved the settlement for all parties. Severing a party, of course, no longer makes that party bound by the settlement.

Of course, there are no hard and fast criteria for determining whether party severing is appropriate. That decision depends on the circumstances of the particular settlement. The Commission must consider the nature of the issue or issues contested, the state of the record, and the impact of the Commission's decision on the settlement. Those factors are illustrated by the Commission's decisions in *Arkla* and *Columbia*. In *Arkla*, the Commission refused to sever contesting parties because, as there described, that would create a "no lose" situation for those parties, who were interruptible customers.<sup>59</sup> Instead, the Commission stated that it would resolve the contested issues on the merits. However, in *Columbia*, the Commission concluded that it was appropriate to sever the contesting party with respect to its firm rates, where the contesting

party would not be in a "no lose" situation and the record was inadequate for reaching a decision on the merits. This refinement of *Arkla* enabled *Columbia* and the settling parties to reap the benefits of their bargain while enabling the contesting party to litigate its case.

The PEC Pipeline Group maintains that "the Commission should abandon its sweeping prohibition against severing parties from Part 284 transportation and storage rate settlements \* \* \* (and) clarify that severance of contesting parties is allowed in Part 284 transportation and storage rate settlements when the contesting parties have no direct economic interest in the settlement."<sup>60</sup> The Commission does permit parties to be severed in Part 284 settlements as indicated by the recent *Columbia* and *Southern* proceedings.<sup>61</sup> A party's lack of direct economic interest in the settlement should be considered when such a circumstance arises.

The Industrials ask the Commission to clarify "what are the effects, if a party is severed, tries an issue such as rate design, and the outcome dictates that party is entitled to rates lower than the rates applicable to the consenting parties."<sup>62</sup> For example, they assert that the refund floor in the next rate case should be the lower of the settled or litigated result. In addition, they ask for clarification about terms and conditions, such as it is unduly discriminatory to have differing quality or pressure standards owing to a settlement and a merits decision. The Commission concludes that the Industrials' clarification requests should be considered in case-specific situations.

Under paragraph (ii) of Rule 602(h)(2), the ALJ determines whether a settlement that is contested by any participant contains a genuine issue of material fact. If the settlement does not, the ALJ may certify the settlement directly to the Commission. If the settlement contains a genuine issue of material fact, the ALJ may certify the settlement only if the three conditions under paragraph (iii) are met. The NOPR proposed to amend Rule 602(f) to require a strong showing by contesting parties detailing any genuine issues of material fact that they contend exist.

Natural Gas Clearinghouse maintains that the Commission should not require contesting parties to submit affidavits detailing genuine issues of material fact

because this will encourage extensive discovery rather than produce more certifiable settlements. It submits that disciplining parties for superficial claims is a more "surgical" solution.<sup>63</sup> Other commenters support the requirement for affidavits.<sup>64</sup>

The Commission continues to believe that the affidavit approach is the appropriate way to ensure that genuine issues of material fact exist. This is a more efficient approach than disciplining parties at some later date. As with a motion for summary disposition, the ALJ can determine if discovery is needed for a party to determine whether genuine issues of material fact exist.

Under the previous Rule 602(h)(2)(iii), the ALJ could certify an offer of settlement or part of any offer of settlement even if the settlement contained genuine issues of material fact. In these circumstances, the ALJ was entitled to certify an offer that is contested by a party if all of the following conditions, contained in subparts (A), (B), and (C), were met:

(A) The parties concur on a motion for omission of the initial decision as provided in Rule 710;

(B) The presiding officer determines that the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues; and

(C) The parties have an opportunity to avail themselves of their rights with respect to the presentation of evidence and cross-examination of opposing witnesses.

If any one of these conditions was not present, the judge could direct further procedures as deemed appropriate, including certification of the settlement at a later time if the conditions were then met.

The NOPR proposed to modify the regulations to permit the ALJ to certify a settlement if there is less than unanimous concurrence of the parties under condition (A) to a motion filed under Rule 710 for omission of the initial decision. To accomplish this, the NOPR proposed to amend both condition (A) and Rule 710 to delegate to the ALJ the authority to determine that, if a motion filed under Rule 710 has less than unanimous concurrence, omission of the initial decision is appropriate to the same extent the Commission is able to make that determination under Rule 710. The NOPR concluded that condition (C) is subsumed by condition (B) and

<sup>54</sup> Natural Gas Clearinghouse at 3-7.

<sup>55</sup> *Arkla Energy Resources*, 48 FERC ¶ 61,602, *reh'g denied*, 49 FERC ¶ 61,051 (1989).

<sup>56</sup> *Tejas Power Co. v. FERC*, 908 F.2d 998 (D.C. Cir. 1990).

<sup>57</sup> *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61,366, *reh'g denied and order clarified*, 66 FERC ¶ 61,214 (1994); *Southern Natural Gas Co.*, 67 FERC ¶ 61,156 (1994), *appeal docketed*, *Mississippi Valley Gas Co. v. FERC*, No. 94-1486 (D.C. Cir. filed July 1, 1994).

<sup>58</sup> *United Municipal Distribution Group v. FERC*, 732 F.2d 102 (D.C. Cir. 1984).

<sup>59</sup> *Arkla Energy Resources*, 48 FERC ¶ 61,602 at p. 61,303, *reh'g denied*, 49 FERC ¶ 61,051 (1989).

<sup>60</sup> PEC Pipeline Group at 7.

<sup>61</sup> *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61,366, *reh'g denied and order clarified*, 66 FERC ¶ 61,214 (1994); *Southern Natural Gas Co.*, 67 FERC ¶ 61,156 (1994).

<sup>62</sup> Industrials at 12.

<sup>63</sup> Natural Gas Clearinghouse at 7-8.

<sup>64</sup> AGD at 6; Electric Generation at 12; Natural Gas Supply at 4.

proposed to eliminate condition (C) entirely.

Natural Gas Pipeline submits that the ALJ should certify to the Commission a settlement that is sponsored or supported by the applicant and also has substantial support among other participants. It maintains that the Commission, not the ALJ, is better able to decide policy issues, decide whether the record is adequate, establish special procedures, and effect severance procedures.<sup>65</sup>

The ALJ is best suited to rule in the first instance about whether a settlement should be certified and, if not, what procedures should be pursued. Natural's approach in essence would limit the ALJs to record fashioners only.

The Industrials maintain that the ALJs are better equipped than the Commission to sift through a record to find facts and that the initial decision process is not a roadblock. At a minimum, they assert the Commission should clarify that omission of the initial decision is discretionary.<sup>66</sup> Omission of an initial decision is only mandatory if all parties join or concur in the motion.

Natural Gas Supply is concerned about the lack of standards on omission of an initial decision in Rules 602(h)(2)(iii)(A) and 710.<sup>67</sup> The Commission concludes that those sections should be applied on a case-specific basis.

Natural Gas Supply maintains that the existence of record evidence is unrelated to the credibility of the evidence and that a mini-hearing should not be a material imposition on the parties or the fact finder. Northern Distributors also opposes the deletion of the right to cross-examination, which it says will not be inconsistent with the use of affidavits because it will allow the testing of and developing of assertions in the affidavits.<sup>68</sup> Northeast and New Jersey also oppose the limits on cross-examination because, they contend, that is the only true test of contested facts. They also oppose the proposed limit on an opportunity to present evidence.<sup>69</sup>

The commenters are incorrect in their view that the Commission has limited the opportunity to present evidence and to cross-examine witnesses. The Commission has merely eliminated previous Rule 602(h)(2)(iii)(C) because it is subsumed within subsection (B)'s requirement of substantial evidence.

The ALJ will have to determine whether a party is entitled to present evidence and to cross-examine witnesses when the determination is made concerning whether the "record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues."<sup>70</sup> In this vein, the Commission emphasizes that substantial evidence pertains to the quality and not the quantity of the evidence; evidence elicited through cross-examination of witnesses may be necessary and appropriate in some instances but not in others.

The Industrials ask the Commission to clarify the role of the trial staff in prehearing and settlement discussions and during and after any hearings are held for severed parties or on severed issues. They state that the trial staff is an advocate of the public interest with an independent position of its own and should continue to participate in hearings on the merits even if it supports a settlement. They argue that the staff should not be permitted to withhold its witnesses or withdraw its testimony during contested party litigation.<sup>71</sup>

The rule adopts nothing that affects the trial staff's role in proceedings. It is well settled that trial staff members can not be required to testify on behalf of a private litigant.<sup>72</sup> The trial staff often acts as an informal mediator, although it is not a pure neutral in that it can also advance a position on the merits. Continued litigation of unsettled issues may or may not be in the public interest, depending on the circumstances presented. There is often a public interest benefit in avoiding the societal cost of continued litigation. In those circumstances, the trial staff may decide that it can best serve the public interest by supporting a settlement rather than proceeding with litigation of unresolved issues.

The PEC Pipeline Group maintains that the Commission should modify the settlement regulations so that only parties with a direct economic interest in the outcome of a proceeding have standing to contest a settlement.<sup>73</sup> We will not curtail the rights of parties to oppose a settlement based on their

degree of economic interest in the outcome. Such parties have a right to their day in court regardless of their economic stake in the outcome.

The Industrials maintain that to avoid "settlement by ambush," the Commission should require settlement sponsors to hold at least one formal settlement conference for outlining or summarizing the settlement and to answer questions before a settlement is filed. They add that a failure to do so should be deemed "bad faith."<sup>74</sup>

The Commission sees no reason to require a formal settlement conference in each case. Whether a conference should be convened is a case-specific matter to be determined by the decisional authority on a case by case basis.<sup>75</sup> It might be appropriate only in those instances when not all of the parties have been involved in the settlement negotiation process. In those circumstances, there may be a reason to believe, based on the record developed to that point, that the settlement might be opposed. If, however, all of the parties have been invited to participate in the settlement process then there would be no purpose to requiring yet another meeting.<sup>76</sup>

The Industrials maintain that, in light of the affidavit process, the Commission should either (1) modify the time periods for initial comments and reply comments to 45 and 30 days, respectively, or (2) give the ALJs the authority to modify the time requirements. They contend in the alternative that "if one or more parties claims to have been unfairly excluded from the settlement process, those parties should be entitled to move at any time for a settlement judge to preside over further proceedings. In such a situation, the dates for comments on the settlement, as provided under Rule 602(f), should automatically be suspended."<sup>77</sup> The Commission believes that the current rules about settlements provide the ALJs with adequate authority to act on any requests for extensions of time (Rule

<sup>74</sup> Industrials at 15.

<sup>75</sup> See Rule 601(a).

<sup>76</sup> In rate cases, for instance, the trial staff initiates settlement discussions by the filing of top sheets which are followed by settlement conferences where all parties are invited to attend. If the discussions held at these conferences suggest that a settlement is obtainable, further settlement conferences are held. In all other cases, the trial staff explores with the parties whether settlement discussions should be pursued. If settlement discussions are held, no party is kept out of the process. There may be occasions, however, when smaller meetings with selected parties are held to advance settlement.

<sup>77</sup> Industrials at 23-24.

<sup>70</sup> Rule 602(h)(2)(iii)(B).

<sup>71</sup> Industrials at 14.

<sup>72</sup> See United Gas Pipe Line Company, 47 FERC ¶ 61,035 (1989); cf. Southern Natural Gas Company, 10 FERC ¶ 61,287 at p. 61,577 (1988).

<sup>73</sup> PEC Pipeline Group at 4-6. The PEC Pipeline Group also maintains that the Commission should not permit an ALJ to certify a settlement "unless, at a minimum, the contested settlement is sponsored and supported by the primary party." We prefer to leave this to the discretion of the ALJs.

<sup>65</sup> Natural Gas Pipeline at 4-7.

<sup>66</sup> Industrials at 21-23.

<sup>67</sup> Natural Gas Supply at 4.

<sup>68</sup> Northern Distributors at 6-8.

<sup>69</sup> Northeast and New Jersey at 3-4.

602(f)(2)) or for a settlement judge (Rule 603).

Natural Gas Supply suggests other steps to more efficiently resolve rate matters. It recommends (1) requiring the filing of Statement P with the case itself, (2) requiring staff to timely prepare and submit top sheets, and (3) appointing a settlement judge for each new rate filing.<sup>78</sup> These matters fall beyond the scope of this proceeding. For example, the Commission is proposing in another rulemaking to require the submission of Statement P with a rate filing.<sup>79</sup>

Finally, the Industrials ask us to codify the procedures for technical conferences. That is also a matter that is beyond the scope of this rulemaking.<sup>80</sup>

## V. Miscellaneous

### A. ADR in Oil Pipeline Rate Proceedings

Section 1802(e) of the Energy Policy Act of 1992<sup>81</sup> required the Commission, to the maximum extent practicable, to establish ADR procedures in oil pipeline rate proceedings including required negotiations and voluntary arbitration for use early in contested rate proceedings. In Order No. 561,<sup>82</sup> the Commission established ADR and arbitration procedures for oil pipelines at § 343.5 of its regulations. Those provisions are much the same as the ADR rules proposed in the ADR NOPR in the instant proceeding except for a provision that requires the Commission to refer all protested oil pipeline rate filings to a settlement judge for recommended resolution.

The NOPR asked for comments on whether to integrate the oil pipeline provisions into the proposed ADR rules so that the Commission would then have a single set of ADR rules. The Association of Oil Pipelines (AOPL) supports integration but claims that the prohibitions against judicial review in the proposed rules are not included in the oil pipeline ADR rules and thus should not be made applicable to oil pipelines in the final rules here. The PEC Pipeline Group observes that the Congressional mandate for required negotiation does not apply to gas pipelines and therefore that the required

negotiation approach is inappropriate in the gas pipeline context.<sup>83</sup>

The Commission concludes that it would be more efficient and less confusing for all participants in Commission proceedings to have a single set of ADR rules. The Commission thus will make the ADR rules adopted here applicable to oil pipelines. The Commission disagrees with AOPL's position on judicial review because we did not intend special judicial review provisions for oil pipelines,<sup>84</sup> and thus will not exclude oil pipelines from the provisions adopted here regarding judicial review. The Commission agrees, however, that negotiation should not be required other than for oil pipelines and thus will make the required negotiation provision currently in the oil pipeline ADR rules applicable only to oil pipelines. Therefore, we are deleting most of § 343.5 of the Commission's regulations, except for the required negotiation provision previously at § 343.5(b), which is now renumbered simply as § 343.5. We are also deleting some of the related definitions in § 343.1.

### B. ADR and Other Agencies

The U.S. Departments of Commerce<sup>85</sup> and the Interior generally support the use of ADR, but Interior expresses concern over how those Departments' statutory functions in the hydropower licensing process will be protected and integrated in the ADR process.

Section 4(e) of the Federal Power Act (FPA) requires that Commission licenses for projects located within United States reservations must include all conditions that the Secretary of the department under whose supervision the reservation falls shall deem necessary for the adequate protection and utilization of such reservation.<sup>86</sup> Section 18 of the FPA requires the Commission to require the licensee to provide "such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce."<sup>87</sup> Interior also refers to section 30(c) of the FPA,<sup>88</sup> which requires the Commission to include fish and wildlife protective conditions in exemptions from licenses when those Departments so mandate, and to section 7(a)(2) of the Endangered Species Act,<sup>89</sup>

which requires certain consultation with Interior's U.S. Fish and Wildlife Service. We also note that section 10(j) of the FPA,<sup>90</sup> in conjunction with the Fish and Wildlife Coordination Act,<sup>91</sup> mandates consultation with both Commerce and Interior on fish and wildlife mitigation conditions in Licenses.

We assure both Departments that their statutory authority and responsibilities will not be impaired. The ADR rules are not intended, nor could they be lawfully construed, to in any way waive, evade, or undermine any agency's statutory rights or responsibilities. Having rendered that categorical assurance, we urge both Commerce and Interior to join us in devising ways to integrate the conduct of their statutory functions under the FPA with the Commission's. In particular, we encourage Commerce and Interior to participate early and actively in consultative, ADR, or any other informal fora for discussing environmental problems and potential mitigatory and enhancement measures with license applicants, other interested persons, and (where appropriate) our staff, in an effort to resolve these matters as early, cooperatively and efficiently as possible.<sup>92</sup>

The Colorado River Energy Distributors Association (CREDA) comment on the use of ADR techniques in the context of requests by Federal Power Marketing Agencies (PMA's) for confirmation and approval of rates proposed for the sale of power from federally-owned projects.

CREDA asserts that PMA rate proceedings at the Commission lend themselves especially well to ADR proceedings. CREDA cites the Commission's traditional advisory role in deciding whether to confirm and approve PMA rates, and maintains that this role would be greatly enhanced by the availability of ADR. CREDA further cites the sometimes conflicting goals of the PMA's, the customers of PMA's, and the federal power generating agencies that are charged with recovery of the costs of operating the projects. CREDA concludes that in light of these conflicting interests and the numerous complex issues involved in PMA rate proceedings, informal resolution of these issues through ADR proceedings

<sup>78</sup> Natural Gas Supply at 5-7.

<sup>79</sup> Filings and Reporting Requirements for Interstate Natural Company Rate Schedules and Tariff, 60 FR 311 (Jan. 13, 1995), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,511 (Dec. 16, 1994).

<sup>80</sup> Industrials at 23-24.

<sup>81</sup> See 42 U.S.C.A. 7172 note (West Supp. 1993).

<sup>82</sup> Revisions to Oil Pipeline Regulations pursuant to the Energy Policy Act of 1992, Order No. 561, 58 FR 58785 (November 4, 1993), III FERC Stats. & Regs. ¶ 30, 985 (1993), *order on reh'g and clarification*, Order No. 561-A, 59 FR 40243 (August 8, 1994), III FERC Stats. & Regs. ¶ 31,000 (1994).

<sup>83</sup> PEC Pipeline Group at 16-17.

<sup>84</sup> See, for example, Order No. 561 at 30,974, where the Commission specifically provided: "A decision by the Commission to vacate an arbitration award would not be subject to judicial review."

<sup>85</sup> The comments of the Department of Commerce were submitted by its National Marine Fisheries Service.

<sup>86</sup> 16 U.S.C. 797(e).

<sup>87</sup> 16 U.S.C. 811.

<sup>88</sup> 16 U.S.C. 823a(c).

<sup>89</sup> 16 U.S.C. 1536(a)(2).

<sup>90</sup> 16 U.S.C. 803(j).

<sup>91</sup> 16 U.S.C. 661 *et seq.*

<sup>92</sup> We are not willing to adopt Interior's suggestion that State and Federal resource agencies be accorded the power to, in effect, veto the use of ADR procedures in hydropower license cases. The statutory rights of the resource agencies can be adequately protected without precluding all of the other interested participants in the process from meeting and trying to resolve their differences through use of ADR procedures.

could greatly reduce the Commission's workload in PMA rate proceedings.

CREDA generally supports the Commission's proposals to incorporate use of ADR. CREDA recognizes that § 300.1(a) of Part 300 of the Commission's regulations already specifically states that, except as otherwise provided by rule or order, the Commission's Rules of Practice and Procedure apply to filings by PMA's in which confirmation and approval is sought for proposed rates. CREDA nevertheless recommends, out of an abundance of caution, that the Commission specifically state in its regulations concerning Commission consideration of PMA rate filings that ADR is available upon Commission order. It is not necessary, however, to make specific provision for ADR in the regulations concerning PMA rate filings because § 300.1(a) makes the Rules of Practice and Procedure generally applicable to all PMA rate proceedings under Part 300.

**VI. Administrative Findings**

**A. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) <sup>93</sup> generally requires the Commission to describe the impact that a rule will have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Commission is not required to make an analysis if a rule will not have such an impact.<sup>94</sup>

Pursuant to section 605(b) of the RFA, the Commission certifies that the Final Rule adopted herein will not have a significant economic impact on a substantial number of small entities.

**B. Environmental Review**

The Commission is not preparing an environmental assessment or environmental impact statement in this proceeding because the new rules and amendments are procedural only, changing only the Commission's Rules of Practice and Procedure, and therefore have no significant effect on the human environment.<sup>95</sup>

**C. Information Collection Requirements**

Office of Management and Budget (OMB) regulations require OMB to approve certain information collection

requirements imposed by agency rules.<sup>96</sup> However, this Final Rule contains no new information collection requirements in part 385 and therefore is not subject to OMB approval.

**VII. Effective Date**

This rule is effective May 19, 1995.

**List of Subjects**

**18 CFR Part 343**

Pipelines, Reporting and recordkeeping requirements.

**18 CFR Part 385**

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

**Lois D. Cashell,**  
*Secretary.*

In consideration of the foregoing, the Commission amends parts 343 and 385, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

**PART 343—PROCEDURAL RULES APPLICABLE TO OIL PIPELINE PROCEEDINGS**

1. The authority citation for part 343 is revised to read as follows:

**Authority:** 5 U.S.C. 571–583; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

**§ 343.1 [Amended]**

2. In § 343.1, paragraphs (a), (b), (d), (e), (f), (g) and (h) are removed, and paragraphs (c) and (i) are redesignated as paragraphs (a) and (b), respectively.

3. § 343.5 is revised to read as follows:

**§ 343.5 Required negotiations.**

The Commission or other decisional authority may require parties to enter into good faith negotiations to settle oil pipeline rate matters. The Commission will refer all protested rate filings to a settlement judge pursuant to § 385.603 of this chapter for recommended resolution. Failure to participate in such negotiations in good faith is a ground for decision against the party so failing to participate on any issue that is the subject of negotiation by other parties.

**PART 385—RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for part 385 continues to read as follows:

**Authority:** 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

<sup>96</sup> 5 CFR 1320.13.

2. In § 385.503, paragraph (a) is revised to read as follows:

**§ 385.503 Consolidation, severance and extension of close-of-record date by Chief Administrative Law Judge (Rule 503).**

(a) The Chief Administrative Law Judge may, on motion or otherwise, order proceedings pending under this subpart consolidated for hearing on, or settlement of, any or all matters in issue in the proceedings, or order the severance of proceedings or issues in a proceeding. The order may be appealed to the Commission pursuant to Rule 715.

3. In § 385.504, paragraph (b)(7) is revised to read as follows:

**§ 385.504 Duties and powers of presiding officers (Rule 504).**

(b) Powers. \* \* \*

(7) Hold conferences of the participants, as provided in Subpart F of this part, including for the purpose of considering the use of alternative dispute resolution procedures;

4. In § 385.601, paragraph (a) is revised to read as follows:

**§ 385.601 Conferences (Rule 601).**

(a) *Convening.* The Commission or other decisional authority, upon motion or otherwise, may convene a conference of the participants in a proceeding at any time for any purpose related to the conduct or disposition of the proceeding, including submission and consideration of offers of settlement or the use of alternative dispute resolution procedures.

5. In § 385.602, paragraphs (b)(3) and (f)(4) are added and paragraphs (h)(1)(ii) introductory text, (h)(1)(iii), (h)(2)(iii), and (h)(2)(iv) are revised to read as follows:

**§ 385.602 Submission of settlement offers (Rule 602).**

(b) *Submission of offer.* \* \* \*

(3) If an offer of settlement pertains to multiple proceedings that are in part pending before the Commission and in part set for hearing, any participant may by motion request the Commission to consolidate the multiple proceedings and to provide any other appropriate procedural relief for purposes of disposition of the settlement.

(f) *Comments.* \* \* \*

(4) Any comment that contests an offer of settlement by alleging a dispute as to a genuine issue of material fact

<sup>93</sup> 5 U.S.C. 601–612.

<sup>94</sup> 5 U.S.C. 605(b).

<sup>95</sup> Section 380.4(a)(2)(ii) of the Commission's regulations categorically exempts from environmental review Commission proposals for promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of the regulations being amended. See 18 CFR 380.4(a)(2)(ii).

must include an affidavit detailing any genuine issue of material fact by specific reference to documents, testimony, or other items included in the offer of settlement, or items not included in the settlement, that are relevant to support the claim. Reply comments may include responding affidavits.

\* \* \* \* \*

(h) *Contested offers of settlement.*

(1) \* \* \*

(ii) If the Commission finds that the record lacks substantial evidence or that the contesting parties or contested issues can not be severed from the offer of settlement, the Commission will:

\* \* \* \* \*

(iii) If contesting parties or contested issues are severable, the contesting parties or uncontested portions may be severed. The uncontested portions will be decided in accordance with paragraph (g) of this section.

(2) \* \* \*

(iii) Any offer of settlement or part of any offer may be certified to the Commission, if:

(A) The parties concur on a motion for omission of the initial decision as provided in Rule 710, or, if all parties do not concur in the motion, the presiding officer determines that omission of the initial decision is appropriate under Rule 710(d), and

(B) The presiding officer determines that the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues.

(iv) If any contesting parties or contested issues are severable, the uncontested portions of the settlement may be certified immediately by the presiding officer to the Commission for decision, as provided in paragraph (g) of this section.

\* \* \* \* \*

6. In Subpart F, §§ 385.604 through 385.606 are added to read as follows:

**§ 385.604 Alternative means of dispute resolution (Rule 604).**

(a) *Applicability.* (1) Participants may, subject to the limitations of paragraph (a)(2) of this section, use alternative means of dispute resolution to resolve all or part of any pending matter if the participants agree. The alternative means of dispute resolution authorized under Subpart F of this part will be voluntary procedures that supplement rather than limit other available dispute resolution techniques.

(2) Except as provided in paragraph (a)(3) of this section, the decisional authority will not consent to use of an alternative dispute resolution proceeding if:

(i) A definitive or authoritative resolution of the matter is required for precedential value;

(ii) The matter involves or may bear upon significant questions of policy that require additional procedures before a final resolution may be made, and the proceeding would not likely serve to develop a recommended policy;

(iii) Maintaining established policies is of special importance;

(iv) The matter significantly affects persons or organizations who are not parties to the proceeding;

(v) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide a record; or

(vi) The Commission must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the Commission's fulfilling that requirement.

(3) If one or more of the factors outlined in paragraph (a)(2) of this section is present, alternative dispute resolution may nevertheless be used if the alternative dispute resolution proceeding can be structured to avoid the identified factor or if other concerns significantly outweigh the identified factor.

(4) A determination to use or not to use a dispute resolution proceeding under Subpart F of this part is not subject to judicial review.

(5) Settlement agreements reached through the use of alternative dispute resolution pursuant to Subpart F of this part will be subject to the provisions of Rule 602, unless the decisional authority, upon motion or otherwise, orders a different procedure.

(b) *Definitions.* For the purposes of Subpart F of this part:

(1) *Alternative means of dispute resolution* means any procedure that is used, in lieu of an adjudication, to resolve issues in controversy, including but not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination thereof;

(2) *Award* means any decision by an arbitrator resolving the issues in controversy;

(3) *Dispute resolution communication* means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or non-party participant. A written agreement to enter into a dispute resolution proceeding, or a final written agreement or arbitral award

reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(4) *Dispute resolution proceeding* means any alternative means of dispute resolution that is used to resolve an issue in controversy in which a neutral may be appointed and specified parties participate;

(5) *In confidence* means information is provided:

(i) With the expressed intent of the source that it not be disclosed, or

(ii) Under circumstances that create a reasonable expectation on behalf of the source that the information will not be disclosed;

(6) *Issue in controversy* means an issue which is or is anticipated to be material to a decision in a proceeding before the Commission and which is the subject of disagreement between participants who would be substantially affected by the decision or between the Commission and any such participants;

(7) *Neutral* means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(8) *Participants* in a dispute resolution proceeding that is used to resolve an issue in controversy in a proceeding involving an application for a license or exemption to construct, operate, and maintain a hydroelectric project pursuant to the Federal Power Act or the Public Utility Regulatory Policies Act shall include such state and federal agencies and Indian tribes as have statutory roles or a direct interest in such hydroelectric proceedings.

(c) *Neutrals.* (1) A neutral may be a permanent or temporary officer or employee of the Federal Government (including an administrative law judge), or any other individual who is acceptable to the participants to a dispute resolution proceeding. A neutral must have no official, financial, or personal conflict of interest with respect to the issues in controversy, except that a neutral who is not a government employee may serve if the interest is fully disclosed in writing to all participants and all participants agree.

(2) A neutral serves at the will of the participants, unless otherwise provided.

(3) Neutrals may be selected from among the Commission's administrative law judges or other employees, from rosters kept by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, the American Arbitration Association, or from any other source.

(d) *Submission of proposal to use alternative means of dispute resolution.*

(1) The participants may at any time submit a written proposal to use

alternative means of dispute resolution to resolve all or part of any matter in controversy or anticipated to be in controversy before the Commission.

(2) For matters set for hearing under Subpart E of this part, a proposal to use alternative means of dispute resolution other than binding arbitration must be filed with the presiding administrative law judge.

(3) A proposal to use binding arbitration must be filed with the Secretary for consideration by the Commission.

(4) For all other matters, a proposal to use alternative means of dispute resolution may be filed with the Secretary for consideration by the appropriate decisional authority.

(5) The appropriate decisional authority will issue an order, approving or denying, under the guidelines in Rule 604(a) (2) and (3), a proposal to use alternative means of dispute resolution. Denial of a proposal to use alternative dispute resolution will be in the form of an order and will identify the specific reasons for the denial. A proposal to use alternative dispute resolution is deemed approved unless an order denying approval is issued within 30 days after the proposal is filed.

(6) Any request to modify a previously-approved ADR proposal must follow the same procedure used for the initial approval.

(e) *Contents of proposal.* A proposal to use alternative means of dispute resolution must be in writing and include:

(1) A general identification of the issues in controversy intended to be resolved by the proposed alternative dispute resolution method;

(2) A description of the alternative dispute resolution method(s) to be used;

(3) The signatures of all participants or evidence otherwise indicating the consent of all participants; and

(4) A certificate of service pursuant to Rule 2010(h).

(f) *Monitoring the alternative dispute resolution proceeding.* The decisional authority may order reports on the status of the alternative dispute resolution proceeding at any time.

(g) *Termination of alternative dispute resolution proceeding.* (1) The decisional authority, upon motion or otherwise, may terminate any alternative dispute resolution proceeding under Rule 604 or 605 by issuing an order to that effect.

(2) A decision to terminate an alternative dispute resolution proceeding is not subject to judicial review.

### § 385.605 Arbitration (Rule 605).

(a) *Authorization of arbitration.* (1) The participants may at any time submit a written proposal to use binding arbitration under the provisions of Rule 605 to resolve all or part of any matter in controversy, or anticipated to be in controversy, before the Commission.

(2) The proposal must be submitted as provided in Rule 604(d).

(3) The proposal must be in writing and contain the information required in Rule 604(e).

(4) An arbitration proceeding under this rule may be monitored and terminated as provided in Rule 604 (d) and (g).

(5) No person may be required to consent to arbitration as a condition of entering into a contract or obtaining a benefit. All interested parties must expressly consent before arbitration may be used.

(b) *Arbitrators.* (1) The participants to an arbitration proceeding are entitled to select the arbitrator.

(2) The arbitrator must be a neutral who meets the criteria of a neutral under Rule 604(c).

(c) *Authority of arbitrator.* An arbitrator to whom a dispute is referred under this section may:

(1) Regulate the course of and conduct arbitral hearings;

(2) Administer oaths and affirmations;

(3) Compel the attendance of witnesses and the production of evidence to the extent the Commission is authorized by law to do so; and

(4) Make awards.

(d) *Arbitration proceedings.* (1) The arbitrator will set a time and place for the hearing on the dispute and must notify the participants not less than 5 days before the hearing.

(2) Any participant wishing that there be a record of the hearing must:

(i) Prepare the record;

(ii) Notify the other participants and the arbitrator of the preparation of the record;

(iii) Furnish copies to all identified participants and the arbitrator; and

(iv) Pay all costs for the record, unless the participants agree otherwise or the arbitrator determines that the costs should be apportioned.

(3) (i) Participants to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing to the same extent as in a proceeding under Subpart E of this part;

(ii) The arbitrator may, with the consent of the participants, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each participant has an opportunity to participate.

(iii) The hearing must be conducted expeditiously and in an informal manner.

(iv) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

(v) The arbitrator will interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(4) No interested person will make or knowingly cause to be made to the arbitrator an unauthorized *ex parte* communication relevant to the merits of the proceeding, unless the participants agree otherwise. If a communication is made in violation of this prohibition, the arbitrator will ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of such communication, the arbitrator may require the offending participant to show cause why the claim of the participant should not be resolved against the participant as a result of the improper conduct.

(5) The arbitrator will make the award within 30 days after the close of the hearing or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless the participants and the arbitrator agree to some other time limit.

(e) *Arbitration awards.* (1)(i) The award in an arbitration proceeding under Subpart F of this chapter will include a brief, informal discussion of the factual and legal basis for the award.

(ii) The prevailing participants must file the award with the Commission, along with proof of service on all participants.

(2) The award in an arbitration proceeding will become final 30 days after it is filed, unless the award is vacated. The Commission, upon motion or otherwise, may extend the 30-day period for one additional 30-day period by issuing a notice of the extension before the end of the first 30-day period.

(3) A final award is binding on the participants to the arbitration proceeding.

(4) An award may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. The award also may not be used as precedent or otherwise be considered in any factually unrelated proceeding or in any other arbitration proceeding.

(f) *Vacating an award.* (1) Within 10 days after the award is filed, any person may file a request with the Commission to vacate an arbitration award and must

serve the request to vacate on all participants. Responses to such a request are due 10 days after the request is filed.

(2) Upon request or otherwise, the Commission may vacate any award issued under this rule before the award becomes final by issuing an order to that effect, in which case the award will be null and void.

(3) Rule 2202 regarding separation of functions applies with respect to a decision to vacate an arbitration award.

(4) If the Commission vacates an award under paragraph (f)(3) of this section, a party to the arbitration may, within 30 days of the action, petition the Commission for an award of attorney fees and expenses incurred in connection with the arbitration proceeding. The Commission will award the petitioning party those fees and expenses that would not have been incurred in the absence of the arbitration proceeding, unless the Commission finds that special circumstances make the award unjust. The fees and expenses awarded will be paid by the Commission.

(5) An arbitration award vacated under this paragraph will not be admissible in any proceeding relating to the issues in controversy with respect to which the award was made.

(6) A decision by the Commission to vacate an arbitration award is not subject to rehearing or judicial review.

**§ 385.606 Confidentiality in dispute resolution proceedings (Rule 606).**

(a) Except as provided in paragraphs (d) and (e) of this section, a neutral in a dispute resolution proceeding shall not voluntarily disclose, or through discovery or compulsory process be required to disclose, any information concerning any dispute resolution communication or any communication provided in confidence to the neutral, unless:

(1) All participants in the dispute resolution proceeding and the neutral consent in writing;

(2) The dispute resolution communication has otherwise already been made public;

(3) The dispute resolution communication is required by statute to be made public, but a neutral should make the communication public only if no other person is reasonably available to disclose the communication; or

(4) A court determines that the testimony or disclosure is necessary to:

(i) Prevent a manifest injustice;

(ii) Help establish a violation of law;

or

(iii) Prevent harm to the public health or safety of sufficient magnitude in the

particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential.

(b) A participant in a dispute resolution proceeding shall not voluntarily disclose, or through discovery or compulsory process be required to disclose, any information concerning any dispute resolution communication, unless:

(1) All participants to the dispute resolution proceeding consent in writing;

(2) The dispute resolution communication has otherwise already been made public;

(3) The dispute resolution communication is required by statute to be made public;

(4) A court determines that the testimony or disclosure is necessary to:

(i) Prevent a manifest injustice;

(ii) Help establish a violation of law;

or

(iii) Prevent harm to the public health and safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential; or

(5) The dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of the agreement or award.

(c) Any dispute resolution communication that is disclosed in violation of paragraphs (a) or (b) of this section shall not be admissible in any proceeding.

(d) The participants may agree to alternative confidential procedures for disclosures by a neutral. The participants must inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of paragraph (a) of this section that will govern the confidentiality of the dispute resolution proceeding. If the participants do not so inform the neutral, paragraph (a) of this section shall apply.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a participant regarding a dispute resolution communication, the participant will make reasonable efforts to notify the neutral and the other participants of the demand. Any participant who receives the notice and within 15 calendar days

does not offer to defend a refusal of the neutral to disclose the requested information waives any objection to the disclosure.

(f) Nothing in Rule 606 prevents the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding. See sections 385.410 and 388.112 of this chapter.

(g) Paragraphs (a) and (b) of this section do not preclude disclosure of information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Paragraphs (a) and (b) of this section do not prevent the gathering of information for research and educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the participants and the specific issues in controversy are not identifiable.

(i) Paragraphs (a) and (b) of this section do not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a participant in the proceeding, so long as the communication is disclosed only to the extent necessary to resolve the dispute.

(j) Nothing in this section precludes parties from seeking privileged treatment for documents under section 388.112 of this chapter.

(k) Where disclosure is authorized by this section, nothing in this section precludes use of a protective agreement or protective orders.

7. In § 385.710, paragraph (d) is added to read as follows:

**§ 385.710 Waiver of the initial decision (Rule 710).**

\* \* \* \* \*

(d) *Waiver by presiding officer.* A motion for waiver of the initial decision, requested for the purpose of certification of a contested settlement pursuant to Rule 602(h)(2)(iii)(A), may be filed with, and decided by, the presiding officer. If all parties join in the motion, the presiding officer will grant the motion. If not all parties join in the motion, the motion is denied unless the presiding officer grants the motion within 30 days of filing the written motion or presenting an oral motion. The contents of any motion filed under paragraph (d) of this section must comply with the requirements in paragraph (b) of this section. A motion may be oral or written, and may be made whenever appropriate for the consideration of the presiding officer.

**Note.**—This appendix will not be published in the Code of Federal Regulations.

## Appendix

### Alternative Dispute Resolution

Docket No. RM91-12-000

#### Commenters

American Gas Distributors (AGD)  
 American Public Power Association  
 Association of Oil Pipelines (AOPL)  
 Colorado Interstate Gas Company and ANR Pipeline Company (CIG and ANR)  
 Colorado River Energy Distributors Association (CREDA)  
 Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia Gas)  
 Consumers Power Company (Consumers)  
 Edison Electric Institute (EEI)  
 Electric Generation Association (Electric Generation)  
 McCormack Institute of Public Affairs  
 Missouri Public Service Commission (Missouri PSC)  
 Natural Gas Clearinghouse  
 Natural Gas Pipeline Company of America (Natural Gas Pipeline)  
 Natural Gas Supply Association (Natural Gas Supply)  
 New England Power Service  
 Northeast Energy Associates and North Jersey Energy Associates (Northeast and North Jersey)  
 Northern Distributors Group (Northern Distributors)  
 Northwest Industrial Gas Users (Northwest Users)  
 Pacific Gas and Electric Company (PG&E)  
 Process Gas Consumers Group, American Iron and Steel Institute, and Georgia Industrial Group (Industrials)  
 Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Trunkline Gas Company and Algonquin Gas Transmission Company (PEC Pipeline Group)  
 Transcontinental Gas Pipe Line Corporation (Transco)  
 U.S. Department of Commerce (Commerce)  
 U.S. Department of the Interior (Interior)  
 Williams Natural Gas Company and Northwest Pipeline Company (Williams)  
 Wisconsin Municipal Group

[FR Doc. 95-9594 Filed 4-18-95; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1310

[DEA No. 128F]

RIN 1117-AA26

#### Records, Reports, and Exports of Listed Chemicals

**AGENCY:** Drug Enforcement Administration (DES), Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule adds methyl isobutyl ketone (MIBK) as a List II

Chemical under the Controlled Substances Act (CSA). This action is based on substantial evidence that MIBK is increasingly being used as a solvent in the production of cocaine hydrochloride during the conversion of cocaine base to cocaine hydrochloride. The recent steps by the Government of Columbia (GOC) to control MIBK further support this action.

This action will only affect specific types of transactions which are greater than 500 gallons or 1523 kilograms of MIBK destined for countries in the Western Hemisphere (with the exception of transactions destined for Canada). These transactions include (1) export transactions; (2) international transactions in which a U.S. broker or trader participates; and (3) transshipments through the U.S.

**EFFECTIVE DATE:** May 19, 1995.

#### FOR FURTHER INFORMATION CONTACT:

Howard McClain Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307-7183.

**SUPPLEMENTARY INFORMATION:** The Controlled Substances Act (CSA), specifically 21 U.S.C. section 802, provides the Attorney General with the authority to specify by regulation, additional precursor and essential chemicals as "listed chemicals" if they are used in the illicit manufacture of controlled substances. Section 802(39) also provides the Attorney General with authority to establish a threshold amount for "listed chemicals" if the Attorney General so elects. This authority has been delegated to the Administrator of DEA by 28 CFR 0.100 and redelegated to the Deputy Administrator under 28 CFR 0.104 (Subpart R) Appendix Sec. 12.

On February 28, 1995 the Deputy Administrator of the Drug Enforcement Administration (DEA) published a Notice of Proposed Rulemaking (60 FR 10814). This notice proposed the addition of methyl isobutyl ketone (MIBK) as a List II Chemical under the Controlled Substances Act (CSA). Interested parties were given 30 days in which to submit comments and objections.

Only one comment was received in response to the Notice of Proposed Rulemaking. This comment requested further clarification of the meaning of the term "Western Hemisphere". Webster's II New Riverside University Dictionary defines the term "Western Hemisphere" to mean, "The half of the earth that includes North and South America, the surrounding waters, and all neighboring islands". For purposes

of this rulemaking, this is the definition that the DEA is adopting.

While methyl ethyl ketone (MEK) has become the solvent of choice in the processing of cocaine base to cocaine hydrochloride, recent regulatory and enforcement efforts in Latin America have resulted in a reduced availability of MEK. Information available to DEA indicates that in response to this shortfall of MEK, cocaine laboratory operators have moved to the utilization of MIBK for the processing of cocaine base to cocaine hydrochloride. Due to information regarding the use of MIBK for cocaine processing, the dramatic increase in MIBK importation, and the importation of MIBK by some firms that the Government of Colombia (GOC) considers suspect, the GOC has recently taken steps to control the sale and distribution of MIBK.

The United States is a major producer of MIBK and exports MIBK to Colombia and other countries within Latin America. In light of the above, the DEA has determined that the control of MIBK as a List II Chemical under the CSA is warranted. Since the illicit use of MIBK for cocaine processing occurs in Latin America, MIBK shipments exported from the U.S., shipments transshipped or transferred through the U.S., and international transactions in which a U.S. broker or trader participates, shall be considered regulated transactions if destined for any country in the Western Hemisphere (with the exception of transactions destined for Canada) 21 U.S.C. section 802(39)(A)(iii). In addition, a threshold similar to that of MEK shall be established for MIBK. A threshold of 500 gallons (by volume) or 1523 kilograms (by weight) shall be established for MIBK. Therefore, this action will only effect specific types of transactions which are greater than 500 gallons or 1523 kilograms of MIBK destined for designated countries. These transactions include (1) export transactions; (2) international transactions in which a U.S. broker or trader participates; and (3) transshipments through the U.S. Import transactions of MIBK into the U.S. (not destined for transshipment or transfer to designated countries), and domestic transactions of MIBK are excluded from the definitions of regulated transactions contained in 21 CFR 1310.01(f) and 1313.02(d).

The Deputy Administrator hereby certifies that this rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. A review of maritime shipments of MIBK reveals that during a two year period, there were less than

100 above-threshold export transactions destined for designated countries. This rule is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

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

**List of Subjects in 21 CFR Part 1310**

Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR part 1310 is amended as follows:

**PART 1310—[AMENDED]**

1. The authority citation for part 1310 continues to read as follows:

**Authority:** 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is amended by adding a new paragraph (b)(10) to read as follows:

**§ 1310.02 Substances Covered.**

\* \* \* \* \*

(b) \* \* \*

(10) Methyl Isobutyl Ketone (MIBK)

\* \* \* \* \*

3. Section 1310.04 is amended by adding new paragraph (f)(2)(v) to read as follows:

**§ 1310.04 Maintenance of Records.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(v) Export and International Transactions to Designated Countries, and Importations for Transshipment or Transfer to Designated Countries

Chemical	Threshold by volume	Threshold by weight
(A) Methyl Isobutyl Ketone (MIBK).	500 gallons	1523 kilograms.
(B) Reserved.		

4. Section 1310.08 is amended by adding new paragraphs (c), (d) and (e) to read as follows:

**§ 1310.08 Excluded transactions.**

\* \* \* \* \*

(c) Domestic transactions of Methyl Isobutyl Ketone (MIBK).

(d) Import transactions of Methyl Isobutyl Ketone (MIBK) destined for the United States.

(e) Export transactions, international transactions, and import transactions for transshipment or transfer of Methyl Isobutyl Ketone (MIBK) destined for

Canada or any country outside of the Western Hemisphere.

Dated: April 12, 1995.

**Stephen H. Greene,**

*Deputy Administrator.*

[FR Doc. 95-9589 Filed 4-18-95; 8:45 am]

BILLING CODE 4410-09-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[AZ-34-1-6823; FRL-5193-4]

**Clean Air Act Section 182(f) NO<sub>x</sub> Exemption Petition; Phoenix Ozone Nonattainment Area**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is finalizing the approval of a petition submitted by the Arizona Department of Environmental Quality (ADEQ) requesting that EPA grant an exemption for the Phoenix ozone nonattainment area (Phoenix area) from the requirement to implement oxides of nitrogen (NO<sub>x</sub>) reasonably available control technology (RACT). EPA published a proposed action to approve the Phoenix area NO<sub>x</sub> exemption in the **Federal Register** on November 1, 1994. In accordance with the requirements of the Clean Air Act, as amended in 1990 (the Act or CAA), the EPA has determined that additional NO<sub>x</sub> reductions from major stationary sources in the Phoenix area would not contribute to attainment of the national ambient air quality standard (NAAQS) for ozone. The approval of this action exempts the Phoenix area from implementing the NO<sub>x</sub> requirements for RACT, new source review (NSR), and the applicable general and transportation conformity and inspection and maintenance (I/M) requirements of the CAA. The EPA is finalizing approval of this action under provisions of the CAA regarding plan requirements for nonattainment areas.

**EFFECTIVE DATE:** This action is effective on April 11, 1995.

**ADDRESSES:** Copies of the petition and EPA's evaluation report is available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted petition is 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  
 Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012  
 Maricopa County Air Pollution Control District, 2406 South 24th Street, Suite E214, Phoenix, Arizona 85034

**FOR FURTHER INFORMATION CONTACT:** Wendy Colombo, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1202.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 1, 1994, EPA proposed to approve the Phoenix area NO<sub>x</sub> exemption petition, submitted by the ADEQ on April 13, 1994. 59 FR 54540. The exemption petition is based on urban airshed modeling (UAM) and makes a demonstration that additional NO<sub>x</sub> reductions in the Phoenix area would not contribute to attainment of the NAAQS for ozone. A detailed discussion of the background concerning the NO<sub>x</sub> requirements and the submitted petition is provided in the notice of proposed rulemaking (NPRM) cited above.

EPA has evaluated the exemption petition for consistency with the requirements of the CAA, EPA regulations, and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the petition satisfies the applicable EPA requirements and is exempting the Phoenix area from implementing the NO<sub>x</sub> requirements for RACT, NSR<sup>1</sup>, and the applicable general and transportation conformity and I/M requirements<sup>2</sup> of the CAA. A detailed discussion of the petition and EPA's evaluation have been provided in the NPRM and in the technical support document (TSD), dated October 1994. A detailed discussion of the scope of the

<sup>1</sup> The section 182(f) exemption provisions center on the effect on ozone concentrations due to NO<sub>x</sub> emission reductions. In the case of new or modified sources, even after the application of on-site controls from NSR programs, the source will result in increases of NO<sub>x</sub> emissions. Therefore, the "substantial NO<sub>x</sub> reductions" analysis used to demonstrate that NO<sub>x</sub> reductions do not contribute to attainment should reflect a zero emissions increase from new or modified stationary sources.

<sup>2</sup> "Scope of Nitrogen Oxides (NO<sub>x</sub>) Exemptions," from G.T. Helms, Group Leader, Ozone/Carbon Monoxide Programs Branch (MD-15), to the Air Branch Chiefs, January 12, 1995. "I/M Requirements in NO<sub>x</sub> RACT Exempt Areas", from Mary T. Smith, Acting Director, Office of Mobile Sources, to the Air Division Directors, October 14, 1994.

NO<sub>x</sub> exemption as applicable to the Phoenix area is discussed in the TSD dated January 1995 which accompanies this final action. These documents are available at EPA's Region IX office.

### Response to Public Comments

A 30-day public comment period was provided in 59 FR 54540. EPA received comment letters of support from two utility companies, the Arizona transportation authority, and two local governments in the Phoenix area. Two adverse comment letters were received from environmental groups and a local public interest law office.

In August 1994, three environmental groups submitted joint comments on the proposed approvals of NO<sub>x</sub> exemptions for the Ohio and Michigan ozone nonattainment areas. The comments address EPA's policy regarding NO<sub>x</sub> exemptions in general and apply to all actions EPA takes regarding section 182(f) NO<sub>x</sub> exemptions. These comments as well as those received from the local public interest law office are addressed below.

*Comment:* Certain commenters argued that NO<sub>x</sub> exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). Because the NO<sub>x</sub> exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place "when [EPA] approves a plan or plan revision," these commenters conclude that all NO<sub>x</sub> exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO<sub>x</sub> requirements, exemptions from the NO<sub>x</sub> conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the CAA's conformity provisions.

*Response:* Section 182(f) contains very few details regarding the administrative procedure for acting on NO<sub>x</sub> exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedures Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that

subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO<sub>x</sub> exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO<sub>x</sub> exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which section 302(e) of the CAA defines to include States) may petition for NO<sub>x</sub> exemptions "at any time," and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

With respect to major stationary sources, section 182(f) requires States to adopt NO<sub>x</sub> NSR and RACT rules, unless exempted. These rules were generally due to be submitted to EPA by November 15, 1992. Thus, in order to avoid the CAA sanctions, areas seeking a NO<sub>x</sub> exemption would have needed to submit their exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations are not due until November 1993 or 1994 (and EPA may take 12-18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO<sub>x</sub> NSR), no attainment demonstration is called for in the CAA. For maintenance plans, the CAA does not specify a deadline for submittal of maintenance demonstrations. Clearly, the CAA envisions the submittal of and EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The CAA requires conformity to the applicable SIP with regard to federally-supported NO<sub>x</sub> generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO<sub>x</sub> requirements would not apply if EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO<sub>x</sub>

requirements of the conformity rule, EPA notes that this issue has previously been raised in a formal petition for reconsideration of EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO<sub>x</sub> exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the Administrative Procedures Act. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in EPA's final conformity regulations, and EPA remains bound by their existing terms.

*Comment:* One commenter contends that because the Arizona SIP is inadequate to produce attainment, EPA cannot approve the waiver under section 182(f).

*Response:* The basis for granting the NO<sub>x</sub> exemption is that additional NO<sub>x</sub> reductions would not contribute to attainment. How an area demonstrates that NO<sub>x</sub> reductions do not contribute to attainment is outlined in EPA's December 1993 exemption guidance.<sup>3</sup> The contribute to attainment test is met by demonstrating through UAM that substantial reductions of VOC emissions result in lower ozone levels than would result from both substantial reductions of NO<sub>x</sub> emissions and combined reductions of VOC and NO<sub>x</sub> emissions. The Phoenix petition adequately demonstrates this through UAM modeling consistent with EPA's guidance. For reasons stated above, EPA does not agree that the decision to grant or deny the Phoenix petition under section 182(f) should depend on the approvability of the attainment demonstration under section 182 (b) or (c).

*Comment:* Some commenters stated that the modeling required by EPA guidance is insufficient to establish that NO<sub>x</sub> reductions would not contribute to attainment since only one level of NO<sub>x</sub> control, i.e., "substantial" reductions, is required to be analyzed. The comments also contend that the NO<sub>x</sub> reductions modeled specifically for the Phoenix

<sup>3</sup> "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)," from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Division Directors, December 16, 1993.

petition are not sufficient to meet the requirements of section 182(f), and that if any level of additional NO<sub>x</sub> reductions would contribute to attainment (as opposed to one test showing substantial reductions do not contribute to attainment), then the waiver must be denied. In addition, the commenters claim that Arizona did not model scenarios actually presented in the SIP.

*Response:* As described in EPA's December 1993 NO<sub>x</sub> exemption guidance, photochemical grid modeling is generally needed to document cases where NO<sub>x</sub> reductions are counterproductive to net air quality, do not contribute to attainment, do not show a net ozone benefit, or include excess reductions. The UAM or, in an ozone transport region, the Regional Oxidant Model (ROM) are acceptable models for these purposes.

EPA's guidance also states that application of UAM should be consistent with techniques specified in the EPA document, entitled, *Guideline on Air Quality Models, Revised*. Further, application of UAM should also be consistent with procedures contained in the EPA document, *Guideline for Regulatory Application of the Urban Airshed Model*, issued July 1991. Thus, episode selection for the section 182(f) demonstration should be consistent with the UAM guidance for SIP attainment demonstrations.

The section 182(f) contribute to attainment and net ozone benefit demonstrations concern unspecified "additional reductions" of NO<sub>x</sub>. EPA's December 1993 exemption guidance specifies that the analysis should reflect 3 scenarios of "substantial" NO<sub>x</sub> and VOC emission reductions. The guidance states that, in the first scenario, the demonstration should use the VOC reductions needed to attain (demonstrated by EKMA or UAM analyses). Alternatively, if the attainment demonstration has not been completed, the demonstration may use some other substantial VOC reduction. In any case, the VOC reductions should be substantial and documented as reasonable to expect for the area due to the CAA requirements. In the second scenario, NO<sub>x</sub> reductions should be modeled without any VOC reductions above the attainment year baseline. The level of NO<sub>x</sub> reductions should reflect the same percent reduction of anthropogenic VOC emissions in scenario (1) above. In the third scenario, a similar level of NO<sub>x</sub> reductions would be modeled along with the level of VOC reductions chosen. That is, if a 40% VOC reduction is chosen in scenario (1), then the model for scenario (3) would

simulate a 40% VOC reduction and approximately a 40% NO<sub>x</sub> reduction. It would be inappropriate to select a high level of VOC reductions and a low level of NO<sub>x</sub> reductions since this could artificially favor a finding that NO<sub>x</sub> reductions are not beneficial; thus, the scenarios are constrained to avoid an inappropriate analysis.

The EPA believes that these analyses are appropriate to determine in a *directional manner* whether or not NO<sub>x</sub> reductions are expected to be beneficial with respect to the air quality in the area/region. These analyses described in EPA's December 1993 guidance may be less precise than an attainment demonstration required under section 182(c). By contrast, with respect to the excess reductions provision in section 182(f)(2), EPA believes that more than a directional analysis is needed (for reasons described in the December 1993 guidance) and, therefore, requires an analysis based on the attainment demonstration.

The EPA does not agree that the waiver analysis must consider "any level" of NO<sub>x</sub> reductions. The EPA guidance requires analysis of "substantial" reductions because reductions which are extremely small or extremely large would bias the model so that the results could be predetermined. Analyzing very small changes in NO<sub>x</sub> and/or VOC emissions would yield a result of no change in the ozone concentrations since the model cannot assess very small changes. Analysis of very large NO<sub>x</sub> emission reductions might be unrealistic (especially compared to the adopted attainment demonstration) and would result in concluding that NO<sub>x</sub> reductions reduce ozone concentrations in all cases. Also, in developing an attainment demonstration, an area typically tries to attain the ozone standard in the least costly way by starting from current conditions and reducing emissions from there. While 100% VOC reduction alternatives exist, they are not the least expensive ways to meet the NAAQS, and may not be feasible. Instead, alternative combinations of VOC and NO<sub>x</sub> reductions are examined. If two different strategies show the same ambient ozone concentration, but one requires greater reductions and cost, the latter is not considered a preferable strategy.

EPA believes that the main reason for the NO<sub>x</sub> RACT waiver provisions in the CAA is the recognition by Congress that under certain conditions NO<sub>x</sub> emission reductions can be counterproductive to ozone attainment, because they could increase ozone levels and necessitate additional VOC reductions to

compensate. Although required as beneficial to ozone attainment unless demonstrated otherwise, NO<sub>x</sub> reductions which achieve the same ozone levels at a greater cost based on a strategy using extra counterbalancing VOC reductions does not make sense from an ozone regulatory standpoint. Therefore, EPA's exemption guidance reflects this rationale in allowing petitioners the opportunity to demonstrate scenarios where substantial reductions of NO<sub>x</sub> are counterproductive to ozone attainment. In the Arizona petition, both across-the-board NO<sub>x</sub> reductions and NO<sub>x</sub> RACT specific reductions were simulated which consistently demonstrate that NO<sub>x</sub> reductions do not contribute to attainment of the ozone standard.

The EPA believes that the scenarios utilized in the Phoenix analysis are adequate to determine that NO<sub>x</sub> reductions that might reasonably be considered in an attainment strategy would not contribute to attainment in the Phoenix area.

*Comment:* Some commenters provided a comment that three years of "clean" data fail to demonstrate that NO<sub>x</sub> reductions would not contribute to attainment.

*Response:* The EPA does not believe that this comment is applicable to the Phoenix area action because the area's section 182(f) petition is based on modeling rather than "clean" monitoring data.

*Comment:* Some commenters provided a comment on all section 182(f) actions that a waiver of NO<sub>x</sub> controls is unlawful if such a waiver will impede attainment and maintenance of the ozone standard in separate downwind areas.

*Response:* The EPA believes that while this comment may be applicable to proposed NO<sub>x</sub> exemption actions in other areas, it is not applicable to the Phoenix exemption action because the EPA is unaware of, and the comment itself does not specify, any downwind area for which NO<sub>x</sub> transport is of concern.

*Comment:* Comments were received regarding exemption of areas from the NO<sub>x</sub> requirements of the conformity rules. They argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, and do not waive the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO<sub>x</sub> emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO<sub>x</sub> emissions under the general conformity rules. The

commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO<sub>x</sub>, but want EPA in actions on NO<sub>x</sub> exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO<sub>x</sub> increases is in place.

*Response:* With respect to conformity, EPA's conformity rules<sup>4, 5</sup> provide a NO<sub>x</sub> waiver if an area receives a section 182(f) exemption. In its "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that in order to conform nonattainment and maintenance areas must demonstrate that the transportation plan and TIP are consistent with the motor vehicle emissions budget for NO<sub>x</sub> even where a conformity NO<sub>x</sub> waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO<sub>x</sub> motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO<sub>x</sub> motor vehicle emissions budget. However, the exemption for the Phoenix area was submitted pursuant to section 182(f)(3), and EPA does not believe it is appropriate to delay the statutory deadline for acting on this petition until the conformity rule is amended. As noted earlier in response to a previous issue raised by these commenters, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. This issue, thus, is under consideration within the Agency, but at this time remains unresolved. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are

those that appear in the Agency's final conformity regulations, and the Agency remains bound by their existing terms.

*Comment:* Some commenters argue that the CAA does not authorize any waiver of the NO<sub>x</sub> reduction requirements until conclusive evidence exists that such reductions are counter-productive.

*Response:* EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO<sub>x</sub> exemption policies, EPA has sought an approach that reasonably accords with Congress' intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO<sub>x</sub> similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO<sub>x</sub> reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO<sub>x</sub> exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO<sub>x</sub> in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f) but throughout the Title I ozone subpart, to avoid requiring NO<sub>x</sub> reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f)), the House Conference Committee Report states in pertinent part: "[T]he Committee included a separate NO<sub>x</sub>/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO<sub>x</sub> provisions. The Committee does not intend NO<sub>x</sub> reduction for reduction's sake, but rather as a measure scaled to the value of NO<sub>x</sub> reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess. 257-258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA "shall consider" the 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO<sub>x</sub> exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act

on NO<sub>x</sub> exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO<sub>x</sub> exemption requests must await "conclusive evidence", as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO<sub>x</sub> exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the CAA provides that the new NO<sub>x</sub> requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that *any one* of the following tests is met:

- (1) In any area, the net air quality benefits are greater in the absence of NO<sub>x</sub> reductions from the sources concerned;
- (2) In nonattainment areas not within an ozone transport region, additional NO<sub>x</sub> reductions would not contribute to ozone attainment in the area; or
- (3) In nonattainment areas within an ozone transport region, additional NO<sub>x</sub> reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO<sub>x</sub> exemption.

Only the first test listed above is based on a showing that NO<sub>x</sub> reductions are "counter-productive." If one of the tests is met (even if another test is failed), the section 182(f) NO<sub>x</sub> requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

*Comment:* One commenter objected to the adequacy of the modeling demonstration in meeting the fundamental requirements of EPA's guidance for applying the UAM, because the record reflects that the Phoenix area is not an area with a single meteorological regime and no intensive data from a field study was obtained for modeling purposes. In addition to these reasons, the commenter claims that because there was not a field study conducted with respect to the emissions inventory and that modeling performance was not very good at several sites, the petition should be denied.

*Response:* EPA's Guideline on Regulatory Application of the Urban

<sup>4</sup>"Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act," November 24, 1993 (58 FR 62188).

<sup>5</sup>"Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule," November 30, 1993 (58 FR 63214).

Airshed Model (UAM guidance), EPA-450/91-013, July 1991, describes procedures for the appropriate use of UAM, such as for attainment demonstrations required of all ozone nonattainment areas. This guidance generally requires that for attainment demonstrations, an area with a single meteorological regime, must model three episodes of that type of regime. However, EPA believes that the results of simulating two episodes with intensive data from a field study would be more reliable than simulating three episodes with merely routine data.

In terms of the meteorological regime issue, every day has different meteorology and will yield different ozone predictions. This does not necessarily mean that each varying meteorological day belongs to a different meteorological regime. Regime refers to a general pattern responsible for ozone formation. In the case of Phoenix, as documented in the Systems Applications International (SA) memorandum dated September 17, 1992,<sup>6</sup> a single meteorological regime exists in the Phoenix area which consists of a low pressure system over southwestern Arizona, with light southwesterly flow during the afternoon, and high temperatures. There is nothing in the record that is inconsistent with this description or conclusion.

EPA guidance for UAM states that three episodes should be modeled for each observed meteorological regime. However, in this case two episodes were considered sufficient because it was determined that data beyond that routinely available would be gathered and used to simulate ozone episodes. A field study, documented in "Summer 1992 Phoenix Ozone Field Study" (ADEQ, 1/93), involved the collection of data beyond that recorded on a routine basis, such as meteorological and air quality data aloft, VOC data, and extra background air quality data. In addition, because of the desire to use a fuller database, episodes were selected from among those that occurred during the study.

There was not a "field study" conducted in regards to the emissions inventory as field studies usually do not refer to emissions inventories. The emissions inventory in the Phoenix area

was developed using standard EPA-approved methods.

Because modeling performance is never exact, EPA must evaluate whether its performance is adequate for regulatory decision-making. Although modeling performance was not good at several sites, and some under-prediction occurred, the modeling exercise meets EPA's performance goals, and appears overall to perform reasonably. Spatial plots of the whole modeling domain and time-series plots of individual stations show reasonable performance. This is illustrated by the model's correct responses to diagnostic and sensitivity tests, in which various inputs are changed in determining if the model responds consistently with our scientific understanding of ozone formation. Therefore, EPA believes that the overall modeling performance is reasonable and acceptable.

*Comment:* One commenter contends that the Phoenix modeling tests failed the alternative "net air quality benefits" test because there were no ozone decreases in some model grid cells on the initial modeling day.

*Response:* While there was some discussion, the "net air quality benefits" test was not relied on by Arizona in support of the petition. Instead, two sets of modeling runs were performed for each modeling episode to meet the "contribute to attainment" test. The two sets were substantial levels of pollutant reductions and source-specific NO<sub>x</sub> reductions. Together, these runs showed that the specific reductions that would occur under NO<sub>x</sub> RACT, and also levels of NO<sub>x</sub> reductions likely to be examined in an attainment demonstration, would overall be counterproductive to ozone attainment.

The effect of decreases in NO<sub>x</sub> will always depend on location because a decrease can increase ozone nearby in time or space, and decrease it later and farther away. The fact that various modeling cells go up and down is far less significant for regulatory purposes than the effect on the overall peak.

The initial day of a modeling simulation is typically not used, per EPA guidance, because it is deemed too dependent on uncertain initial conditions for air quality, which must be extrapolated in time and space from relatively few measurements. Thus, the decreases in ozone for the initial days of the episodes modeled are not considered meaningful. Results for the second and later days of a simulation are used, since these more closely reflect the area's actual emissions.

### EPA Action

EPA is finalizing this action to exempt the Phoenix ozone nonattainment area from implementing the NO<sub>x</sub> requirements for RACT, NSR, and the applicable general and transportation conformity and I/M requirements.

The EPA believes that all section 182(f) exemptions that are approved should be approved only on a contingent basis. As described in the EPA's NO<sub>x</sub> Supplement to the General Preamble (57 FR 55628, November 25, 1992), the EPA would rescind a NO<sub>x</sub> exemption in cases where NO<sub>x</sub> reductions were later found to be beneficial in the area's attainment plan. That is, a modeling based exemption would last for only as long as the area's modeling continued to demonstrate attainment without the additional NO<sub>x</sub> reductions required by section 182(f). Arizona submitted its ozone attainment demonstration on November 15, 1994, and EPA is currently in the process of evaluating it in regards to meeting the CAA requirements.

If the EPA later determines that NO<sub>x</sub> reductions are beneficial based on new photochemical grid modeling in an area initially exempted, the area would be removed from exempt status and would be required to adopt and implement the NO<sub>x</sub> requirements, except to the extent that modeling shows NO<sub>x</sub> reductions to be "excess reductions". A determination that the NO<sub>x</sub> exemption no longer applies would mean that the NO<sub>x</sub> general and transportation conformity provisions would again be applicable (see 58 FR 63214, 58 FR 62188; 59 FR 31238) to the affected area. In the rulemaking action which removes the exempt status, the EPA would specify a schedule for Arizona to adopt the NO<sub>x</sub> requirements and for sources to comply with the applicable requirements.

The subsequent modeling analyses mentioned above need not be limited to those whose main purpose is to demonstrate attainment in the 1994 SIP revisions without the need for NO<sub>x</sub> controls required under section 182(f). State or local officials might want to consider a strategy that phases in NO<sub>x</sub> reductions only after certain VOC reductions are implemented. As improved emission inventories and ambient data become available, planning officials may choose to remodel. In addition, alternative control strategy scenarios might be considered in subsequent modeling analyses in order to improve the cost-effectiveness of the attainment plan.

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

<sup>6</sup> "Review of Ozone Episodes (1987-1991) in the Phoenix Area", from the Arizona Department of Environmental Quality to Systems Applications International, September 17, 1992. This memorandum is a summary of the characteristics of the ozone episodes in the Phoenix area, including annual, seasonal, and spatial distributions of the exceedances.

request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

### Regulatory Process

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the 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 action is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

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 May 19, 1995. Filing a petition for reconsideration by the Administrator of this 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 a rule. This action may not be challenged later in proceedings to enforce its requirements. Section 307(b)(2).

### List of Subjects in 40 CFR Part 52

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

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

Dated: April 11, 1995.

**Carol M. Browner,**  
*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 D—Arizona

2. Subpart D is amended by adding § 52.136 to read as follows:

### § 52.136 Control strategy for ozone: Oxides of nitrogen.

EPA is approving an exemption request submitted by the State of Arizona on April 13, 1994 for the Maricopa County ozone nonattainment area from the NO<sub>x</sub> RACT requirements contained in section 182(f) of the Clean Air Act. This approval exempts the Phoenix area from implementing the NO<sub>x</sub> requirements for RACT, new source review (NSR), and the applicable general and transportation conformity and inspection and maintenance (I/M) requirements of the CAA. The exemption is based on Urban Airshed Modeling as lasts for only as long as the area's modeling continues to demonstrate attainment without NO<sub>x</sub> reductions from major stationary sources.

[FR Doc. 95-9568 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-W

### 40 CFR Part 52

[TX-49-1-6831; FRL-5193-8]

### Approval and Promulgation of Temporary Section 182(f) Exemption to the Nitrogen Oxides (NO<sub>x</sub>) Control Requirements for the Houston and Beaumont Ozone Nonattainment Areas; Texas

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

**ACTION:** Final rule.

**SUMMARY:** In this action, the EPA is approving a petition from the State of Texas requesting that the Houston and Beaumont ozone nonattainment areas be temporarily exempted from NO<sub>x</sub> control requirements of section 182(f) of the Clean Air Act (CAA) as amended in 1990. The State of Texas bases its request upon preliminary photochemical grid modeling which shows that reductions in NO<sub>x</sub> would be detrimental to attaining the National Ambient Air Quality Standards (NAAQS) for ozone in these areas. This temporary exemption is being requested under section 182(f) of the CAA.

**EFFECTIVE DATE:** This action is effective as of April 12, 1995.

**ADDRESSES:** Copies of the documents relevant to these actions 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, Dallas, Texas 75202-2733

The Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087

**FOR FURTHER INFORMATION CONTACT:** Ms. Leila Yim Surratt or Mr. Quang Nguyen, Planning Section (6T-AP), Air Programs Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7214.

### SUPPLEMENTARY INFORMATION:

#### I. Background

On August 17, 1994, the Texas Natural Resource Conservation Commission (TNRCC) submitted to the EPA a petition pursuant to section 182(f) of the CAA which requests that the Houston and Beaumont ozone nonattainment areas be temporarily exempted by the EPA from the NO<sub>x</sub> control requirements of section 182(f). The Houston nonattainment area includes the cities of Houston and Galveston, and consists of the following eight counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The Beaumont nonattainment area includes the cities of Beaumont and Port Arthur, and consists of the following three counties: Hardin, Jefferson, and Orange. The State bases its petition on an Urban Airshed Modeling (UAM) demonstration showing that NO<sub>x</sub> reductions would not contribute to attainment in either area because the decrease in ozone concentrations resulting from volatile organic compound (VOC) reductions alone is equal to or greater than the decrease obtained from NO<sub>x</sub> reductions or a combination of VOC and NO<sub>x</sub> reductions.

As described in the State's petition, the TNRCC plans to complete additional UAM modeling between November 1995 and May 1996 using the results of an intensive 1993 field study, the Coastal Oxidant Assessment for Southeast Texas (COAST). The data collected through the COAST study consist of hourly point source emissions, gridded typical summer day on-road mobile source emissions, hourly air quality data, and detailed meteorological data for specific ozone exceedance episodes in the Houston-Beaumont domain. Because it is the most comprehensive data set available, it should result in greater accuracy in the modeling and therefore in the

attainment control strategy. Since the modeling is expected to be completed by May 1996, the TNRCC is requesting only a temporary NO<sub>x</sub> exemption until May 31, 1997.

The TNRCC had previously adopted and submitted to the EPA complete NO<sub>x</sub> Reasonably Available Control Technology (RACT) rules for the Houston and Beaumont areas. The TNRCC has also adopted and submitted to the EPA New Source Review (NSR), conformity, and vehicle inspection and maintenance (I/M) rules, each of which contain NO<sub>x</sub> provisions. The EPA's approval of the temporary NO<sub>x</sub> exemption petition affects the federal applicability and enforcement of the State's NO<sub>x</sub> RACT rule and the NO<sub>x</sub> provisions contained in the State's NSR, conformity, and I/M rules.

On December 15, 1994, the EPA proposed to approve the section 182(f) petition for a temporary NO<sub>x</sub> exemption for the Houston and Beaumont areas (see 59 FR 64640). The proposed rulemaking notice, the EPA's Technical Support Document (November 1994) on the proposed action, and supplemental information are contained in the docket and provide a detailed discussion of the TNRCC's submittal, applicable guidance and the EPA's rationale for proposing approval of the State's petition. Rather than repeating that entire discussion in this document, that discussion is incorporated by reference herein. Thus, the public should review the notice of proposed rulemaking for relevant background on this final rulemaking action.

## II. Response to Comments

The EPA requested public comments on all aspects of the proposed action to approve the section 182(f) petition for a temporary NO<sub>x</sub> exemption for the Houston and Beaumont ozone nonattainment areas. The EPA received 51 letters of support from individuals, industry, local judges, the State transportation authority, State and Federal legislators, and local governments.

Six adverse comment letters were received from individuals, environmental groups, and an association of companies which supply stationary source air pollution control systems, equipment, and services. One of the letters was submitted by three environmental groups and contained generic comments objecting to the EPA's general policy on section 182(f) exemptions. The three environmental groups who submitted the generic letter requested that it be included in each EPA rulemaking action for each section 182(f) petition.

*Comment:* Two letters of support asked for clarification concerning when the NO<sub>x</sub> requirements would take effect if the COAST modeling results indicate that some or all of the applicable NO<sub>x</sub> control requirements would contribute to attainment of the ozone NAAQS.

*Response:* In the FR notice proposing to approve the temporary NO<sub>x</sub> exemption for Houston and Beaumont (see 59 FR 64640, December 15, 1994), the EPA also proposed that upon the expiration of the temporary exemption on December 31, 1996, if the State had not received a permanent NO<sub>x</sub> exemption from the EPA prior to that time, the NO<sub>x</sub> RACT, NSR, conformity and I/M requirements would again become applicable except that the NO<sub>x</sub> RACT compliance date shall be as expeditious as practicable but no later than May 31, 1997. The EPA continues to believe that the above stated requirement is appropriate. Therefore, through this rulemaking on the temporary NO<sub>x</sub> exemption for the Houston and Beaumont areas, the following requirements would become applicable on January 1, 1997, if the Houston and Beaumont areas had not received a permanent NO<sub>x</sub> exemption prior to that time: (1) The State must have adopted and submitted to the EPA RACT, NSR, conformity, and I/M regulations to control NO<sub>x</sub> emissions (note that these provisions have already been met by the TNRCC), (2) the State's NO<sub>x</sub> RACT regulation must require subject sources to comply with the NO<sub>x</sub> control requirements as expeditiously as practicable but no later than May 31, 1997, (3) any NSR permits that had not been deemed complete prior to January 1, 1997, must comply with the NO<sub>x</sub> NSR requirements, consistent with the policy set forth in the EPA's NSR Supplemental Guidance memo dated September 3, 1992, from John S. Seitz, Director, EPA's Office of Air Quality Planning and Standards, (4) any conformity determination (for either a new or revised transportation plan and transportation improvement program (TIP)) made on or after January 1, 1997, must comply with the NO<sub>x</sub> conformity requirements, and (5) any I/M vehicle inspection made on or after January 1, 1997, must comply with the I/M NO<sub>x</sub> requirements.

*Comment:* One commenter stated that the temporary NO<sub>x</sub> waiver would expire on May 15, 1997, and asked for clarification on whether TIPs being developed this year would be exempted from the NO<sub>x</sub> conformity requirements.

*Response:* The EPA would like to clarify that the NO<sub>x</sub> waiver does not expire on May 15, 1997, as stated by the commenter, but rather will expire on

December 31, 1996, as discussed in the EPA's proposed approval of the State's petition (see 59 FR 64643). Because the State's petition clearly indicates that the attainment modeling should be completed between November 1995 and May 1996 (which will determine whether a VOC, NO<sub>x</sub>, or combination thereof, strategy is most beneficial for attainment), the EPA believes that the petition supports granting the State's request for a temporary exemption only until the end of 1996. Any conformity determination (for either a new or revised transportation plan and TIP) made after the effective date of the EPA's approval of this 182(f) petition for Houston and Beaumont, and before the expiration of the waiver on December 31, 1996, would be exempted from the NO<sub>x</sub> conformity requirements. Any conformity determination (for either a new or revised transportation plan and TIP) made on or after January 1, 1997, must comply with the NO<sub>x</sub> conformity requirements, unless the State had received a permanent section 182(f) NO<sub>x</sub> exemption prior to that time.

*Comment:* Several adverse comments stated that an area must submit a complete, approvable attainment State Implementation Plan (SIP) before a NO<sub>x</sub> waiver could be granted. Certain comments continued by stating that NO<sub>x</sub> exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). Because the NO<sub>x</sub> exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place "when [EPA] approves a plan or plan revision," these commenters conclude that all NO<sub>x</sub> exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO<sub>x</sub> requirements, exemptions from the NO<sub>x</sub> conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the CAA's conformity provisions.

*Response:* The TNRCC petitioned the EPA for an exemption under section 182(f), as evidenced by the letter from John Hall, Chairman of the TNRCC, transmitting the petition to the EPA (dated August 17, 1994) which states, "The TNRCC is submitting for your review, pursuant to Section 182(f) of the

CAA, a petition requesting a temporary exemption from NO<sub>x</sub> RACT \* \* \* In addition, on page 3 of the petition, the State also referenced subsection 182(f)(3) concerning the procedure for petitioning the Administrator.

Section 182(f) contains very few details regarding the administrative procedure for acting on NO<sub>x</sub> exemption requests. The absence of specific guidelines by Congress leaves the EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO<sub>x</sub> exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO<sub>x</sub> exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which section 302(e) of the CAA defines to include States) may petition for NO<sub>x</sub> exemptions "at any time," and requires the EPA to make its determination within six months of the petition's submission. These key differences lead the EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

With respect to major stationary sources, section 182(f) requires States to adopt NO<sub>x</sub> NSR and RACT rules, unless exempted. These rules were generally due to be submitted to the EPA by November 15, 1992. Thus, in order to avoid the CAA sanctions, areas seeking a NO<sub>x</sub> exemption would need to submit their exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations are not due until November 1993 or 1994 (and the EPA may take 12-18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO<sub>x</sub> NSR), no attainment demonstration is called for in the CAA. For maintenance plans, the CAA does

not specify a deadline for submittal of maintenance demonstrations. Clearly, the CAA envisions the submittal of an EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The CAA requires conformity with regard to federally-supported NO<sub>x</sub> generating activities in relevant nonattainment and maintenance areas. However, the EPA's conformity rules explicitly provide that these NO<sub>x</sub> requirements would not apply if the EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO<sub>x</sub> requirements of the conformity rule, the EPA notes that this issue has previously been raised in a formal petition for reconsideration of the EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within the EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO<sub>x</sub> exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the Administrative Procedure Act. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the EPA's final conformity regulations, and the EPA remains bound by their existing terms.

*Comment:* Several commenters felt that the UAM computer model is not sufficiently accurate to allow good predictions of air quality. Some stated that the modeling performed by the TNRCC was inconclusive. One commenter argued that focusing on severe rather than more typical ozone episodes may significantly distort the findings. Another commenter stated that TNRCC only modeled three episodes, each with varying performance. Finally, several commenters felt that the emissions inventories were significantly inaccurate so as to discredit the modeling results.

*Response:* The EPA disagrees with the comment that the UAM demonstration conducted by the TNRCC was insufficient to allow good predictions of air quality. Due to the large number of factors that influence ozone formation, the EPA agrees that the UAM model cannot precisely predict the exact

relationship between VOC, NO<sub>x</sub>, and ozone. However, Congress clearly intended that photochemical grid modeling be used for air quality planning purposes. As noted in the EPA's December 1993 guidance, UAM results are acceptable for the purpose of the section 182(f) demonstrations and application of UAM should be consistent with techniques specified in the EPA's "Guideline on Air Quality Models (Revised)."

The EPA disagrees with the comment that the episodes analyzed by the TNRCC may have distorted the findings. The TNRCC followed the EPA's "Guideline for Regulatory Application of the Urban Airshed Model" in selecting the episodes that were used in the 182(f) demonstration. In accordance with the EPA guidance, the State selected episodes that were likely to cover different sets of meteorological conditions corresponding with high ozone concentrations, not necessarily the most severe ozone exceedance. The EPA recommends that high ozone days be analyzed to ensure that the control strategy plan developed from the UAM analysis will result in ozone attainment under most meteorological conditions, not just the average meteorological condition. The selected multi-day episodes used in the Houston and Beaumont UAM analyses are representative of the primary meteorological conditions typically found on high ozone days.

The EPA's UAM guidance recommends that a minimum of three days from among all meteorological regimes should be modeled (e.g., three meteorological regimes each containing one primary episode day, or two meteorological regimes with at least two primary days from one of those regimes). The TNRCC's analyses are consistent with the EPA's guidance in that the two episodes that exhibited satisfactory performance cover more than three days of ozone exceedances and represent several of the predominant meteorological regimes for ozone exceedances in the Gulf Coast. (For further information, see the EPA's proposed approval notice for the temporary NO<sub>x</sub> exemption for Houston and Beaumont (59 FR 64640), and the EPA's Technical Support Document for the proposed action.)

The EPA disagrees with the comment that the emissions inventories were too inaccurate to produce acceptable modeling results. In accordance with the EPA's UAM guidance the State used the 1990 emissions inventory for Houston and Beaumont to developing its modeling demonstration. The EPA evaluated the State's 1990 base year

emissions inventories and a final approval was published in the FR on November 8, 1994 (see 59 FR 55588).

*Comment:* Several commenters stated that the modeling required by the EPA is insufficient to establish that NO<sub>x</sub> reductions would not contribute to attainment since only one level of NO<sub>x</sub> control, i.e., "substantial" reductions, is required to be analyzed. They argued that larger NO<sub>x</sub> reductions are realistically available, and that if Texas had considered large enough reductions in NO<sub>x</sub> emissions, the modeling would have shown decreases in ozone. They further explained that an area must submit an approvable attainment plan before the EPA can know whether NO<sub>x</sub> reductions will aid or undermine attainment.

*Response:* As described in the EPA's December 1993 NO<sub>x</sub> exemption guidance,<sup>1</sup> photochemical grid modeling is generally needed to document cases where NO<sub>x</sub> reductions are counterproductive to net air quality, do not contribute to attainment, do not show a net ozone benefit, or include excess reductions. The UAM or, in an ozone transport region, the Regional Oxidant Model (ROM) are acceptable models for these purposes.

The EPA guidance also states that application of UAM should be consistent with techniques specified in the EPA "Guideline on Air Quality Models (Revised)." Further, application of UAM should also be consistent with procedures contained in the EPA "Guideline for Regulatory Application of the Urban Airshed Model" (July 1991). Thus, episode selection for the section 182(f) demonstration should be consistent with the UAM guidance for SIP attainment demonstrations.

The section 182(f) contribute to attainment and net ozone benefit demonstrations concern an unspecified "additional reductions" of NO<sub>x</sub>. The EPA's December 1993 guidance specifies that the analysis should reflect three scenarios of "substantial" NO<sub>x</sub> and VOC emission reductions. The guidance states that, in the first scenario, the demonstration should use the VOC reductions needed to attain (demonstrated by EKMA or UAM analyses). Alternatively, if the attainment demonstration has not been completed, the demonstration may use some other substantial VOC reduction. In any case, the VOC reductions should be substantial and documented as reasonable to expect for the area due to

the CAA requirements. In the second scenario, NO<sub>x</sub> reductions should be modeled without any VOC reductions above the attainment year baseline. The level of NO<sub>x</sub> reductions should reflect the same percent reduction of anthropogenic VOC emissions in scenario (1) above. In the third scenario, a similar level of NO<sub>x</sub> reductions would be modeled along with the level of VOC reductions chosen. That is, if a 40 percent VOC reduction is chosen in scenario (1), then the model for scenario (3) would simulate a 40 percent VOC reduction and approximately a 40 percent NO<sub>x</sub> reduction. It would be inappropriate to select a high level of VOC reductions and a low level of NO<sub>x</sub> reductions since this could artificially favor a finding that NO<sub>x</sub> reductions are not beneficial; thus, the scenarios are constrained to avoid an inappropriate analysis.

The EPA believes that these analyses are appropriate to determine in a directional manner whether or not NO<sub>x</sub> reductions are expected to be beneficial with respect to the air quality in the area/region. These analyses described in the EPA's December 1993 guidance may be less precise than an attainment demonstration required under section 182(c). With respect to the excess reductions provision in section 182(f)(2), however, the EPA believes that more than a directional analysis is needed (for reasons described in the December 1993 guidance) and, therefore, requires an analysis based on the attainment demonstration.

Contrary to the statements of some of the commenters, the State modeled substantial NO<sub>x</sub> emission reductions that are significantly greater than the 10–15 percent reductions cited by the commenters as projected to result from NO<sub>x</sub> RACT. In the 1999 projected domain-wide (i.e., Houston and Beaumont) NO<sub>x</sub> emissions inventory used in the State's section 182(f) demonstration, point source emissions comprise 66 percent of the total NO<sub>x</sub> inventory. The State modeled a 50 percent total reduction of NO<sub>x</sub> (which would represent a 76 percent reduction in the point source NO<sub>x</sub> inventory) along with a 50 percent reduction of VOC and 50 percent reduction of both VOC and NO<sub>x</sub>. Clearly, the TNRC's section 182(f) modeling demonstration reflects substantial NO<sub>x</sub> reductions in addition to substantial VOC reductions.

*Comment:* Three groups provided a generic comment on all section 182(f) actions that three years of "clean" data fail to demonstrate that NO<sub>x</sub> reductions would not contribute to attainment.

*Response:* The EPA does not believe that this comment is applicable to the

Houston and Beaumont actions because neither area has based its section 182(f) petition on "clean" air monitoring data.

*Comment:* Several commenters stated that the EPA's December 1993 guidance prohibits granting a section 182(f) waiver based on three years of clean data if evidence exists showing that the waiver would interfere with attainment or maintenance in downwind areas. They argued that the condition should also apply to waiver requests based on modeling. The commenters felt that a NO<sub>x</sub> exemption in Houston and Beaumont would likely exacerbate ozone formation downwind in other nonattainment areas (e.g., Dallas) or near nonattainment areas (e.g., Austin, San Antonio, Corpus Christi, and Longview-Tyler-Marshall).

*Response:* As a result of the comments, the EPA reevaluated its position on this issue and has revised the previously issued guidance. As described below, the EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO<sub>x</sub> emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO<sub>x</sub> emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by the EPA on a NO<sub>x</sub> exemption request for stationary sources under section 182(f). That is, EPA action to grant or deny a NO<sub>x</sub> exemption request under section 182(f) would not shield that area from EPA action to require NO<sub>x</sub> emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of demonstrating attainment in the 1994 SIP revisions. Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO<sub>x</sub> emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO<sub>x</sub> emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, the EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, certain nonattainment areas in the modeling domain have requested exemptions from NO<sub>x</sub> requirements

<sup>1</sup> "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)," from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Division Directors, December 16, 1993.

under section 182(f). Some areas requesting an exemption may be upwind of and impact upon downwind nonattainment areas. The EPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the CAA, an exemption from the NO<sub>x</sub> requirements may be granted for nonattainment areas outside an ozone transport region if the EPA determines that "additional reductions of [NO<sub>x</sub>] would not contribute to attainment of the national ambient air quality standard for ozone in the area."<sup>2</sup> As described in section 4.3 of the December 1993 guidance document, the EPA believes that the term "area" means the "nonattainment area" and that the EPA's determination is limited to consideration of the effects in a single nonattainment area due to NO<sub>x</sub> emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated nonattainment area. Specifically, the guidance encourages States to "consider imposition of the NO<sub>x</sub> requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State [see section 110(a)(2)(D)(i)(I)]."

In contrast, section 4.4 of the guidance states that the section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO<sub>x</sub> exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on

to explain that section 110(a)(2)(D) (not section 182(f)) prohibits such impacts.

Consistent with the guidance in section 4.3, the EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently and hence is withdrawing the guidance presently contained in section 4.4. Thus, if there is evidence that NO<sub>x</sub> emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by the EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by the EPA. In some cases, then, the EPA may grant an exemption from across-the-board NO<sub>x</sub> RACT controls under section 182(f) and, in a separate action, require NO<sub>x</sub> controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances.

*Comment:* Several comments were received regarding exemption of areas from the NO<sub>x</sub> requirements of the conformity rules. They argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO<sub>x</sub> emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO<sub>x</sub> emissions under the general conformity rules. The commenters admit that, in prior guidance, the EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO<sub>x</sub>, but want the EPA in actions on NO<sub>x</sub> exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO<sub>x</sub> increases is in place.

*Response:* The EPA's conformity rules<sup>3,4</sup> provide a NO<sub>x</sub> waiver if an area receives a section 182(f) exemption. In its "Conformity; General Preamble for Exemption From Nitrogen Oxides

Provisions," 59 FR 31238, 31241 (June 17, 1994), the EPA reiterated its view that in order to conform nonattainment and maintenance areas must demonstrate that the transportation plan and TIP are consistent with the motor vehicle emissions budget for NO<sub>x</sub> even where a conformity NO<sub>x</sub> waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, the EPA states in the June 17 notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO<sub>x</sub> motor vehicle emissions budget, the EPA also intends to require consistency with the attainment demonstration's NO<sub>x</sub> motor vehicle emissions budget. However, the exemptions were submitted pursuant to section 182(f)(3), and the EPA does not believe it is appropriate to delay the statutory deadline for acting on these petitions until the conformity rule is amended. As noted earlier in response to a previous issue raised by these commenters, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. This issue, thus, is under consideration within the Agency, but at this time remains unresolved. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the Agency's final conformity regulations, and the Agency remains bound by their existing terms.

*Comment:* One group commented that the CAA does not authorize any waiver of the NO<sub>x</sub> reduction requirements until conclusive evidence exists that such reductions are counter-productive.

*Response:* The EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO<sub>x</sub> exemption policies, the EPA has sought an approach that reasonably accords with that intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO<sub>x</sub> similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, the EPA determines that in certain

<sup>2</sup>There are 3 NO<sub>x</sub> exemption tests specified in section 182(f). Of these, 2 are applicable for areas outside an ozone transport region; the "contribute to attainment" test described above, and the "net air quality benefits" test. EPA must determine, under the latter test, that the net benefits to air quality in an area "are greater in the absence of NO<sub>x</sub> reductions" from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO<sub>x</sub> exemption. Consequently, as stated in section 1.4 of the December 16, 1993 EPA guidance, "[w]here any one of the tests is met (even if another test is failed), the section 182(f) NO<sub>x</sub> requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply."

<sup>3</sup>"Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act," November 24, 1993 (58 FR 62188).

<sup>4</sup>"Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule," November 30, 1993 (58 FR 63214).

areas NO<sub>x</sub> reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO<sub>x</sub> exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO<sub>x</sub> in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f) but throughout the Title I ozone subpart, to avoid requiring NO<sub>x</sub> reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f)), the House Conference Committee Report states in pertinent part: "[T]he Committee included a separate NO<sub>x</sub>/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO<sub>x</sub> provisions. The Committee does not intend NO<sub>x</sub> reduction for reduction's sake, but rather as a measure scaled to the value of NO<sub>x</sub> reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess. 257-258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that the EPA "shall consider" the 185B report taken together with the time frame the Act provides both for completion of the report and for acting on NO<sub>x</sub> exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for the EPA to act on NO<sub>x</sub> exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO<sub>x</sub> exemption requests must await "conclusive evidence", as the commenters argue, there is also nothing in the Act to prevent the EPA from revisiting an approved NO<sub>x</sub> exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in the EPA's December 1993 guidance) that section 182(f)(1) of the CAA provides that the new NO<sub>x</sub> requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that *any one* of the following tests is met:

(1) In any area, the net air quality benefits are greater in the absence of NO<sub>x</sub> reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO<sub>x</sub> reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO<sub>x</sub> reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), the EPA believes that each test provides an independent basis for receiving a full or limited NO<sub>x</sub> exemption.

Only the first test listed above is based on a showing that NO<sub>x</sub> reductions are "counter-productive." If one of the tests is met (even if another test is failed), the section 182(f) NO<sub>x</sub> requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

*Comment:* Two commenters stated that the health and environmental benefits of decreasing NO<sub>x</sub> as well as the likelihood of concomitant reduction in other criteria pollutants (e.g., CO, SO<sub>2</sub> and particulates), provide other reasons to control NO<sub>x</sub>, independent of their impact on ozone formation. One commenter listed various negative health and environmental impacts of NO<sub>x</sub> and stated that although Houston does not exceed the NAAQS for nitrogen dioxide (NO<sub>2</sub>), current ambient levels are believed to be unsafe. In addition, the federal standard, 53 parts per billion (ppb) annual average, is meaningless without a short-term standard.

*Response:* The EPA agrees that high NO<sub>x</sub> emissions can contribute to air pollution problems independent of their role in ozone formation; however, the EPA disagrees that the NO<sub>x</sub> controls required under section 182(f) of the CAA should be implemented in the Houston or Beaumont area regardless of their impact on ozone. Ambient concentrations of NO<sub>2</sub> in Houston and Beaumont are significantly below the federal NAAQS for NO<sub>2</sub> (in 1993, the annual average NO<sub>2</sub> concentration was 24 ppb in Houston and 10 ppb in Beaumont, as compared with the federal standard of 53 ppb). Therefore, based on current federal standards, the EPA does not believe the NO<sub>2</sub> levels in Houston or Beaumont are unsafe.

The EPA is mandated to periodically re-evaluate the NAAQS for each criteria pollutant based on the best information available. The EPA is currently evaluating the NO<sub>2</sub> standard and will evaluate concerns over the standard through a separate rulemaking process. As part of that effort, in October 1994,

the EPA issued a draft paper for public review and comment entitled, "Review of National Ambient Air Quality Standards for Nitrogen Dioxide, Assessment of Scientific and Technical Information, OAQPS Staff Paper," concerning the NO<sub>2</sub> standard, and expects to propose rulemaking action in late 1995. If the EPA finds, based on its review, that the NO<sub>2</sub> standard should be revised, then at that time the Agency will implement NO<sub>x</sub> control requirements in areas that become nonattainment for NO<sub>2</sub> under the revised standard.

In addition, as discussed in an earlier response, section 182(f)(1)(A) specifically provides for an exemption in cases where NO<sub>x</sub> emission reductions would not contribute to attainment of the NAAQS for ozone in the area. The TNRCC has demonstrated for the relevant time period in its petition and in the EPA's proposed action that the NO<sub>x</sub> reductions required by section 182(f) would not contribute to attaining the ozone NAAQS in either area.

Finally, for the purposes of reducing acid rain deposition, certain NO<sub>x</sub> sources will still be required to reduce NO<sub>x</sub> emissions under Title IV of the CAA. For these reasons, the EPA does not believe that the NO<sub>x</sub> controls required under section 182(f) of the CAA should be implemented in the Houston or Beaumont areas regardless of their impact on ozone.

*Comment:* One commenter stated that Houston is not at risk of over controlling emissions, and that it is important to front end load emission reductions now so that control strategies would have time to work.

*Response:* The TNRCC petition for a temporary NO<sub>x</sub> exemption relies not on an excess emission reduction test, but on modeling which indicates that NO<sub>x</sub> reductions would be detrimental to attaining the ozone standard. The EPA agrees that where NO<sub>x</sub> reductions would be beneficial to attaining the ozone standard, they should be pursued expeditiously; however, for Houston and Beaumont, the State's modeling demonstration shows that NO<sub>x</sub> reductions will not contribute to attainment of the ozone NAAQS. As discussed in a previous response, Congress clearly understood that in certain areas, NO<sub>x</sub> reductions may not be beneficial, and for this reason, included a provision to exempt such areas from NO<sub>x</sub> control requirements.

*Comment:* One commenter argued that regardless of the impact NO<sub>x</sub> controls might have in the Houston area, NO<sub>x</sub> controls should be required in the Beaumont nonattainment area, since point source emissions are a significant

source of NO<sub>x</sub> in that area and large NO<sub>x</sub> reductions would guarantee ozone reductions.

*Response:* The EPA disagrees with this comment. As discussed in the EPA's proposed approval notice for the temporary NO<sub>x</sub> exemption for Houston and Beaumont (see 59 FR 64640), and the EPA's Technical Support Document for the proposed action, the TNCRCC modeled substantial reductions of VOC, NO<sub>x</sub> and both VOC and NO<sub>x</sub> in Beaumont and showed that ozone levels were lowest under the VOC-only reduction scenario. The State's petition therefore demonstrates that NO<sub>x</sub> reductions would not be beneficial to attainment of the ozone standard in the Beaumont area.

*Comment:* One commenter stated that there is no congestion management plan as required by federal transportation law and that the EPA has allowed the State to illegally wait two additional years before submitting a plan.

*Response:* The EPA disagrees with this comment for two reasons. First, it does not accurately reflect the current status of the transportation congestion management plan (which is a program implemented under the Intermodal Surface Transportation Efficiency Act (ISTEA) by the U.S. Department of Transportation (DOT)) in the Houston and Beaumont areas. Contrary to the commenter's statement, it is the EPA's understanding that a congestion management plan for Houston and Beaumont was submitted in accordance with the DOT regulatory requirements specified in title 23 of the Code of Federal Regulations in § 500.509 (see 58 FR 63442, December 1, 1993).

Second, the EPA's approval of the NO<sub>x</sub> exemption petition does not adversely impact the requirements and implementation of the transportation congestion management plan required by the DOT. The EPA supports this program and believes that it will, at a minimum, identify the congestion problems in the area and will lead to development of a traffic management plan which would have positive air quality benefits for the area. This program is being implemented by the DOT (which is a separate Federal agency from the EPA) under authority of the ISTEA. Contrary to the commenter's statement, the EPA's action on the NO<sub>x</sub> exemption petition will not result in a two year delay in the submission of the transportation congestion management plan.

*Comment:* Two commenters requested that the EPA consider extending the section 182(f) NO<sub>x</sub> exemption and the NO<sub>x</sub> RACT compliance deadlines past the EPA's proposed deadlines of

December 31, 1996 and May 31, 1997, respectively. One commenter stated that the EPA's revised ozone attainment planning policy points to the possible extension of modeling completion deadlines into 1997.

*Response:* The EPA believes that it is appropriate to maintain the NO<sub>x</sub> exemption period and the RACT compliance deadline as originally proposed by the EPA. The State of Texas has not requested that the exemption period or compliance dates be extended, nor did it make such a request during the public comment period for the EPA's proposed approval of the State's section 182(f) petition. In addition, the EPA has not received from the State any request that the COAST modeling schedule described in the State's petition has been delayed or would need to be modified. The EPA therefore believes that the rationale (as explained in the notice of proposed rulemaking (see 59 FR 64643)), for the December 31, 1996, and May 31, 1997, dates concerning the exemption period and the RACT compliance deadline, respectively, is still valid, and is independent of the EPA's revised ozone attainment planning policy. Should the EPA subsequently receive a revised section 182(f) petition for the Houston and Beaumont areas, we will evaluate it at that time for consistency with the CAA and the EPA's guidance on section 182(f) exemptions.

### III. Effective Date

This rulemaking is effective as of April 12, 1995. The Administrative Procedure Act (APA) 5 U.S.C. 553(d)(1), permits the effective date of a substantive rule to be less than thirty days after publication of the rule if the rule "relieves a restriction." Since the approval of the section 182(f) exemptions for the Houston and Beaumont areas is a substantive rule that relieves the restrictions associated with the CAA title I requirements to control NO<sub>x</sub> emissions, the NO<sub>x</sub> exemption approval may be made effective upon signature by the EPA Administrator.

### IV. Final Action

The EPA is taking final action to approve the section 182(f) petition submitted by the State of Texas requesting a temporary NO<sub>x</sub> exemption for the Houston and Beaumont ozone nonattainment areas. The temporary exemption automatically expires on December 31, 1996, without further notice from the EPA. Approval of the temporary exemption waives the federal requirements for NO<sub>x</sub> RACT, NSR,

conformity, and I/M for the period of the temporary exemption.

The State had previously adopted and submitted to the EPA complete NO<sub>x</sub> RACT, NSR, conformity, and I/M rules. During the temporary exemption, the EPA will not act upon the State's NO<sub>x</sub> RACT rules. The EPA plans to act upon the State's NO<sub>x</sub> NSR and conformity provisions in separate rulemaking actions because those provisions are contained in broader rules that also control VOC emissions; however, during the period of the temporary exemption, the State's NO<sub>x</sub> NSR and conformity requirements are not federally applicable. The EPA previously approved the State's I/M rules (see 59 FR 43046, August 22, 1994).

Upon the expiration of the temporary exemption, (1) the requirements pertaining to NO<sub>x</sub> RACT, NSR, conformity, and I/M will again become applicable, except that the NO<sub>x</sub> RACT implementation date applicable to the Houston and Beaumont nonattainment areas under section 182(f) shall be as expeditious as practicable but no later than May 31, 1997, unless (2) the State has received a permanent NO<sub>x</sub> exemption from the EPA prior to that time. The EPA will begin rulemaking action on the State's NO<sub>x</sub> RACT SIP upon the expiration of the temporary exemption if the State has not received a permanent NO<sub>x</sub> exemption by that time.

### Regulatory Process

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 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.

Approvals of NO<sub>x</sub> exemption petitions under section 182(f) of the CAA do not create any new requirements. Therefore, because the Federal approval of the petition does not impose any new requirements, the EPA certifies that it does not have a significant impact on affected small entities. 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 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by June 19, 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 12866*

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, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: April 12, 1995.

**Carol M. Browner,**  
*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 52.2308 is amended by adding paragraph (d) to read as follows:

#### **§ 52.2308 Area-wide nitrogen oxides (NO<sub>x</sub>) exemptions.**

\* \* \* \* \*

(d) The TNRCC submitted to the EPA on August 17, 1994, with supplemental information submitted on August 31, 1994, and September 9, 1994, a petition requesting that the Houston and Beaumont ozone nonattainment areas be temporarily exempted from the NO<sub>x</sub> control requirements of section 182(f) of the CAA. The Houston nonattainment area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties. The Beaumont nonattainment area consists of Hardin, Jefferson, and Orange counties. The exemption request was based on photochemical grid modeling which shows that reductions in NO<sub>x</sub> would not contribute to attaining the ozone NAAQS. On April 12, 1995, the

EPA approved the State's request for a temporary exemption. Approval of the temporary exemption waives the federal requirements for NO<sub>x</sub> Reasonably Available Control Technology (RACT), New Source Review (NSR), conformity, and vehicle inspection and maintenance (I/M) for the period of the temporary exemption. The temporary exemption automatically expires on December 31, 1996, without further notice from the EPA. Based on the rationale provided in the notice of proposed rulemaking on this action, upon the expiration of the temporary exemption, the requirements pertaining to NO<sub>x</sub> RACT, NSR, conformity, and I/M will again become applicable, except that the NO<sub>x</sub> RACT implementation date applicable to the Houston and Beaumont nonattainment areas under section 182(f) shall be as expeditious as practicable but no later than May 31, 1997, unless the State has received a permanent NO<sub>x</sub> exemption from the EPA prior to that time.

[FR Doc. 95-9567 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-P

#### **40 CFR Part 52**

[CA 144-4-6973b; FRL-5194-6]

#### **California State Implementation Plan Revision Interim Final Determination that State has Corrected Deficiencies**

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

**ACTION:** Interim final determination.

**SUMMARY:** Elsewhere in today's **Federal Register**, EPA has published a notice of proposed rulemaking fully approving revisions to the California State Implementation Plan. The revisions include a rule from the South Coast Air Quality Management District (SCAQMD): SCAQMD Rule 1153, Commercial Bakery Ovens. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiency for which sanctions clocks were activated on September 29, 1993. This action will defer the application of the offset sanctions and defer the application of the highway sanctions. Although the interim final action is effective upon publication, EPA will take comment. If no comments are received on EPA's proposed approval of the State's submittal, EPA will finalize its determination that the State has corrected the deficiency that started the sanctions clocks by publishing a final action in the **Federal Register**. If comments are received on EPA's proposed approval and this interim final

action, EPA will publish a final action taking into consideration any comments received.

**DATES:** Effective Date: April 19, 1995.

Comments: Comments must be received by May 19, 1995.

**ADDRESSES:** Comments should be sent to: Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

The State submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address and at the following locations:

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 2020 "L" Street,  
Sacramento, CA 95814.  
South Coast Air Quality Management  
District, 21865 E. Copley Drive,  
Diamond Bar, CA 91765-4182.

**FOR FURTHER INFORMATION CONTACT:**  
Christine Vineyard, 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) 744-1197.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On May 13, 1991, the State submitted SCAQMD Rule 1153, Commercial Bakery Ovens, which EPA disapproved in part on September 29, 1993. 58 FR 50850. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted a revised rule on February 24, 1995. The revised rule was adopted by the SCAQMD on January 13, 1995. In the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State of California's submittal of SCAQMD Rule 1153, Commercial Bakery Ovens.

Based on the proposed approval set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiency. Therefore, EPA is taking this interim final rulemaking action, effective on publication, finding that the State has corrected the deficiency. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable

and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiency. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiency has not been corrected. Until EPA takes such an action, the application of sanctions will continue to be deferred and/or stayed.

This action does not stop the sanctions clock that started for this area on September 29, 1993. However, this action will defer the application of the offsets sanctions and will defer the imposition of the highway sanctions. See 59 FR 39832 (Aug. 4, 1994). If EPA publishes a notice of final rulemaking fully approving the State's submittal, such action will permanently stop the sanctions clock and will permanently lift any applied, stayed or deferred sanctions. If EPA must withdraw the proposed full approval based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiency, the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832, to be codified at 40 CFR 52.31.

## II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiency that started the sanctions clocks. Based on this action, imposition of the offset sanctions will be deferred and imposition of the highway sanctions will be deferred until EPA's final action fully approving the State's submittal becomes effective or until EPA takes action proposing or disapproving in whole or part the State submittal. If EPA's proposed rulemaking action fully approving the State submittal becomes final, at that time any sanctions clocks will be permanently stopped and any applied, stayed or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has corrected the deficiency identified in EPA's limited disapproval actions, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act in not providing an opportunity for comment before this action takes effect.<sup>1</sup> 5 U.S.C. 553(b)(3). EPA believes that notice-and-comment rulemaking before the effective date of this action is

<sup>1</sup> As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks.

Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

## III. 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 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.

This action temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

The Office of Management and Budget (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, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

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

Dated: April 12, 1995.

**John C. Wise,**

*Acting Regional Administrator.*

[FR Doc. 95-9706 Filed 4-18-95; 8:45 am]

**BILLING CODE 6560-50-P**

## 40 CFR Part 180

[PP 4F4334/R2114; FRL-4941-2]

RIN 2070-AB78

### Poly-D-Glucosamine (Chitosan); Exemption from the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This document establishes an exemption from the requirement of a tolerance for residues of the biochemical growth regulator poly-D-glucosamine (hereafter referred to as chitosan) when used as a seed treatment in or on rice. Based on the nontoxic nature of this chemical, the Agency is also establishing an exemption from the requirement of a tolerance for residues of poly-D-glucosamine when used as a pesticide in the production of any raw agricultural commodities. Vanson L.P. requested this exemption.

**EFFECTIVE DATE:** This regulation becomes effective April 19, 1995.

**ADDRESSES:** Written objections, identified by the document control number, [PP 4F4334/R2114], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830; E-mail: miller.joanne@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of November 2, 1994 (59 FR 54907), EPA issued a notice that Vanson L.P., 8840, 152nd Ave.,

Northeast, Redmond, WA 98052, had submitted pesticide petition (PP 4F4334) to EPA proposing that an exemption from the requirement of a tolerance be established for residues of the biochemical growth regulator chitosan when used as a seed treatment on rice.

Chitosan is a naturally occurring substance produced from chitin extracts of crustacean shells (e.g., crab, shrimp, and lobster). The product is intended for use in treatment of seed prior to planting. Plant root growth is stimulated and stem strength enhanced, helping to prevent lodging (when the plants fall over because weak stems are unable to support it) in rice. Plants which lodge are difficult to harvest; therefore, yields may be decreased.

The chemical is taken up by plant cells where it enters the nucleus and stimulates messenger RNA and enzyme production. In the case of rice, such enzymes are thought to be responsible for stimulating the plant to produce more lignin in the stems, resulting in stronger stems and decreased lodging.

The Agency considered the following factors in support of this request for exemption from the requirement of a tolerance: Chitosan (1) is not toxic, as demonstrated in acute toxicity studies in mice, rats, and rabbits; (2) is naturally occurring in the environment in large concentrations; (3) has been exempted from the requirement of a tolerance in or on barley, beans, oats, peas, and wheat (40 CFR 180.1072) when used as a seed treatment at an application rate of 4 oz./100 lbs. seed; (4) has been approved by the State of Oregon for use in unrestricted amounts as a soil amendment (fertilizer), a use not regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act. Certain chitin-based products are permitted to be used in foods as hypocholesterolemic agents, as dietary fiber in low-calorie diets, and as agents to increase the specific loaf volume of bread.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this exemption request. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request.

Chitosan is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Based on the nontoxic nature of this chemical, the Agency is also establishing an exemption from the requirement of a tolerance for residues of poly-D-glucosamine when used as a pesticide in the production of any raw agricultural commodities.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 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 that is likely to result in 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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients

thereof; 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 the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 1995.

**Daniel M. Barolo**,  
*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.1072 is revised to read as follows:

#### § 180.1072 Poly-D-glucosamine (chitosan); exemption from the requirement of a tolerance.

(a) An exemption from the requirement of a tolerance is established for residues of the biological plant growth regulator poly-D-glucosamine when used as a seed treatment in or on barley, beans, oats, peas, rice, and wheat.

(b) An exemption from the requirement of a tolerance is established for residues of the biological plant growth regulator poly-D-glucosamine when used as a pesticide in the production any raw agricultural commodity.

[FR Doc. 95-9165 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-F

**40 CFR Part 300**

[FRL-5193-7]

**National Oil and Hazardous Substances Contingency Plan; National Priorities List Update; Cemetery Dump Site, Rose Township, MI****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of Deletion of the Cemetery Dump Site, Rose Township, Michigan from the National Priorities List (NPL).

**SUMMARY:** The Environmental Protection Agency (EPA) announces the deletion of the Cemetery Dump Site, in Rose Township, Michigan 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 Michigan 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 Michigan have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

**EFFECTIVE DATE:** April 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Matthew Mankowski (HSRW-6J), Remedial Project Manager, Office of Superfund, U.S. EPA-Region V, 77 West Jackson Blvd., Chicago, IL 60604, (312) 886-1842. The comprehensive information on the site is available at the local information repository located at: Holly Township Library, 1116 N. Saginaw, Holly, MI. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. Address for the Regional Docket Office is Jan Pfundheller (H-7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353-5821.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Cemetery Dump Site, Rose Township, Michigan.

A Notice of Intent to Delete for this site was published FR Doc. 95-3604. The closing date for comments on the Notice of Intent to Delete was March 17, 1995. EPA received no comments and therefore has not prepared a Responsiveness Summary.

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 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

**List of Subjects in 40 CFR Part 300**

Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

1. The authority citation for part 300 is revised to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

**Appendix B [Amended]**

2. Table 1 of appendix B to part 300 is amended by removing the Site "Cemetery Dump, Rose Township, Michigan".

Dated: April 3, 1995.

**David A. Ullrich,**

*Acting Regional Administrator, U.S. EPA, Region V.*

[FR Doc. 95-9537 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-P-M

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****43 CFR Public Land Order 7134**

[CA-930-1430-01; CACA 4661]

**Partial Revocation of Executive Order Dated April 17, 1926, Public Water Reserve No. 107; California****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Public Land Order.

**SUMMARY:** This order partially revokes an Executive Order insofar as it affects 69.78 acres of public land withdrawn for a public water reserve. The land is no longer needed for that purpose, and the partial revocation is needed to facilitate a land exchange under Section 206 of the Federal Land Policy and Management Act of 1976. This action will open 69.78 acres to surface entry and nonmetalliferous mining unless closed by overlapping withdrawals or temporary segregation of record. The land has been and remains open to metalliferous mining and mineral leasing.

**EFFECTIVE DATE:** May 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825-1889; 916-979-2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order of April 17, 1926, creating Public Water Reserve No. 107, is hereby revoked insofar as it affects the following described land:

**Mount Diablo Meridian**

T. 17 N., R. 10 E.,

Sec. 28, lots 5 and 7.

The area described contains 69.78 acres in Nevada County.

2. At 10 a.m. on May 19, 1995, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on May 19, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on May 19, 1995, the land will be opened to location and entry for nonmetalliferous mining under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration in unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between

rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: April 4, 1995.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 95-9581 Filed 4-18-95; 8:45 am]

BILLING CODE 4310-40-P

### 43 CFR Public Land Order 7135

[AK-932-1430-01; J-011940]

#### Revocation of Public Land Order No. 2546; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order revokes a public land order in its entirety as it affects approximately 6.86 acres of National Forest System land withdrawn for use by the Forest Service, Department of Agriculture, for the North Douglas Administrative Site. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State is opened and will be subject to the terms and conditions of the national forest reservation and any other withdrawal of record.

**EFFECTIVE DATE:** April 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 2546, which withdrew lands for use by the Forest Service as administrative sites, is hereby revoked as it affects the following described land:

#### Copper River Meridian

##### *Tongass National Forest*

A parcel of land located within lot 4 of sec. 17, in partially surveyed T. 41 S., R. 66 E., more particularly described as:

Beginning at a point N. 10°29' E., 102.81 chains from Corner No. 2 of U.S.S. No. 1555 and also N. 63° W., 0.14 chain from Station P-569+00 on the P-Line of B.P.R. North Douglas Forest Highway Extension No. 30; Thence West, 8.0 chains;

North, 8.04 chains to the line of mean high water;

Easterly, 10.19 chains with the line of mean high water;

S. 9° W., 9.96 chains to the point of beginning.

The area described contains approximately 6.86 acres.

2. The State of Alaska application for selection made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State is opened and will be subject to the terms and conditions of the Tongass National Forest reservation and any other withdrawal of record.

Dated: April 4, 1995.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 95-9580 Filed 4-18-95; 8:45 am]

BILLING CODE 4310-JA-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 61

[CC Docket No. 94-1; FCC 95-132]

#### Price Cap Performance Review for Local Exchange Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On March 30, 1995, the Federal Communications Commission adopted a First Report and Order revising its price cap regulations applicable to local exchange carriers (LECs). The Commission adopted these Rule revisions as a result of a performance review of LEC price cap regulation, which the Commission scheduled when it originally adopted LEC price cap regulation in 1990, to evaluate the price cap system as implemented and LEC performance under that system. The Commission's rule revisions increase value of the productivity offset factor in the price cap formula, provide three options for the productivity offset factor, revise the rules governing sharing obligations, and require a one-time reduction in the LECs' price cap indexes. The Commission also limits the number of cost changes resulting from changes in accounting rules that are eligible for exogenous cost treatment, and extends exogenous cost treatment to cost changes resulting from the sales or swaps of exchanges. In addition, the Commission states its intention to issue a further notice of proposed rulemaking in the near future, to consider adopting

other rule changes on a long-term basis. Finally, the Commission delegates authority to the Common Carrier Bureau to determine appropriate adjustments for LECs to make appropriate adjustments to their price cap indexes, to account for these effects caused by rescheduling their 1995 annual access filings.

**EFFECTIVE DATE:** May 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Joanne F. Wall or Steven Spaeth, Tariff Division, Common Carrier Bureau, (202) 418-1530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's First Report and Order adopted March 30, 1995, and released April 7, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M. St., N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, N.W., Washington, D.C. 20037.

#### Regulatory Flexibility Analysis

We have determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in Section 3 of the Small Business Act excludes any business that is dominant in its field operation. Local exchange carriers do not qualify as small entities because they have a nationwide monopoly on ubiquitous access to the subscribers in their service area. The Commission also has found all exchange carriers to be dominant in its competitive carrier proceeding. See 85 FCC 2d 1, 23-24 (1980).

To the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will have a significant effect on a substantial number of "small entities."

#### Summary of Report and Order

In this Order, we adopted revisions to the productivity offset factor, or "X-Factor," of the price cap index formula. In the formula, the X-Factor, which represents the amount by which local exchange carriers have been more productive than the economy as a whole, is subtracted from the Gross National Product Price Index (GNP-PI), a measure of inflation. In general, LEC prices are not permitted to increase more than the rate established by the

cap. Three X-Factor options are provided: 4.0, 4.7 and 5.3 percent.

We also adopt revisions to the LECs' sharing obligations, which are treated as downward adjustments of the price cap. Specifically, the 50-50 sharing zone for the 4.0 percent X-Factor option ranges from 12.25 to 13.25 percent rate return; the 100 percent sharing zone for this option begins at 13.25 percent. The sharing obligations for the 4.7 percent X-Factor requires 50-50 sharing for LECs with rates of return between 12.25 and 16.25 percent, and 100 percent sharing for LECs with rates of return above 16.25 percent. We have eliminated sharing obligations for LECs electing the high-options X-Factor, 5.3 percent.

We also conclude that the current 3.3 percent X-Factor was 0.7 percent too low during the first four years of price cap regulations. Accordingly, we require LECs to adjust their price cap indexes downward by 0.7 percent for each year from 1990 to 1994 that they elected the 3.3 percent productivity offset factor.

We also revise our rules governing exogenous costs in two ways. Exogenous costs are treated as either downward or upward adjustments to the price cap. First, we will allow exogenous cost adjustments for accounting changes only to the extent those accounting revisions result in economic cost changes, e.g., they affect the discounted cash flow of the carrier. We consider accounting rule changes as economic cost changes only to the extent those changes affect the discounted cash flow of the carrier. Second, we establish procedures for LECs to follow when seeking exogenous treatment for cost changes. Parties will be required to raise the issue of whether to treat any cost change exogenously in a petition for rulemaking, petition for declaratory ruling, or petition for waiver.

Finally, we adopt a number of minor revisions to the LEC price cap plan. We find that there is sufficient evidence to allow carriers greater flexibility to lower prices within service bands without risking predation or cross-subsidization. Therefore, we expand the lower pricing bands that apply to the service categories within the traffic sensitive and trunking baskets and to density pricing zones by 5 percent. We also will require LECs to treat cost reductions resulting from sales or swaps of exchanges to be treated exogenously as a condition placed on the grant of any waiver of the study area boundary rules. Finally, we change the inflation measure in the price cap index formula from Gross National Product Price Index

(GNP-PI) to Gross Domestic Product Price Index (GDP-PI).

**Ordering Clauses**

Accordingly, it is ordered, pursuant to authority contained in Sections 4(i), 4(j), 201-205, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201-205, 303(r), 403, and Section 553 of Title 5, United States Code, that Part 61 of the Commission's Rules, 47 C.F.R. Part 61 is amended as set forth below.

It is further ordered that authority is delegated to the Chief, Common Carrier Bureau, to determine that adjustments are necessary to the price cap indexes, actual price indexes, and service band indexes of local exchange carriers, to account for the effects of the revised effective date of the 1995 annual access filings of local exchange carriers under price cap regulation, and to establish a pleading cycle for review of those tariffs.

It is further ordered that the provisions in this Report and Order will be effective 30 days after **Federal Register** publication.

**List of Subjects in 47 CFR Part 61**

Communications common carriers, Tariffs.  
Federal Communications Commission.  
**William F. Caton,**  
*Acting Secretary.*

Part 61 of Title 47 of the CFR is amended as follows:

**PART 61—TARIFFS**

1. The authority citation continues to read as follows:

**Authority:** Secs. 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201-205, and 403, unless otherwise noted.

2. Section 61.3 is amended by redesignating paragraphs (p) through (ll) as (q) through (mm), and by adding a new paragraph (p) to read as follows:

**§ 61.3 Definitions.**

(p) *GDP Price Index (GDP-PI).* The estimate of the "Fixed Weight Price Index for Gross Domestic Product, 1987 Weights" published by the United States Department of Commerce, which the Commission designates by Order.

3. Section 61.45 is amended by revising paragraphs (b) and (c), the introductory text of paragraphs (d) and (d)(1) and paragraphs (d)(1)(ii), (d)(1)(vi) and (e) to read as follows:

**§ 61.45 Adjustments to the PCI for Local Exchange Carriers.**

\* \* \* \* \*

(b) Adjustments to local exchange carrier PCIs for the baskets designated in § 61.42(d) (2), (3) and (4) shall be made pursuant to the formula set forth in § 61.44(b), and as further explained in §§ 61.44 (e), (f), (g), and (h).

(1) Notwithstanding the value of X defined in § 61.44(b), the X value applicable to the baskets specified in § 61.42(d) (2) and (3) shall be 4.0%, or 4.7%, or 5.3%, as the carrier elects.

(2) For the basket specified in § 61.42(d)(4), the value of X shall be 3.0%, or 3.7%, or 4.3%, as the carrier elects.

(c) Subject to paragraph (e) of this section, adjustments to local exchange carrier PCIs for the basket designated in § 61.42(d)(1) shall be made pursuant to the following formula:

$$PCI_t = PCI_{t-1} [1 + w[(GDP-PI - X - (g/2)) / (1 + (g/2))] + \Delta Z / R]$$

where

GDP-PI = the percentage change in the GDP-PI between the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year,

X = productivity factor of 4.0%, or 4.7%, or 5.3% if the carrier so elects,

g = the ratio of minutes of use per access line during the base period, to minutes of use per access line during the previous base period, minus 1,

$\Delta Z$  = the dollar effect of current regulatory changes when compared to the regulations in effect at the time the PCI was updated to  $PCI_{t-1}$ , measured at base period level of operations,

R = base period quantities for each rate element "i", multiplied by the price for each rate element "i" at the time the PCI was updated to  $PCI_{t-1}$ ,

w =  $R + \Delta Z$ , all divided by R,  $PCI_t$  = the new PCI value, and  $PCI_{t-1}$  = the immediately preceding PCI value.

(d) The exogenous cost changes represented by the term " $\Delta Z$ " in the formula detailed in paragraphs (b) and (c) of this section shall be limited to those cost changes that the Commission shall permit or require by rule, rule waiver, or declaratory ruling.

(1) Subject to further order of the Commission, those exogenous changes shall include cost changes caused by:

\* \* \* \* \*

(ii) Such changes in the Uniform System of Accounts, including changes in the Uniform System of Accounts requirements made pursuant to § 32.16

of this chapter, as the Commission shall permit or require be treated as exogenous by rule, rule waiver, or declaratory ruling.

\* \* \* \* \*

(vi) Such tax law changes and other extraordinary cost changes as the Commission shall permit or require be treated as exogenous by rule, rule waiver, or declaratory ruling.

\* \* \* \* \*

(e) The “w[(GDP-PI-X-[g/2))/(1+(g/2)))]” component of the PCI formula contained in paragraph (c) of this section shall be employed only in the adjustment made in connection with the annual price cap filing.

\* \* \* \* \*

7. Section 61.47 is amended by revising paragraphs (e), (g)(1), (g)(2), (g)(4), and (h)(2) to read as follows:

**§ 61.47 Adjustments to the SBI; pricing bands.**

\* \* \* \* \*

(e) Pricing bands shall be established each tariff year for each service category and subcategory within a basket. Except as provided in paragraphs (f), (g), and (h) of this section, each band shall limit the pricing flexibility of the service category or subcategory, as reflected in the SBI, to an annual increase of five percent or an annual decrease of ten percent, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year.

\* \* \* \* \*

(g) (1) *Local Exchange Carriers—Service categories and subcategories.* Local exchange carriers subject to price cap regulation as that term is defined in § 61.3(w) shall use the methodology set forth in paragraphs (a) through (d) of this section to calculate two separate subindexes: One for the DS1 services offered by such carriers and the other for the DS3 services offered by such carriers. The annual pricing flexibility for each of these two subindexes shall be limited to an annual increase of five percent or an annual decrease of ten percent, relative to the percentage change in the PCI for the special access services basket, measured from the last day of the preceding tariff year.

(2) The upper pricing band for the tandem-switched transport service category shall limit the annual upward pricing flexibility for this service category, as reflected in its SBI, to two percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year. The lower pricing band for the tandem-switched transport service

category shall limit the annual downward pricing flexibility for this service category, as reflected in its SBI, to ten percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year.

\* \* \* \* \*

(4) Local exchange carriers subject to price cap regulation as that term is defined in § 61.3(v) shall use the methodology set forth in paragraphs (a) through (d) of this section to calculate a separate subindex for the 800 data base vertical features offered by such carriers. The annual pricing flexibility for this subindex shall be limited to an annual increase of five percent or an annual decrease of ten percent, relative to the percentage change in the PCI for the traffic sensitive basket, measured from the last day of the preceding tariff year.

\* \* \* \* \*

(h) \* \* \*

(2) The annual pricing flexibility for each of the subindexes specified in paragraph (h)(1) of this section shall be limited to an annual increase of five percent or an annual decrease of fifteen percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year.

12. Section 61.48 is amended by revising paragraphs (h)(3)(ii)(B), (h)(5)(i), (i)(3)(ii)(B), and (i)(4)(ii) to read as follows:

**§ 61.48 Transition rules for price cap formula calculations.**

\* \* \* \* \*

(h) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(B) 0.90 times the SBI value for the special access services included in the category or subcategory on the day preceding the transport restructure date, weighted by the revenue weight of the transport services included in the category or subcategory.

\* \* \* \* \*

(5) \* \* \*

(i) The upper pricing band for the tandem-switched transport service category shall limit the upward pricing flexibility for this service category, as reflected in its SBI, to two percent, measured from the initial restructured rates for tandem-switched transport. The lower pricing band for the tandem-switched transport service category shall limit the downward pricing flexibility for this service category, as reflected in its SBI, to ten percent,

measured from the initial restructured rates for tandem-switched transport.

\* \* \* \* \*

(i) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(B) 0.85 times the SBI value for the services included in the zone category on the day preceding the later date, weighted by the revenue weight of the later services included in the zone category.

\* \* \* \* \*

(4) \* \* \*

(ii) From the later date through the end of the following tariff year, the annual pricing flexibility for each of the subindexes specified in paragraph (i)(4)(i) of this section shall be limited to an annual increase of five percent or an annual decrease of fifteen percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the tariff year preceding the tariff year in which the later date occurs.

\* \* \* \* \*

[FR Doc. 95-9571 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 69**

[CC Docket No. 93-6; FCC 95-94]

**Safeguards To Improve Administration of the Interstate Access Tariff and Revenue Distribution Processes**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission (“FCC” or “Commission”) has adopted a Report and Order and Order to Show Cause (“Order”) adopting new rules to reform the interstate access tariff and revenue distribution processes administered by the National Exchange Carrier Association, Inc. (“NECA”). The Order amends the rules to include five directors from outside the local exchange carrier (“LEC”) industry on NECA’s Board of Directors. The Order adopts additional measures to increase NECA and LEC accountability to the FCC, and strengthen NECA’s internal operations. In addition, the Order directs NECA to show cause why it should not be required to amend its incentive compensation plan to eliminate any incentive based upon common line or traffic sensitive pool earnings, or that might otherwise induce NECA officers or employees to violate Commission requirements. The FCC adopted this Order to assure that NECA

administers the interstate access tariff and revenue distribution processes in accordance with FCC rules.

**EFFECTIVE DATE:** May 19, 1995. NECA shall submit its response to the Commission's order to show cause on or before June 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** William A. Kehoe III, telephone number 202-418-0850, or John Hays, telephone number 202-418-0875.

**SUPPLEMENTARY INFORMATION:** This is a summary of the FCC's Report and Order and Order to Show Cause ("Order") in Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, FCC 95-94, CC Docket No. 93-6, adopted March 3, 1995 and released March 8, 1995. The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M St., NW., Washington, DC. The full text will be published in the FCC Record and may also be purchased from the Commission's copy contractor, the International Transcription Service, at 2100 M Street, NW., suite 140, Washington, DC 20037, telephone number 202-857-3800.

### Regulatory Flexibility Analysis

In the Notice of Proposed Rulemaking<sup>1</sup> in this proceeding, the Commission certified that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposals in this proceeding were adopted, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act.<sup>2</sup> Those proposals addressed by the administration of the interstate access tariff and revenue distribution processes by NECA, which is an association of LECs. Because of the nature of local exchange and access service, the Commission has concluded that LECs, including small LECs, are dominant in their fields of operation and therefore are not "small entities" as defined by that act.<sup>3</sup> The Secretary has sent a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of that act.<sup>4</sup>

<sup>1</sup> Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, *Notice of Proposed Rulemaking*, 8 FCC Rcd 1503, 1510, 58 FR 11203, 11204 (1993) (Notice).

<sup>2</sup> 5 U.S.C. 601(3).

<sup>3</sup> See MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983).

<sup>4</sup> 5 U.S.C. 603(a).

### Synopsis of the Report and Order and Order to Show Cause

The NECA is an association of LECs established in 1984, at the direction of the Federal Communications Commission, to administer important Commission programs. These programs now include the common line ("CL") and traffic sensitive pools, the universal service fund, the lifeline assistance program, and the long term support program. The Commission's rules require LECs to report revenue, cost, and demand data to NECA so that NECA can administer these programs in accordance with Commission requirements.<sup>5</sup>

In 1989 and 1990, the Common Carrier Bureau ("Bureau") audited certain data that the Bell Operating Companies ("BOCs") had reported to NECA's CL pool during late 1988 and early 1989. That audit disclosed that several NECA directors appeared to have participated in an attempt to influence improperly the CL pool earnings for 1988 by inducing certain large LECs to report data to NECA that were inconsistent with our accounting, separations, and access charge rules. In a November 9, 1990 letter to NECA,<sup>6</sup> the Commission expressed concern regarding the directors' apparent misconduct. The Commission required NECA to hire an independent auditor to recommend safeguards to prevent manipulation of NECA's processes. NECA hired Ernst & Young, which filed its report on this audit with the Commission on December 9, 1991.<sup>7</sup> This report acknowledged NECA's improvement since the Bureau audit and recommended additional measures to improve the interstate access tariff and revenue distribution processes further.<sup>8</sup> NECA has implemented many of the recommendations that required no Commission action and has asked the Commission to act when such action was required.<sup>9</sup>

<sup>5</sup> 47 CFR 69.116(c), 69.117(c), 69.605(a).

<sup>6</sup> Letter from Donna R. Searcy, Secretary, FCC, to Lawrence C. Ware, Chairman of the Board of Directors, NECA, 5 FCC Rcd 7183 (1990) (*November 9 Letter*).

<sup>7</sup> Ernst & Young, Review and Recommended Pool Safeguards, AAD 91-24 (filed Dec. 9, 1991) (Safeguards Report).

<sup>8</sup> The improvements included a new emphasis on rule compliance, changes to NECA's bylaws that make NECA's Board deliberations more systematic, and better methods for ensuring that the data LECs submit to NECA comply with Commission requirements. We discuss these improvements in subsequent portions of this Order.

<sup>9</sup> For instance, after the independent auditor recommended that the NECA Board include directors from outside the LEC industry, NECA petitioned the Commission for a rule change to add two outside director positions to its Board.

In the Notice in this Docket, the Commission proposed to adopt those recommendations of the independent auditor that it found warranted Commission action. The Commission's proposals focused on the composition and operation of NECA's Board, on the relationship between NECA and the Commission, and on methods for strengthening NECA's internal operations. Sixteen parties filed comments on the Notice, and five parties replied.

In this Order, the Commission adopts many of its proposals. To bring independent views to NECA's deliberations and to help ensure that NECA complies with Commission requirements, the Commission changes the composition of NECA's Board. Effective January 1, 1996, NECA's Board will consist of five directors from outside the LEC industry, two directors representing the BOCs, two directors representing other LECs having annual operating revenues in excess of \$40 million, and six directors representing LECs having annual operating revenues of less than \$40 million. These directors will serve one-year terms, but, if they seek reelection, must face contested elections at least every three years. The Commission requires that each NECA Board committee include at least one outside director, and eliminates restrictions on the membership of NECA's CL and traffic sensitive committees.

In the Order, the Commission reiterates that, in preparing interstate access tariff filings and distributing interstate revenue, NECA must correct any data that it reasonably believes do not comply with our rules. To help ensure that NECA receives complete and accurate data from LECs, the Commission requires that responsible LEC officers or employees certify data submissions to NECA. The Commission also requires NECA to report annually to the Commission on the results of its cost study review process. In addition, the Commission orders NECA to show cause why it should not be required to amend its incentive compensation plan for its officers and employees to eliminate any incentives that may reward rule violations. The Commission, however, declines to require LECs that do not participate in NECA's pools to obtain independent audits of their costs studies. It also declines to require NECA to provide it with on-line access to NECA data bases at this time.

In taking these actions, the Commission emphasized that it has no wish to superintend NECA's day-to-day operations, and that it does not believe

that its actions intrude upon NECA's managerial discretion. NECA, however, is an organization established at the Commission's direction, whose structure and principal functions are specified by Commission rules.<sup>10</sup> The Commission believes that, to discharge its own responsibility to ensure the reasonableness of interstate telephone rates, it must ensure that NECA is discharging its responsibilities under the Commission's rules.

**Ordering Clauses**

Accordingly, It Is Ordered, pursuant to Sections 1, 4(i), 201-205, 218-220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201-05, 218-20, and 403, that Part 69 of the Commission's rules, 47 CFR Part 69, IS AMENDED, as specified below.

It Is Further Ordered, pursuant to Sections 1, 4(i), 201-205, 218-220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201-05, 218-20, and 403, that NECA shall file an annual report as specified in paragraphs 64 and 65 of the Report and Order.

It Is Further Ordered, pursuant to Sections 1, 4(i), 201-205, 218-220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201-05, 218-20, and 403, that NECA shall show cause why it should not be required to amend its incentive compensation plan to eliminate any incentive based upon common line or traffic sensitive pool earnings or that might otherwise induce NECA officers or employees to violate Commission requirements.

It Is Further Ordered, pursuant to Sections 1, 4(i), 201-205, 218-220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201-05, 218-20, and 403, that, pending further Commission order, NECA shall not make any incentive payments based on the rates of return earned by the common line or traffic sensitive pools.

**List of Subjects in 47 CFR Part 69**

Access charges, Telephone.  
Federal Communications Commission.

**William F. Caton,**  
*Acting Secretary.*

**Rule Amendments**

Part 69 of Title 47 of the CFR is amended as follows:

**PART 69—ACCESS CHARGES**

1. The authority citation for part 69 continues to read as follows:

**Authority:** Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.601 is amended by adding a new paragraph (c) to read as follows:

**§ 69.601 Exchange carrier association.**

\* \* \* \* \*

(c) All data submissions to the association required by this Title shall be accompanied by the following certification statement signed by the officer or employee responsible for the overall preparation for the data submission:

**Certification**

I am (title of certifying officer or employee). I hereby certify that I have overall responsibility for the preparation of all data in the attached data submission for (name of carrier) and that I am authorized to execute this certification. Based on information known to me or provided to me by employees responsible for the preparation of the data in this submission, I hereby certify that the data have been examined and reviewed and are complete, accurate, and consistent with the rules of the Federal Communications Commission.

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Persons making willful false statements in this data submission can be punished by fine or imprisonment under the provisions of the U.S. Code, Title 18, Section 1001).

3. Section 69.602 is revised to read as follows:

**§ 69.602 Board of directors.**

(a) For purposes of this section, the association membership shall be divided into three subsets:

(1) The first subset shall consist of the telephone companies owned and operated by the seven Regional Bell Holding Companies;

(2) The second subset shall consist of all other telephone companies with annual operating revenues in excess of forty million dollars;

(3) The third subset shall consist of all other telephone companies. All commonly controlled companies shall be deemed to be one company for purposes of this section.

(b) There shall be fifteen directors of the association.

(c) Until 1996, three directors shall represent the first subset, three directors shall represent the second subset, and nine directors shall represent the third subset. In 1996 and thereafter, two directors shall represent the first subset, two directors shall represent the second subset, six directors shall represent the third subset, and five directors shall represent all three subsets.

(d) No director who represents all three subsets shall be a current or former officer or employee of the association or of any association member, or have a business relationship or other interest that could interfere with his or her exercise of independent judgment.

(e) Each subset shall select the directors who will represent it individually through an annual election in which each member of the subset shall be entitled to vote for the number of directors that will represent such members' subset.

(f) The association membership shall select the directors for the following calendar year who will represent all three subsets through an annual election in which each member of the association shall be entitled to one vote for each director position. There shall be at least two candidates meeting the qualifications in paragraph (d) of this section for each such director position:

(1) In any election in which the most recently elected director for such position is not a qualified candidate;

(2) If there has been no election for such position having more than one qualified candidate during the present and the two preceding calendar years; and

(3) In any election for which the ballot lists two or more qualified candidates.

(g) At least one director representing all three subsets shall be a member of each committee of association directors.

(h) For each access element or group of access elements for which voluntary pooling is permitted, there shall be a committee that is responsible for the preparation of charges for the associated access elements that comply with all applicable sections in this part.

(i) Directors shall serve for a term of one year commencing January 1 and concluding on December 31 of each year.

4. Section 69.605 is amended by adding a new paragraph (e) to read as follows:

**§ 69.605 Reporting and distribution of pool access revenues.**

\* \* \* \* \*

(e) The association shall submit a report on or before February 1 of each calendar year describing the association's cost study review process for the preceding calendar year as well as the results of that process. For any revisions to cost study results made or recommended by the association that would change the respective carrier's calculated annual common line or traffic sensitive revenue requirement by ten percent or more, the report shall include the following information:

<sup>10</sup> See 47 CFR 69.601-69.612.

- (1) The name of the carrier;  
 (2) A detailed description of the revisions;  
 (3) The amount of the revisions;  
 (4) The impact of the revisions on the carrier's calculated common line and traffic sensitive revenue requirements; and  
 (5) The carrier's total annual common line and traffic sensitive revenue requirement.

[FR Doc. 95-9575 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 94-66; RM-8469]

#### Radio Broadcasting Services; Tyler, Fairfield and Commerce, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Gleiser Communications, Inc., substitutes Channel 221C3 for Channel 221A at Tyler, Texas, and modifies the license of Station KDOK(FM) to specify operation on the higher powered channel. To accommodate the upgrade at Tyler, the Commission also substitutes Channel 256A for Channel 221A at Fairfield, Texas, and Channel 277A for Channel 221A at Commerce, Texas; and modifies the licenses of Station KNES(FM) and KEMM(FM), respectively, to reflect the change in channels. See 59 FR 3589, July 14, 1994, and Supplemental Information, *infra*. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94-66, adopted April 6, 1995, and released April 14, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC 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 contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

The following channels can be allotted to the noted communities in compliance with the Commission's minimum distance separation requirements. Channel 221C3 can be allotted to Tyler with a site restriction

of 1.6 kilometers (1.0 miles) west to accommodate Gleiser's desired site. The coordinates for Channel 221C3 at Tyler are 32-20-42 and 95-19-08. Channels 256A and Channel 277A can be allotted to Fairfield and Commerce, respectively, at the transmitter sites specified in Stations KNES(FM) and KEMM(FM)'s licenses. The coordinates for Channel 256A at Fairfield, Texas, are 31-41-52 and 96-09-44. The coordinates for Channel 277A at Commerce, Texas, are 33-11-40 and 96-01-20.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

#### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 221A and adding Channel 221C3 at Tyler; by removing 221A and adding Channel 256A at Fairfield; and by removing Channel 221A and adding Channel 277A at Commerce.

Federal Communications Commission.

**John A Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95-9628 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-F

#### DEPARTMENT OF DEFENSE

#### 48 CFR Parts 225 and 252

#### Defense Federal Acquisition Regulation Supplement; Restriction on Procurement of Goods

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

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

**SUMMARY:** The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the existing foreign source restrictions for machine tools and valves, buses, chemical weapons antidote, air circuit breakers, and antifriction bearings, by uniformly permitting acquisition of Canadian items, expanding and standardizing the waiver criteria, and exempting acquisitions below the simplified acquisition threshold from these restrictions.

**DATES:** *Effective date:* April 10, 1995.

**Comment date:** Comments on the interim rule should be submitted in writing to the address below on or before June 19, 1995, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 94-D314 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0131.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim DFARS rule implements 10 U.S.C. 2534 as amended by Section 814 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337) and Section 4102(i) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355). Section 814 revises the existing foreign source restrictions for machine tools and valves, buses, chemical weapons, antidote, air circuit breakers, and antifriction bearings, by uniformly permitting acquisition of Canadian items, and by expanding and standardizing the waiver criteria. Section 4102(i) exempts acquisitions below the simplified acquisition threshold from these restrictions.

##### B. Regulatory Flexibility Act

The interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule expands the conditions under which non-U.S. products may be acquired. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address specified herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94-D314 in correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any additional information collection requirements which require the approval of the Office of

Management and Budget under 44 U.S.C. 3501, *et seq.*

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

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment because it is necessary to implement statutory changes to 10 U.S.C. 2534. However, comments received in response to this interim rule will be considered in formulating the final rule.

**List of Subjects in 48 CFR Parts 225 and 252**

Government procurement.

**Michele P. Peterson,**  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

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

**PART 225—FOREIGN ACQUISITION**

2. Sections 225.7004, 225.7004-1, 225.7004-2, 225.7004-3, 225.7004-4, and 225.7004-5 are revised, and 225.7004-6 is added to read as follows:

**225.7004 Restriction on machine tools and powered and non-powered valves.**

**225.7004-1 Restriction.**

In accordance with 10 U.S.C. 2534, through fiscal year 1996, do not acquire, either directly as end items or indirectly on behalf of the Government, the machine tools or powered and non-powered valves in 225.7004-2 unless they are of U.S. or Canadian origin.

**225.7004-2 Applicability.**

(a) Machine tools restricted under this section are those tools listed in Federal supply classes of metalworking machinery in the following categories—

Federal Supply Classification (FSC)	Name
3405 .....	Saw and filing machines.
3408 .....	Machine centers and way type machines.
3410 .....	Electrical and ultrasonic erosion machines.
3411 .....	Boring machines.
3412 .....	Broaching machines.
3413 .....	Drilling and tapping machines.
3414 .....	Gear cutting and finishing machines.
3415 .....	Grinding machines.

Federal Supply Classification (FSC)	Name
3416 .....	Lathes.
3417 .....	Milling machines.
3418 .....	Planers and shapers.
3419 .....	Miscellaneous machine tools.
3426 .....	Metal finishing equipment.
3433 .....	Gas welding, heat cutting, and metalizing equipment.
3438 .....	Miscellaneous welding equipment.
3441 .....	Bending and forming machines.
3442 .....	Hydraulic and pneumatic presses, power driven.
3443 .....	Mechanical presses, power driven.
3445 .....	Punching and shearing machines.
3446 .....	Forging machinery, and hammers.
3448 .....	Riveting machines.
3449 .....	Miscellaneous secondary metal forming and cutting machines.
3460 .....	Machine tool accessories.
3461 .....	Accessories for secondary metalworking machinery.

(b) Machine tool accessories classified under FSC 3460 or 3461 are not components under 225.7004-5. Where a solicitation for machine tools includes machine tool accessories, list machine tool accessories separately. Each machine tool and each accessory must meet the requirements of this section individually.

(c) Valves restricted under this section are those powered and non-powered valves listed in Federal supply classes 4810 (valves, powered) and 4820 (valves, non-powered) used in piping for naval surface ships and submarines.

**225.7004-3 Exception.**

This restriction does not apply if the acquisition is below the simplified acquisition threshold.

**225.7004-4 Waiver.**

(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

- (1) The restriction would cause unreasonable delays.
- (2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items

produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured in the United States or Canada are not available.

(5) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(6) Application of the restriction is not in the national security interests of the United States.

(7) Application of the restriction would adversely affect a U.S. company.

(b) The restriction is waived when it would cause unreasonable costs. The cost of a machine tool or valve of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

**225.7004-5 U.S. or Canadian origin.**

(a) A valve or machine tool shall be considered to be of U.S. or Canadian origin if—

(1) It is manufactured in the United States or Canada; and

(2) The cost of its components manufactured in the U.S. or Canada exceeds 50 percent of the cost of all its components.

(b) The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free certificate may be issued).

**225.7004-6 Contract clauses.**

(a) Unless an exception applies or a waiver has been granted, use the clause at 252.225-7017, Preference for United States and Canadian Valves and Machine Tools, in all solicitations and contracts for valves and machine tools.

(b) Consider using the clause at 252.225-7001, Buy American Act and Balance of Payments Program, and, if applicable, the clause at 252.225-7007, Trade Agreements Act, whenever an exception or waiver is anticipated. Where these clauses are used, state in the solicitation that offers which do not conform to the restrictions of the more restrictive clause will only be considered if an exception applies or a waiver is granted.

3. Section 225.7007 is revised to read as follows:

**225.7007 Restriction on acquisition of foreign buses.**

4. Sections 225.7007-1, 225.7007-2, 225.7007-3, and 225.7007-4 are added to read as follows:

**225.7007-1 Restriction.**

In accordance with 10 U.S.C. 2534, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or Canada.

**225.7007-2 Applicability.**

Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

**225.7007-3 Exceptions.**

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured outside the United States and Canada are needed for temporary use because buses manufactured in the United States or Canada are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or Canada.

(b) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured outside the United States and Canada may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(c) Buses manufactured outside the United States and Canada are available at no cost to the U.S. Government.

(d) The acquisition is below the simplified acquisition threshold.

**225.7007-4 Waiver.**

(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(1) The restriction would cause unreasonable delays.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured in the United States or Canada are not available.

(5) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(6) Application of the restriction is not in the national security interests of the United States.

(7) Application of the restriction would adversely affect a U.S. company.

(b) The restriction is waived when it would cause unreasonable costs. The cost of a bus manufactured in the United States or Canada is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not manufactured in the United States or Canada.

5. Section 225.7010 is revised to read as follows:

**225.7010 Restriction on certain chemical weapons antidote.**

6. Sections 225.7010-1, 225.7010-2, and 225.7010-3 are added to read as follows:

**225.7010-1 Restriction.**

In accordance with 10 U.S.C. 2534, do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the injector or component is manufactured in the United States or Canada by a company that—

(a) Is a producer under the Industrial Preparedness Program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

**225.7010-2 Exception.**

This restriction does not apply if the acquisition is below the simplified acquisition threshold.

**225.7010-3 Waiver.**

(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(1) The restriction would cause unreasonable delays.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items

produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured in the United States or Canada are not available.

(5) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(6) Application of the restriction is not in the national security interests of the United States.

(7) Application of the restriction would adversely affect a U.S. company.

(b) The restriction is waived when it would cause unreasonable costs. The cost of the injector or component manufactured in the United States or Canada is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not manufactured in the United States or Canada.

7. Sections 225.7016-1, 225.7016-2, and 225.7016-3 are revised to read as follows:

**225.7016-1 Restriction.**

In accordance with 10 U.S.C. 2534, do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States or Canada.

**225.7016-2 Exceptions.**

This restriction does not apply if—

(a) The acquisition is below the simplified acquisition threshold; or

(b) Spares and repair parts are needed to support air circuit breakers manufactured outside the United States or Canada. Support includes the purchase of spare air circuit breakers where those from alternate sources are not interchangeable.

**225.7016-3 Waiver.**

(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(1) The restriction would cause unreasonable delays.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a

greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured in the United States or Canada are not available.

(5) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(6) Application of the restriction is not in the national security interest of the United States.

(7) Application of the restriction would adversely affect a U.S. company.

(b) The restriction is waived when it would cause unreasonable costs. The cost of the air circuit breaker manufactured in the United States or Canada is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not manufactured in the United States or Canada.

8. Section 225.7016-4 is removed and section 225.7016-5 is redesignated as section 225.7016-4 and revised to read as follows:

**225.7016-4 Contract clause.**

Use the clause at 252.225-7029, Preference for United States or Canadian Air Circuit Breakers, in all solicitations and contracts requiring air circuit breakers for naval vessels, unless—

(a) An exception under 225.7016-2 is known to apply; or

(b) A waiver has been granted in accordance with 225.7016-3.

9. Sections 225.7019-1, 225.7019-2, 225.7019-3, and 225.7019-4 are revised to read as follows:

**225.7019-1 Restriction.**

In accordance with 10 U.S.C. 2534, through fiscal year 1995, do not acquire antifriction bearings or bearing components which are not manufactured in the United States or Canada.

**225.7019-2 Exceptions.**

The restriction in 225.7019-1 does not apply to—

(a) Acquisitions below the simplified acquisition threshold;

(b) Purchases of commercial products incorporating antifriction bearings;

(c) Miniature and instrument ball bearings restricted under 225.71;

(d) Items acquired overseas for use overseas; or

(e) Antifriction bearings or bearing components or items containing bearings for use in a cooperative or co-production project under an international agreement.

**225.7019-3 Waiver.**

The head of the contracting activity may waive the restriction in 225.7019-1—

(a) Upon execution of a determination and findings that—

(1) No domestic (U.S. or Canadian) bearing manufacturer meets the requirement;

(2) It is not in the best interests of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing. This determination must be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delay. A finding that a cost is unreasonable should take into consideration DoD policy to assist the domestic industrial mobilization base. Contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive;

(3) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

(4) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

(5) Application of the restriction would result in the existence of only one source for the item in the United States or Canada;

(6) Application of the restriction is not in the national security interests of the United States; or

(7) Application of the restriction would adversely affect a U.S. company.

(b) For multiyear contracts or contracts exceeding 12 months, only if—

(1) The head of the contracting activity executes a determination and findings in accordance with paragraph (a) of this subsection;

(2) The contractor submits a written plan for transitioning from the use of nondomestic to domestically manufactured bearings;

(3) The plan—

(i) States whether a domestically manufactured bearing can be qualified, at a reasonable cost, for use during the course of the contract period;

(ii) Identifies any bearings that are not domestically manufactured, their application, and source of supply; and

(iii) Describes, including cost and timetable, the transition to a domestically manufactured bearing.

(The timetable for the transition should normally take no longer than 24 months from the date the waiver is granted); and

(4) The contracting officer accepts the plan and incorporates it in the contract.

**225.7019-4 Contract clause.**

Use the clause at 252.225-7016, Restriction on Acquisition of Antifriction Bearings, in all solicitations and contracts, unless—

(a) An exception applies or a waiver has been granted; or

(b) The contracting officer knows that the items being acquired do not contain antifriction bearings.

**Subpart 252.2—Texts of Provisions and Clauses**

10. Section 252.225-7017 is amended by revising in the introductory text the reference “225.7004-5(a)” to read “225.7004-6(a);” by revising the clause date to read “(APR 1995)” in lieu of “(APR 1992);” and by revising paragraph (c) to read as follows:

**252.225-7017 Preference for United States and Canadian valves and machine tools.**

\* \* \* \* \*

(c) Unless an exception applies or a waiver is granted under 225.7004-4(a) of the Defense Federal Acquisition Regulation Supplement, preference will be given to valves and machine tools of United States or Canadian origin by adding 50 percent to the offered price of all other valves and machine tools for evaluation purposes.

(End of clause)

11. Section 252.225-7029 is revised to read as follows:

**252.225-7029 Preference for United States or Canadian air circuit breakers.**

As prescribed in 225.7016-4, use the following clause:

**Preference for United States or Canadian Air Circuit Breakers (Apr 1995)**

(a) Unless otherwise specified in its offer, the Contractor agrees that air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States or Canada.

(b) Unless an exception applies or a waiver is granted under 225.7016-3(a) of the Defense Federal Acquisition Regulation Supplement, preference will be given to air circuit breakers manufactured in the United States or Canada by adding 50 percent to the offered price of all other air circuit breakers for evaluation purposes.

(End of clause)

[FR Doc. 95-9496 Filed 4-18-95; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****49 CFR Part 40**

[Docket 49713]

RIN 2105-AB95

**Procedures for Transportation Workplace Drug and Alcohol Testing Programs**

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

**SUMMARY:** On August 19, 1994, the Office of the Secretary of Transportation issued a final rule requiring transportation employers to begin using a new Federal Drug Testing Custody and Control Form for all DOT-required drug tests on February 16, 1995. This final rule extends the date by which transportation employers must comply with the use of the new form to June 1, 1995.

**EFFECTIVE DATE:** This rule is effective April 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Edgell, Office of Drug Enforcement and Program Compliance, Department of Transportation, 400 7th Street SW., room 9404, Washington, DC 20590 (202) 366-3784.

**SUPPLEMENTARY INFORMATION:** In February 1994, the Department of Transportation published a final rule which, in part, revised drug testing procedures for employers in the aviation, maritime, railroad, mass transit, pipeline, and motor carrier industries. In August 1994, the DOT issued minor or technical amendments to the rule. One such amendment was the mandatory use "without exception and without modification" of the Federal Drug Testing Custody and Control Form for all DOT urine specimen collections. The form was designed through a lengthy and corroborative effort among DOT, the Department of Health and Human Services, and other interested parties. This form is authorized for use only in Federal employee testing programs and for testing conducted under DOT operating administration rules, and is not authorized for use in any other type of drug testing program. This form will accommodate both split and single specimen collections; instructions for proper use are printed on the back of the last page of the form. All seven pages of the form were printed on August 19, 1994, (59 FR 43005-43012); only the front page is reproduced in Appendix A to this rule. This form may be produced by transportation employers, DHHS

laboratories, collection sites, etc., but must be an exact duplication without modification. OMB has approved the form under the Paperwork Reduction Act, having assigned the OMB No. 9999-0023, with the expiration date of June 30, 1997.

Employers are required to record information specific to the collection of a urine specimen to be used for a DOT drug test. The information that is required is identified on the new Federal Drug Testing Custody and Control Form, and information may not be gathered that is inconsistent with that required by the new form. Mandatory use of the new form had been set to begin on February 16, 1995. Recent information from laboratories, the primary suppliers of the form, and collectors and employers, the main users of the form, indicated that the form is not universally available. A variety of reasons contributing to the unavailability includes DHHS laboratories failure to print the new forms in a timely manner, as well as their mistaken belief that inventories of existing forms could be used up prior to the phase-in of the new form. Assertions were also made that the colored paper for the seven-part form is available only on a limited basis, and that the form is not yet available for sale at the Government Printing Office. After careful consideration of the validity of this situation, the Department has extended the compliance date for mandatory use of the form to June 1, 1995. Collections made with out-of-date forms after that date should not be rejected (by DHHS laboratories) solely because of the usage of the form. Procedures for corrective action were provided the DHHS laboratories via a memorandum on January 23, 1995 from DOT (Office of Drug Enforcement and Program Compliance). These procedures will continue to be in effect after June 1, 1995. DOT compliance agencies will be reviewing the use of the new form and may assess penalties against transportation employers who are not in compliance after June 1, 1995.

**Federal Drug Testing Custody and Control Form**

The following provides printing and use instructions for the new form.

All entities conducting urine specimen collections and drug testing under 49 CFR part 40 shall exclusively use the standard Federal Drug Testing Custody and Control Form. The form, a seven-part carbonless manifold, shall be 8½ by 11 inches in detached size. Part 1 (white) is the original and must accompany the specimen to the laboratory. Part 2 (white) is the second

original and must accompany the specimen to the laboratory. Part 3 (white) is the split specimen original and must accompany the split specimen to the laboratory. Part 4 (pink) must be sent directly to the Medical Review Officer. Part 5 (green) must be given to the donor. Part 6 (yellow) is retained by the collector. Part 7 (blue) is forwarded to the employer.

Print part numbers and designations in red ink at the bottom left on all parts. Print all other information in black ink. Chemical transfer image must be black.

Parts 1 through 7 must have a preprinted specimen identification number. This number, ⅛" to ⅜" high (*size recommended*), reading parallel to the 8½" dimension, in a space 1¼" × ⅜" (*size recommended*) in the top center of all parts (to correspond with "SPECIMEN ID NO." and appear to the left of the "A" delimiter (or "B (SPLIT)" on Part 3) on all parts). The identical specimen identification number ⅛" to ⅜" high (*size recommended*), in a space 1¼" × ⅜" (*size recommended*), shall appear on Part 1 on each unitary label/seal (to correspond with "SPECIMEN ID NO." and appear to the left of the "A" and "B (SPLIT)" delimiters). Note: The specimen identification number on the form (all seven parts) must be identical to the specimen identification number on the labels. Specimen identification numbers may be printed individually to each part prior to assembly, or "crash numbered" on all parts simultaneously after assembly. All numbers must be clear and legible on all parts. These numbers need to be unique *only* for the particular collection. However, the DOT favors numbering systems (e.g., 6 or more digits) that are unique to, and controlled by, the printer of the form.

The unitary labels/seals are to be of tamper-evident quality, and shall be on a perforated stub on the right-hand side of Part 1. The actual size of the labels may be modified to properly fit the specimen bottles to which they will be affixed. A shipping container seal is required for DOT specimens, however, making the shipping container seal part of the form is optional; this seal may be supplied as a separate item in a laboratory's specimen collection kit. If the shipping container seal is part of the form, it must be placed in the label area on Part 1. Part 7 may have a corresponding perforated stub (as backing) to match Part 1 (i.e., to aid in form production and stability).

The top portion, reading parallel to the 8½" dimension, (above SPECIMEN ID NO.) on Parts 1 through 7 may be customized to contain the laboratory's logo and/or bar coding necessary for

accounting and identifying information. No other areas on the form are subject to modification, other than under the provisions of section 40.23(a) which must be approved by the DOT. If bar coding is used in the top portion of Part 1, a corresponding bar code may appear on each of the unitary labels/seals (and shipping container seal, if applicable).

OMB No. 9999-0023 and Expiration Date: 6/30/97 must appear on the Federal Drug Testing Custody and Control Form. (Note the number and date in the lower left-hand corner of the form in Appendix A.) The form will be placed in stock in the Superintendent of Documents, Government Printing Office for sale to the general public by the compliance date.

**Regulatory Analysis and Notices**

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. It does not impose costs on regulated parties and may, to a limited extent, reduce regulatory burdens. Consequently, a regulatory evaluation has not been prepared. The Department finds, for purposes of the Administrative Procedure Act, that issuance of a notice of proposed rulemaking on these subjects is unnecessary, impracticable, or contrary to the public interest. This amendment simply extends the compliance date for use of the form. The use of the form

conforms to previous, joint DOT/DHHS actions, and the rapid issuance of this notification is in the interest of the public. The immediate effective date for this amendment is established because of the necessity of immediately correcting a situation that may be beyond the practical control of many transportation employers, yet still cause them to incur penalties.

**List of Subjects in 49 CFR Part 40**

Drug testing, Alcohol testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 4th day of April 1995, at Washington, DC.

**Federico Peña,**  
*Secretary of Transportation.*

For the reasons set forth in the preamble, the Department of Transportation amends title 49, Code of Federal Regulations, part 40 as follows:

**PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS**

1. The authority citation for 49 CFR part 40 continues to read as follows:

**Authority:** 49 U.S.C. 102,301,322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

2. Section 40.23(a) is amended to read as follows:

**§ 40.23 Preparation for testing.**

\* \* \* \* \*

(a)(1) Except as provided in paragraph (a)(2) of this section, use of the drug testing form prescribed under this part.

(i) This form is found in Appendix A to this part.

(ii) Employers and other participants in the DOT drug testing program may not modify or revise this form, except that the drug testing custody and control form may include such additional information as may be required for billing or other legitimate purposes necessary to the collection, provided that personal identifying information on the donor (other than the social security number or other employee ID number) may not be provided to the laboratory.

(iii) Donor medical information may appear only on the copy provided the donor.

(2) Notwithstanding the requirement of paragraph (a)(1)(ii) of this section, employers and other participants may use existing forms that were in use in the DOT drug testing program prior to February 16, 1995, until June 1, 1995.

(3) Appendix A to part 40 is amended by revising the Federal Drug Testing Custody and Control Form, Copy 1, to read as follows:

**Appendix A to Part 40—Federal Drug Testing Custody and Control Form**

BILLING CODE 4910-62-P

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO

000000 A

LABORATORY ACCESSION NO

SPECIMEN BOTTLE SEALS

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No. \_\_\_\_\_ B. MFO Name and Address \_\_\_\_\_

C. Donor SSN or Employee I.D. No. \_\_\_\_\_

D. Reason for Test:  Pre-employment  Random  Reasonable Suspicion/Cause  Post Accident  
 Return to Duty  Follow-up  Other (specify) \_\_\_\_\_

E. Tests to be Performed:  THC, Cocaine, PCP, Opiates and Amphetamines  
 Only THC and Cocaine  OTHER (specify) \_\_\_\_\_

STEP 2: TO BE COMPLETED BY COLLECTOR - Specimen temperature must be read within 4 minutes of collection.

Specimen temperature within range:  Yes, 90° - 100°F/32° - 38°C  No, Record specimen temperature here \_\_\_\_\_

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: TO BE COMPLETED BY DONOR - Go to copy 4 (pink page); STEP 4

STEP 5: TO BE COMPLETED BY COLLECTOR

COLLECTION SITE LOCATION:

Collection Facility \_\_\_\_\_ Collector's Business Phone No. \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

SPLIT SPECIMEN COLLECTION  YES  NO

REMARKS: \_\_\_\_\_

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 4 of this form, that it bears the same specimen identification number as that set forth above, and that it has been collected, labeled and sealed as in accordance with applicable Federal requirements.

(PRINT) Collector's Name (First, MI, Last) \_\_\_\_\_ Signature of Collector \_\_\_\_\_ Date (Mo./Day/Yr.) \_\_\_\_\_ Time \_\_\_\_\_ AM PM

STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

DATE MO. DAY YR.	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
/ /	DONOR - NO SIGNATURE	Signature _____ Name _____	PROVIDE SPECIMEN FOR TESTING
/ /	Signature _____ Name _____	Signature _____ Name _____	
/ /	Signature _____ Name _____	Signature _____ Name _____	
/ /	Signature _____ Name _____	Signature _____ Name _____	

STEP 7: TO BE COMPLETED BY THE LABORATORY - Specimen Bottle Seal(s) Intact:  YES  NO, Explain in Remarks Below.

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE INITIAL TEST AND CONFIRMATORY TEST CUTOFF LEVELS ESTABLISHED BY THE HHS MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS

NEGATIVE  POSITIVE, for the following:  CANNABINOIDS as Carboxy-THC  COCAINE METABOLITES as Benzoylcegonine  PHENCYCLIDINE

TEST NOT PERFORMED  OPIATES:  codeine  morphine  AMPHETAMINES:  amphetamine  methamphetamine  OTHER \_\_\_\_\_

REMARKS \_\_\_\_\_

TEST LAB (if different from above) \_\_\_\_\_ NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_ PHONE NO. \_\_\_\_\_

I certify that the specimen identified by the laboratory accession number on this form is the same specimen that bears the specimen identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth are for that specimen.

(PRINT) Certifying Scientist's Name (First, MI, Last) \_\_\_\_\_ Signature of Certifying Scientist \_\_\_\_\_ Date (Mo. / Day / Yr.) \_\_\_\_\_

STEP 8: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My determination/verification is:

Negative  Positive  Test Not Performed  Test Cancelled

REMARKS \_\_\_\_\_

(PRINT) Medical Review Officer's Name (First, MI, Last) \_\_\_\_\_ Signature of Medical Review Officer \_\_\_\_\_ Date (Mo. / Day / Yr.) \_\_\_\_\_

COPY 1 - ORIGINAL - MUST ACCOMPANY SPECIMEN TO LABORATORY

SPECIMEN ID NO 000000 A  
 SPECIMEN ID NO 000000 B (SPLIT)

PLACE OVER CAP

Donor's Initials \_\_\_\_\_ Date (Mo. Day / Yr.) \_\_\_\_\_

SHIPPING CONTAINER SEAL

Collector's Initials \_\_\_\_\_ Date (Mo. Day / Yr.) \_\_\_\_\_

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**Federal Railroad Administration****49 CFR Part 219**

[Docket No. RSOR-6; Notice No. 42]

RIN 2130-AA63

**Post-Accident Toxicological Testing; Amended Procedures**

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

**SUMMARY:** FRA's new "post-accident shipping boxes" (formerly designated "post-accident testing toxicology kits") are now available for distribution to railroads. Each shipping box contains supplies, instructions, and custody and control forms that have been modified to incorporate mandatory urine split sample testing, optional breath alcohol testing, and other technical amendments. In this rule, FRA conforms the post-accident testing procedures contained in Appendix C to its alcohol and drug regulations (49 CFR part 219) to these changes. For ease of understanding, FRA here reprints the entire appendix C to part 219, as amended.

**DATES: Effective date.** This final rule is effective April 19, 1995. This rule is being made effective in less than the 30 days from publication otherwise required by law so that FRA can immediately implement post-accident testing amendments that had been delayed pending availability of the new shipping boxes. FRA has therefore determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) to warrant an expedited effective date.

**Compliance date:** Compliance is authorized upon receipt of new FRA post-accident shipping boxes, but in no case later than April 17, 1995.

**ADDRESSES:** Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Docket No. RSOR-6, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., Room 8201, Washington, D.C., 20590. Questions or comments regarding replacement of post-accident shipping boxes should be submitted to Lamar Allen, FRA Alcohol and Drug Program Manager, Office of Safety Enforcement, Operating Practices Division, Federal Railroad Administration, 400 7th Street, S.W., Room 8314, Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Operating Practices Division, Federal Railroad Administration, 400 7th Street

SW., room 8314, Washington, DC 20590, (Telephone: (202) 366-0127) or James T. Schultz, Chief, Operating Practices Division, Office of Safety Enforcement, Federal Railroad Administration, 400 7th Street SW., room 8314, Washington, DC 20590, (Telephone: (202) 366-9178).

**SUPPLEMENTARY INFORMATION:** In a December 30, 1994 Notice [59 FR 67641], FRA announced that interim post-accident testing procedures would remain in effect until new post-accident shipping boxes became available. To anticipate this changeover, however, FRA asked railroads to submit the number of boxes needed for each location, so that FRA could replace outdated boxes on a one-for-one basis without charge.

Box replacement will begin shortly since FRA now has sufficient new post-accident shipping boxes to supply railroads. In this rule, FRA amends its post-accident testing procedures in appendix C to part 219 to incorporate mandatory urine split sample testing, optional breath alcohol testing, and other technical amendments.

As referred to above, FRA now calls the large box that contains forms, instructions and supplies, the "post-accident shipping box" (instead of "post-accident testing kit"). FRA has marked "FRA Post-Accident Shipping Box" on each new box. Within the post-accident shipping box, the individual employee sample boxes are redesignated and marked "FRA Post-Accident Kits." Each shipping box now contains three post-accident kits, instead of the previous five. The only post-accident kit modification is the addition of a second urine sample bottle to accommodate split sample urine testing.

Form F6180.73 includes the revised railroad property damage thresholds for major train accidents and impact accidents. (The criteria for fatal train incidents and passenger train accidents listed on form F6180.73 remain the same.) Forms F6180.73 and F6180.74 are revised to allow for railroad reporting of evidential breath test results by adding a check off box for the railroad representative to indicate whether one or more employees have been breath tested. If a railroad conducts breath alcohol tests, the railroad representative may either attach a copy of the standard DOT (49 CFR part 40) breath alcohol testing form to the FRA forms to be shipped with the post-accident kit, or send a copy of each part 40 form directly to FRA within 10 days of the tests.

Each new post-accident shipping box contains the following:

*One plastic zip-lock bag that includes:*

- One set of collection instructions apiece for the railroad representative, three (3) railroad employees, the collection facility, blood/urine collector(s), and medical examiner (if required);

- One Form FRA F 6180.73, Accident Information Required for Post-Accident Toxicological Testing;

- Three Forms FRA F 6180.74, Post-Accident Testing Blood/Urine Custody and Control Form. Each form also has sealing labels for the urine bottles, the blood tubes, and the individual post-accident kits.

- One shipping box seal;
- Three packets of blue dye tablets (for the toilet or other standing water);
- One shipping box mailing label addressed to the FRA designated laboratory.

*Three individual employee sample kits (marked "FRA Post-Accident Kit.") Each kit contains:*

- Two 90 ml urine sample bottles with caps and one biohazard bag (with absorbent) enclosed in a heat-seal bag;
- One urine collection cup with temperature device affixed also enclosed in a heat-seal bag;
- Two 10 ml gray-top evacuated blood tubes (containing potassium oxylate and sodium fluoride as a preservative) in a sponge holder.

As stated above, FRA expects to have completed distribution of new post-accident shipping boxes by the time this rule is published, and authorizes compliance with this rule immediately upon receipt. However, to allow railroads time to train supervisors on these new procedures, compliance does not become mandatory until April 17, 1995.

**Executive Order 12866 and DOT Regulatory Policy and Procedures**

FRA has determined that this rule is nonsignificant under Executive Order 12866 and under the Department of Transportation's Regulatory Policy and Procedures.

**The Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

**Federalism Implications**

This rule does 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, FRA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

### Paperwork Reduction Act

FRA has determined that this rule does not significantly change any previously approved information collection requirements.

### List of Subjects in 49 CFR Part 219

Alcohol and drug abuse, Railroad safety, Reporting and record keeping requirements.

Accordingly, for the reasons stated above, FRA amends 49 CFR part 219 as follows:

### PART 219—CONTROL OF ALCOHOL AND DRUG USE

1. The authority citation for part 219 continues to read as follows:

**Authority:** 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; Pub. L. 102–143; and 49 CFR 1.49(m).

2. Appendix C to part 219 is revised to read as follows:

### Appendix C to Part 219—Post-Accident Testing Sample Collection

#### 1.0 General.

This appendix prescribes procedures for collection of samples for mandatory post-accident testing pursuant to subpart C of this part. Collection of blood and urine samples is required to be conducted at an independent medical facility.

(Surviving Employees)

#### 2.0 Surviving Employees.

This unit provides detailed procedures for collecting post-accident toxicological samples from surviving employees involved in train accidents and train incidents, as required by 49 CFR part 219, subpart C. Subpart C specifies qualifying events and employees required to be tested.

#### 2.1 Collection Procedures; General.

All forms and supplies necessary for collection and transfer of blood and urine samples for three surviving employees can be found in the FRA post-accident shipping box, which is made available to the collection site by the railroad representative.

Each shipping box contains supplies for blood/urine collections from three individuals, including instructions and necessary forms. The railroad is responsible for ensuring that materials are fresh, complete and meet FRA requirements.

#### 2.11 Responsibility of the Railroad Representative.

In the event of an accident/incident for which testing is required under subpart C of this part, the railroad representative shall follow the designated set of instructions, and,

upon arrival at the independent medical facility, promptly present to the collection facility representative a post-accident shipping box or boxes with all remaining sets of instructions. (Each box contains supplies to collect samples from three employees.) The railroad representative shall request the collection facility representative to review the instructions provided and, through qualified personnel, provide for collection of the samples according to the procedures set out.

The railroad representative shall undertake the following additional responsibilities—

- Complete FRA Form 6180.73 (revised), Accident Information Required for Post-Accident Toxicological Testing, describing the testing event and identifying the employees whose samples are to be deposited in the shipping box.
- As necessary to verify the identity of individual employees, affirm the identity of each employee to the medical facility personnel.
- Consistent with the policy of the collection facility, monitor the progress of the collection procedure.

**Warning:** Monitor but do not directly observe urination or otherwise disturb the privacy of urine or blood collection. Do not handle sample containers, bottles or tubes (empty or full). Do not become part of the collection process.

#### 2.12 Employee Responsibility.

An employee who is identified for post-accident toxicological testing shall cooperate in testing as required by the railroad and personnel of the independent medical facility. Such cooperation will normally consist of the following, to be performed as requested:

- Provide a blood sample, which a qualified medical professional or technician will draw using a single-use sterile syringe. The employee should be seated for this procedure.
- Provide, in the privacy of an enclosure, a urine sample into a plastic collection cup. Deliver the cup to the collector.
- Do not let the blood and urine samples that you provided leave your sight until they have been properly sealed and initialed by you.
- Certify the statement in Step 4 of the Blood/Urine Custody and Control Form (FRA Form 6180.74 (revised)).
- If required by the medical facility, complete a separate consent form for taking of the samples and their release to FRA for analysis under the FRA rule.

**Note:** The employee may not be required to complete any form that contains any waiver of rights the employee may have in the employment relationship or that releases or holds harmless the medical facility with respect to negligence in the collection.

#### 2.2 The Collection.

Exhibit C–1 contains instructions for collection of samples for post-accident toxicology from surviving employees. These instructions shall be observed for each collection. Instructions are also contained in each post-accident shipping box and shall be provided to collection facility personnel

involved in the collection and/or packaging of samples for shipment.

(Post Mortem Collection)

#### 3.0 Fatality.

This unit provides procedures for collecting post-accident body fluid/tissue samples from the remains of employees killed in train accidents and train incidents, as required by 49 CFR part 219, subpart C. Subpart C specifies qualifying events and employees required to be tested.

#### 3.1 Collection.

In the event of a fatality for which testing is required under subpart C, the railroad shall promptly make available to the custodian of the remains a post-accident shipping box. The railroad representative shall request the custodian to review the instructions contained in the shipping box and, through qualified medical personnel, to provide the samples as indicated.

(Surviving Employees and Fatalities)

#### 4.0 Shipment.

The railroad is responsible for arranging overnight transportation of the sealed shipping box containing the samples. When possible without incurring delay, the box should be delivered directly from the collection personnel providing the samples to an overnight express service courier. If it becomes necessary for the railroad to transport the box from point of collection to point of shipment, then—

1. Individual kits and the shipping box shall be sealed by collection personnel before the box is turned over to the railroad representative;
2. The railroad shall limit the number of persons handling the shipping box to the minimum necessary to provide for transportation;
3. If the shipping box cannot immediately be delivered to the express carrier for transportation, it shall be maintained in secure temporary storage; and
4. The railroad representatives handling the box shall document chain of custody of the shipping box and shall make available such documentation to FRA on request.

### Exhibit C–1—Instructions for Collection of Blood and Urine Samples: Mandatory Post-Accident Toxicological Testing

#### A. Purpose

These instructions are for the use of personnel of collection facilities conducting collection of blood and urine samples from surviving railroad employees following railroad accidents and casualties that qualify for mandatory alcohol/drug testing. The Federal Railroad Administration appreciates the participation of medical facilities in this important public safety program.

#### B. Prepare for Collection

Railroad employees have consented to provision of samples for analysis by the Federal Railroad Administration as a condition of employment (49 CFR 219.11). A private, controlled area should be designated for collection of samples and completion of paperwork.

Only one sample should be collected at a time, with each employee's blood draw or urine collection having the complete attention of the collector until the specific sample has been labeled, sealed and documented.

Please remember two critical rules for the collections:

All labeling and sealing must be done in the sight of the donor, with the sample never having left the donor's presence until the sample has been labeled, sealed and initialed by the donor.

Continuous custody and control of blood and urine samples must be maintained and documented on the forms provided. In order to do this it is important for the paperwork and the samples to stay together.

To the extent practical, blood collection should take priority over urine collection. To limit steps in the chain of custody, it is best if a single collector handles both collections from a given employee.

You will use a single Post-Accident Testing Blood/Urine Custody and Control Form (FRA Form 6108.74 (revised)), consisting of six steps to complete the collection for each employee. We will refer to it as the Control Form.

#### C. Identify the Donor

The employee donor must provide photo identification to each collector, or lacking this, be identified by the railroad representative.

The donor should remove all unnecessary outer garments such as coats or jackets, but may retain valuables, including wallet. Donors should not be asked to disrobe, unless necessary for a separate physical examination required by the attending physician.

#### D. Draw Blood

Assemble the materials for collecting blood from each employee: two 10 ml grey-stoppered blood tubes and the Control Form.

Ask the donor to complete STEP 1 on the Control Form.

With the donor seated, draw two (2) 10 ml tubes of blood using standard medical procedures (sterile, single-use syringe into evacuated gray-top tubes provided).

CAUTION: Do not use alcohol or an alcohol-based swab to cleanse the venipuncture site.

Once both tubes are filled and the site of venipuncture is protected, immediately—

- Seal and label each tube by placing a numbered blood sample label from the label set on the Control Form over the top of the tube and securing it down the sides.

- Ask the donor to initial each label. Please check to see that the initials match the employee's name and note any discrepancies in the "Remarks" block of the Control Form.

- As collector, sign and date each blood tube label at the place provided.
- Skip to STEP 5 and initiate chain of custody for the blood tubes by filling out the first line of the block to show receipt of the blood samples from the donor.

- Complete STEP 2 on the form.
- Return the blood tubes into the individual kit. Keep the paperwork and samples together. If another collector will be collecting the urine sample from this

employee, transfer both the form and the individual kit with blood tubes to that person, showing the transfer of the blood tubes on the second line of STEP 5 (the chain of custody block).

#### E. Collect Urine

The urine collector should assemble at his/her station the materials for collecting urine from each employee: one plastic collection cup with temperature device affixed enclosed in a heat-seal bag (with protective seal intact), two 90 ml urine sample bottles with caps and one biohazard bag (with absorbent) also enclosed in a heat-seal bag (with protective seal intact), and the Control Form. Blood samples already collected must remain in the collector's custody and control during this procedure.

After requiring the employee to wash his/her hands, the collector should escort the employee directly to the urine collection area. To the extent practical, all sources of water in the collection area should be secured and a bluing agent (provided in the box) placed in any toilet bowl, tank, or other standing water.

The employee will be provided a private place in which to void. Urination will not be directly observed. If the enclosure contains a source of running water that cannot be secured or any material (soap, etc.) that could be used to adulterate the sample, the collector should monitor the provision of the sample from outside the enclosure. Any unusual behavior or appearance should be noted in the remarks section of the Control Form or on the back of that form.

The collector should then proceed as follows:

Unwrap the collection cup in the employee's presence and hand it to the employee (or allow the employee to unwrap it).

Ask the employee to void at least 60 ml into the collection cup (at least to the line marked). Leave the private enclosure.

IF THERE IS A PROBLEM WITH URINATION OR SAMPLE QUANTITY, SEE THE "TROUBLE BOX" AT THE BACK OF THESE INSTRUCTIONS

Once the void is complete, the employee should exit the private enclosure and deliver the sample to the collector. Both the collector and the employee must proceed immediately to the labeling/sealing area, with the sample never leaving the sight of the employee before being sealed and labeled.

Upon receipt of the sample, proceed as follows:

- In the full view of the employee, remove the wrapper from the two urine sample bottles. Transfer the urine from the collection cup into the sample bottles (at least 30 ml in bottle A and at least 15 ml in bottle B).

- As you pour the sample into the sample bottles, please inspect for any unusual signs indicating possible adulteration or dilution. Carefully secure the tops. Note any unusual signs under "remarks" at STEP 3 of the Control Form.

- Within 4 minutes after the void, measure the temperature of the urine by reading the strip on the bottle. Mark the result at STEP 3 of the Control Form.

IF THERE IS A PROBLEM WITH THE URINE SAMPLE, SEE THE TROUBLE BOX AT THE BACK OF THESE INSTRUCTIONS

- Remove the urine bottle labels from the Control Form. The labels are marked A and B. Place each label as marked over the top of its corresponding bottle, and secure the label to the sides of the bottle.

- Ask the donor to initial each label. Please check to see that the initials match the employee name and note any discrepancy in the "Remarks" block of STEP 3.

- As collector, sign and date each urine label.

- Skip to STEP 5 and initiate chain-of-custody by showing receipt of the urine samples from the donor. (If you collected the blood, a check under "urine" will suffice. If someone else collected the blood, first make sure transfer of the blood to you is documented. Then, using the next available line, show "Provide samples" under purpose, "Donor" under "released by," check under "urine" and place your name, signature and date in the space provided.)

- Complete the remainder of STEP 3 on the Control Form.

- Have the employee complete STEP 4 on the Control Form.

- Place the filled urine bottles in the individual employee kit. Keep the paperwork and samples together. If another collector will be collecting the blood sample from this employee, transfer both the form and the kit to that person, showing the transfer of the urine samples on the next available line of STEP 5 (the chain of custody block).

#### F. Seal the Individual Employee Kit

The blood and urine samples have now been collected for this employee. The blood/urine samples will now be sealed into the individual employee kit, while all paperwork will be retained for further completion. After rechecking to see that each sample is properly labeled and initialed, close the plastic bag to contain any leakage in transportation, and apply the kit security seal to the small individual kit. As collector, sign and date the kit seal.

Before collecting samples from the next employee, complete the next line on the chain-of-custody block showing release of the blood and urine by yourself for the purpose of "Shipment" and receipt by the courier service or railroad representative that will provide transportation of the box, together with the date.

#### G. Complete Treatment Information

Complete STEP 6 of the Control Form. Mark the box if a breath alcohol test was conducted under FRA authority.

#### H. Prepare the Box for Shipment

Sealed individual employee kits should be retained in secure storage if there will be a delay in preparation of the shipping box. The shipping box shall be prepared and sealed by a collection facility representative as follows:

- Inspect STEP 5 of each Control Form to ensure chain-of-custody is continuous and complete for each fluid (showing samples released for shipment). Retain the medical facility copy of each Control Form and the Accident Information form for your records.

- Place sealed individual employee kits in the shipping box. Place all forms in zip-lock bag and seal securely. Place bag with forms and unused supplies in shipping box.

- Affix the mailing label provided to the outside of the shipping box.

#### I. Ship the Box

The railroad must arrange to have the box shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. Whenever possible without incurring delay, the collector should deliver the box directly into the hands of the express courier or air freight representative.

Where courier pickup is not immediately available at the collection facility where the samples are taken, the railroad is required to transport the shipping box for expeditious shipment by air express, air freight or equivalent means.

If the railroad is given custody of the box to arrange shipment, please record the name of the railroad official taking custody on the copy of Form 6180.73 retained by the collection site.

"TROUBLE BOX"

1. Problem: *The employee claims an inability to urinate, either because he/she has recently voided or because of anxiety concerning the collection.*

Action: The employee may be offered moderate quantities of liquid to assist urination. If the employee continues to claim inability after 4 hours, the urine collection should be discontinued, but the blood samples should be forwarded and all other procedures followed. Please note in area provided for remarks what explanation was provided by the employee.

2. Problem: *The employee cannot provide approximately 60 ml. of sample.*

Action: The employee should remain at the collection facility until as much as possible of the required amount can be given (up to 4 hours). The employee should be offered moderate quantities of liquids to aid urination. The first bottle, if it contains any quantity of urine, should be sealed and securely stored with the blood tubes and Control Form pending shipment. A second bottle should then be used for the subsequent void (using a second Control Form with the words "SECOND VOID—FIRST SAMPLE INSUFFICIENT" in the remarks block and labels from that form). However, if after 4 hours the donor's second void is also insufficient or contains no more than the first insufficient void, discard the second void and send the first void to the laboratory.

3. Problem: *The urine temperature is outside the normal range of 32°–38°C/90°–100°F, and a suitable medical explanation cannot be provided by an oral temperature or other means; or*

4. Problem: *The collector observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in sample presented, etc.) and a collection site supervisor or the railroad representative agrees that the circumstances indicate an attempt to tamper with the sample.*

Action (for either Problem No. 3 or Problem No. 4): Document the problem on

the Control Form. If the collection site supervisor or railroad representative concur that the temperature of the sample, or other clear and unequivocal evidence, indicates a possible attempt to substitute or alter the sample, another void must be taken under direct observation by a collector of the same gender.

If a collector of the same sex is not available, do NOT proceed with this step.

If a collector of the same gender is available, proceed as follows: A new Control Form must be initiated for the second void. The original suspect sample should be marked "Void 1" and the follow-up void should be marked "Void 2," with both voids being sent to the laboratory and the incident clearly detailed on the Control Form.

#### Exhibit C-2—Instructions for Collection of Post Mortem Samples: Employee Killed in a Railroad Accident/Incident

To the Medical Examiner, Coroner, or Pathologist:

In compliance with Federal safety regulations (49 CFR part 219), a railroad representative has requested that you obtain samples for toxicology from the remains of a railroad employee who was killed in a railroad accident or incident. The deceased consented to the taking of such samples, as a matter of Federal law, by performing service on the railroad (49 CFR 219.11(f)).

Your assistance is requested in carrying out this program of testing, which is important to the protection of the public safety and the safety of those who work on the railroads.

#### Materials:

The railroad will provide you a post-accident shipping box that contains necessary supplies. If the box is not immediately available, please proceed using supplies available to you that are suitable for forensic toxicology.

#### Samples requested, in order of preference:

(1) Blood—20 milliliters or more. Preferred sites: intact femoral vein or artery or peripheral vessels (up to 10 ml, as available) and intact heart (20 ml). Deposit blood in gray-stopper tubes individually by site and shake to mix sample and preservative.

**Note:** If uncontaminated blood is not available, bloody fluid or clots from body cavity may be useful for qualitative purposes; but do not label as blood. Please indicate source and identity of sample on label of tube.

(2) Urine—as much as 100 milliliters, if available. Deposit into plastic bottles provided.

(3) Vitreous fluid—all available, deposited into smallest available tube (e.g., 3 ml) with 1% sodium fluoride, or gray-stopper tube (provided). Shake to mix sample and preservative.

(4) If available at autopsy, organs—50 to 100 grams each of two or more of the following in order preference, as available: liver, bile, brain, kidney, spleen, and/or lung. Samples should be individually deposited into zip-lock bags or other clean, single use containers suitable for forensic samples.

(5) If vitreous or urine is not available, please provide—

a. Spinal fluid—all available, in 8 ml container (if available) with sodium fluoride or in gray-stopper tube; or, if spinal fluid cannot be obtained,

b. Gastric content—up to 100 milliliters, as available, into plastic bottle.

#### Sample collection:

Sampling at time of autopsy is preferred so that percutaneous needle puncturing is not necessary. However, if autopsy will not be conducted or is delayed, please proceed with sampling.

Blood samples should be taken by sterile syringe and deposited directly into evacuated tube, if possible, to avoid contamination of sample or dissipation of volatiles (ethyl alcohol).

**Note:** If only cavity fluid is available, please open cavity to collect sample. Note condition of cavity.

Please use smallest tubes available to accommodate available quantity of fluid sample (with 1% sodium fluoride).

#### Sample identification, sealing:

As each sample is collected, seal each blood tube and each urine bottle using the respective blood tube or urine bottle using the identifier labels from the set provided with the Post Accident Testing Blood/Urine Custody and Control Form (FRA Form 6180.74 (revised)). Make sure the unique identification number on the labels match the pre-printed number on the Control Form. Please label other samples with name and sample set identification numbers. You can use labels and seals from any of the extra forms, but annotate them accordingly.

Annotate each label with sample description and source (as appropriate) (e.g., blood, femoral vein).

Please provide copy of any written documentation regarding condition of body and/or sampling procedure that is available at the time samples are shipped.

#### Handling:

If samples cannot be shipped immediately as provided below, samples other than blood may be immediately frozen. Blood samples should be refrigerated, but not frozen.

All samples and documentation should be secured from unauthorized access pending delivery for transportation.

#### Information:

If the railroad has not already done so, please place the name of the subject at the top of the Control Form (STEP 1). You are requested to complete STEP 2 of the form, annotating it by writing the word "FATALITY," listing the samples provided, providing any further information under "Remarks" or at the bottom of the form. If it is necessary to transfer custody of the samples from the person taking the samples prior to preparing the box for shipment, please use the blocks provided in STEP 5 to document transfer of custody.

The railroad representative will also provide Accident Information Required for Post-Accident Toxicological Testing, FRA Form 6180.73 (revised). Both forms should be placed in the shipping box when completed; but you may retain the designated medical facility copy of each form for your records.

*Packing the shipping box:*

Place urine bottles and blood tubes in the sponge liner in the individual kit, close the biohazard bag zipper, close the kit and apply the kit custody seal to the kit. You may use additional kits for each tissue sample, being careful to identify sample by tissue, name of deceased, and specimen set identification number. Apply kit security seals to individual kits and initial across all seals.

Place all forms in the zip-lock bag and seal securely. Place the bag in the shipping box. Do not put forms in with the specimens.

Seal the shipping box with the seal provided and initial and date across the seal.

Affix the mailing label to the outside of the box.

*Shipping the box:*

The railroad must arrange to have the box shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. When possible, but without incurring delay, deliver the sealed shipping box directly to the express courier or the air freight representative.

If courier pickup is not immediately available at your facility, the railroad is required to transport the sealed shipping box to the nearest point of shipment via air express, air freight or equivalent means.

*If the railroad receives the sealed shipping box to arrange shipment*, please record under "Supplemental Information" on the Control Form, the name of the railroad official taking custody.

*Other:*

FRA requests that the person taking the samples annotate the Control Form under "Supplemental Information" if additional toxicological analysis will be undertaken with respect to the fatality. FRA reports are available to the coroner or medical examiner on request.

Issued in Washington, D.C. on April 11, 1995.

**Donald M. Itzkoff,**

*Deputy Administrator, Federal Railroad Administration.*

[FR Doc. 95-9554 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-06-P

# Proposed Rules

Federal Register

Vol. 60, No. 75

Wednesday, April 19, 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 AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 905

[Docket No. FV95-905-1]

#### Referendum Order for Marketing Order No. 905 Covering Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida

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

**ACTION:** Referendum order.

**SUMMARY:** This document directs that a referendum be conducted among eligible producers of Florida citrus fruit to determine whether they favor continuance of the marketing order regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in the production area.

**DATES:** The referendum will be conducted from October 1 through October 31, 1995. To vote in this referendum, growers must have been producing Florida citrus during the period August 31, 1994, through September 1, 1995.

**ADDRESSES:** Copies of the marketing order may be obtained from the office of the referendum agent at P.O. Box 276, Winter Haven, Florida, 33883-2276, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC, 20090-6456; telephone (202) 720-5053.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Haven, Florida, 33881-2276; telephone: (813) 299-4770; or Britthany Beadle, Marketing Order Administration Branch, Fruit & Vegetable Division, Agricultural Marketing Service, Department of Agriculture, room 2536-S, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 720-5127.

**SUPPLEMENTARY INFORMATION:** Pursuant to Marketing Order No. 905 [7 CFR part 905], hereinafter referred to as the "order" and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the "Act", it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the producers. The referendum shall be conducted during the period October 1, through October 31, 1995, among Florida citrus producers in the production area. Only producers that were engaged in the production of Florida citrus during the period of August 31, 1994, through September 1, 1995, may participate in the continuance referendum.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuance of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of Florida citrus represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum. The Secretary will also consider other relevant information concerning the operation of the order; the order's relative benefits and disadvantages to producers, handlers, and consumers; and whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all producers affected by the order favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. chapter 35], the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0094 for Florida citrus. It has been estimated that it will take an average of 10 minutes for each of the approximately 11,970 producers of

Florida citrus to cast a ballot. Participation is voluntary. Ballots postmarked after October 31, 1995 will not be included in the vote tabulation.

Doris Jamieson and Christian D. Nissen of the Southeast Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruit, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" [7 CFR Part 900.400 *et. seq.*]

Ballots will be mailed to all producers of record and may also be obtained from the referendum agents.

#### List of Subjects in 7 CFR Part 905

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

**Authority:** 7 U.S.C. 601-674.

Dated: April 13, 1995.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 95-9614 Filed 4-18-95; 8:45 am]

BILLING CODE 3410-02-P

## Food Safety and Inspection Service

### 9 CFR Parts 308, 310, 318, 320, 325, 326, 327, and 381

[Docket No. 95-014N]

#### Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems—Notice of Scientific/Technical Conference

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) will hold a scientific/technical conference, "An Evaluation of the Role of Microbiological Criteria in Establishing Food Safety Performance Standards in Meat and Poultry Products," on May 18-19, 1995, at the Georgetown University Conference Center, 3800 Reservoir Road, Washington, DC. The purpose of the conference is to explore scientific issues related to

microbiological criteria in establishing meat and poultry products safety performance standards.

**DATES:** May 18–19, 1995.

**ADDRESSES:** Georgetown University Conference Center, 3800 Reservoir Road, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Brewer, Staff Officer, Epidemiology and Emergency Response Program, FSIS, USDA, (202) 205–0293.

To register to attend, call Ms. Becky LaQuay or Ms. Pat Baker at (202) 205–0293.

**SUPPLEMENTARY INFORMATION:** On February 3, 1995, FSIS published a proposed rule “Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems” (60 FR 6774). In that document, the Agency proposed a number of regulatory changes applicable to Federal- and State-inspected meat and poultry establishments. The proposed changes are designed to reduce the occurrence and numbers of pathogenic microorganisms in meat and poultry products, thereby reducing the incidence of foodborne illness associated with the consumption of these products.

In the proposed rule, FSIS stated that public meetings would be held with the regulated industry and interested parties to foster the development of beneficial new food safety technologies. Therefore, FSIS is holding a scientific/technical conference to explore the use of microbiological criteria for developing food safety performance standards for meat and poultry products.

The conference, “An Evaluation of the Role of Microbiological Criteria in Establishing Food Safety Performance Standards in Meat and Poultry Products,” will be held on May 18–19, 1995, at the Georgetown University Conference Center, 3800 Reservoir Road, Washington, DC 20057 (202) 687–3200. The conference will begin each day at 8:00 a.m. and end at 5:30 p.m.

#### Conference Agenda

The conference will consist of four sessions, as follows:

Session I: “Review of the Green Book, ‘An Evaluation of the Role of Microbiological Criteria for Foods and Food Ingredients’”

Several members who served on the Subcommittee on Microbiological Criteria for Foods and Food Ingredients will present papers reviewing the Green Book’s concepts and recommendations applicable to meat and poultry products.

Session II: “Current Food Safety Issues and Logic for Using Microbial-based Performance Standards”

Invited speakers will review current food safety issues, including emerging pathogens, and the logic for microbial-based standards (criteria or targets) as a verification of HACCP systems.

Session III: “Basis for Establishing Criteria for Food Safety Performance Standards”

Invited speakers will discuss the basis for setting criteria (i.e. public health-based standards versus technology-based standards) and data needs for developing meaningful performance standards, such as sentinel-site surveillance.

Session IV: “Synopsis of Conference Proceedings”

Panel members will summarize major issues and points of the proceedings. The public will be provided an opportunity to make comments and ask questions.

Dr. J. Glenn Morris, Jr., Director, Epidemiology and Emergency Response Program, FSIS will moderate and be joined by a panel consisting of: Dr. Douglas Archer, Department of Food Science and Human Nutrition, University of Florida; Dr. Robert Black, Department of International Health, Johns Hopkins School of Hygiene and Public Health; Dr. Sherwood Gorbach, Community Health and Medicine, Tufts University School of Medicine; and Dr. Morris Potter, Center for Disease Control and Prevention, Division Bacterial and Mycotic Diseases.

A report will be prepared that summarizes the conference’s processing. This report will include general conclusions on the use of microbiological criteria for developing food safety performance standards for meat and poultry products. The report and transcripts of the conference will be available in the FSIS Docket Clerk’s Office, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

#### Attendance and Hotel Reservations

Seating space at the conference is limited. Please call Ms. Becky LaQuay or Ms. Pat Baker if you wish to attend the conference (see **FOR FURTHER INFORMATION CONTACT**). People attending the conference will be responsible for making their own hotel arrangements. A limited number of rooms are available at the Georgetown University Conference Center. To make reservations call 1–800–446–9476.

Done at Washington, DC, on: April 12, 1995.

**Michael R. Taylor,**

*Acting Under Secretary for Food Safety.*

[FR Doc. 95–9613 Filed 4–18–95; 8:45 am]

**BILLING CODE 3410-DM-P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Part 490

[Docket No. EE–RM–95–110]

RIN 1904–AA64

#### Alternative Fuel Transportation Program

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

**ACTION:** Correction to Notice of Proposed Rulemaking.

**SUMMARY:** This document contains corrections to the Notice of Proposed Rulemaking that was published Tuesday, February 28, 1995, 60 FR 10970, FR Doc. 95–4764. The notice of proposed rulemaking relates to the alternative fueled vehicle acquisition requirements for States and fuel providers that becomes effective by operation of law on September 1, 1995, when model year 1996 begins.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Katz, Program Manager, Office of Energy Efficiency and Renewable Energy (EE–33), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–6116.

#### SUPPLEMENTARY INFORMATION:

##### Need for Correction

As published the notice of proposed rulemaking contains errors which may be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the publication on February 28, 1995 of the Notice of Proposed Rulemaking, which was the subject of FR Doc. 95–4764 is corrected as follows:

1. On page 10972, in the third column, first paragraph, delete the word “underscored” in the last sentence.

2. On page 10973, beginning in the second column, paragraph 4. is corrected to read as follows:

4. Reformulated gasoline. Although percentages can vary to a small degree, it is the Department’s understanding that reformulated gasoline is comprised

of over 90 percent petroleum on an energy equivalent basis. Reformulated gasoline is an enumerated "clean alternative fuel" in section 241 of the Clean Air Act, 42 U.S.C. 7581. It is not mentioned at all in the definition of "alternative fuel" in section 301 of the Energy Policy Act of 1992. Section 301(2) provides as follows: the term "alternative fuel" means methanol, denatured ethanol, and other alcohols; [mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline, or other fuels]; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); [and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits].

3. On page 10973, third column, first full paragraph following paragraph 4., the first sentence is corrected to read as follows:

Each of the above bracketed phrases sets forth limited authority for the Department to add fuels to the definition of "alternative fuel."

4. On page 10990, second column, in Appendix A To Subpart A of Part 490, "Metropolitan Statistical Areas/ Consolidated Metropolitan Statistical Areas with 1980 Populations of 250,000 or more," add the following Metropolitan Statistical Areas in alphabetical order:

Duluth MSA MN-WI  
Johnstown MSA PA  
Kalamazoo-Battle Creek MSA MI

**Thomas J. Gross,**

*Deputy Assistant Secretary for Transportation Technologies, Office of Energy Efficiency and Renewable Energy.*

[FR Doc. 95-9693 Filed 4-18-95; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 94-NM-167-AD]

#### Airworthiness Directives; Mitsubishi Model YS-11 and -11A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Mitsubishi Model YS-11 and -11A series airplanes. This proposal would require the implementation of a corrosion prevention and control program. This proposal is prompted by incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes due to problems associated with corrosion.

**DATES:** Comments must be received by May 25, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-167-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 Nihon Aeroplane Manufacturing, Toranomon Daiichi, Kotohire-Cho, Shiba, Minato-Ku, Tokyo, Japan. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:**

William Roberts, Aerospace Engineer, Airframe Branch, ANM-120L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (310) 627-5228; fax (310) 627-5210.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be

considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-167-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-167-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**Discussion**

In April 1988, a transport category airplane managed to land after tiny cracks in rivet holes in the upper fuselage linked together, causing structural failure and explosive decompression. An 18-foot section ripped from the fuselage. This accident focused greater attention on the problem of aging aircraft.

In June 1988, the FAA sponsored an international conference on aging airplane issues, which was attended by representatives of the aviation industry from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on the aging fleets and maintaining their continued operational safety.

In concert with the objectives that arose from this conference, the "YS-11 Structures Working Group (SWG)," was formed in 1990. This group was comprised of representatives of several Japanese airlines and overhaul facilities; Mitsubishi Heavy Industries (MHI), the airframe manufacturer; and the Japan Civil Aviation Bureau (JCAB), which is the airworthiness authority for Japan. It undertook the task of identifying and

implementing procedures to ensure the continuing structural airworthiness of Model YS-11 fleet.

As a result of this group's effort, a baseline program was developed for controlling corrosion problems that may jeopardize the continued airworthiness of the Model YS-11 fleet. The program is contained in MHI Publication No. YS-MR-301, "YS-11 Corrosion Control Program," dated November 1, 1993 (hereafter referred to as "the Document").

The JCAB has classified the Document as mandatory, and has issued Japanese Airworthiness Directive TCF-50-001-1E-1, KU-KI-1532, TCD-3954-93, dated December 27, 1993, addressing this subject.

Section 1.2 of the Document describes the basic requirements of the corrosion control program (CCP).

Section 1.3 of the Document defines three levels of corrosion: Level 1 corrosion is that which does not exceed certain limits; Level 2 corrosion is that which exceeds those limits; and Level 3 corrosion is significant corrosion which is potentially an urgent airworthiness concern.

Section 2 of the Document describes the general guidelines for developing and implementing a corrosion prevention and control program. These guidelines address such things as the scope and priority of the baseline program; the relationship between an operator's maintenance program and the CCP; intervals for accomplishment of the basic tasks for corrosion prevention; selection of corrosion preventive compound; and how the program relates to newly-acquired, leased, and transferred airplanes. This section also provides for periodic review and update of the data contained in the Document.

It should be noted that this section indicates that, since more than 20 years have passed since most Model YS-11 airplanes were last manufactured, implementation of the Baseline Program is necessary for all airplanes. In light of this, the program described in the Document does not specify any particular "implementation age" for initiating the program on a particular airplane. Instead, it emphasizes developing and adopting a program, then accomplishing the specific actions on each airplane in an operator's fleet, on a phased-in basis.

Section 3 of the Document establishes the procedures for reporting the results of the inspections conducted under the program. It describes the specific system for reporting of findings when various levels of corrosion are determined to exist.

Section 4 of the Document lays out the recommended baseline program. This section describes the "basic task" to be accomplished in each defined airplane area ("zone") as part of the baseline program, the specific airplane areas that are subject to the program, and the intervals for inspecting areas and applying corrosion preventive compound. A "basic task" includes visual inspections of all primary and secondary structures, and may also include detailed visual and non-destructive inspections (NDI). Any corrosion or other damage found as a result of these inspections must be repaired.

This airplane model is manufactured in Japan 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 JCAB has kept the FAA informed of the situation described above. The FAA has examined the findings of the JCAB, 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 corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require adoption of a corrosion prevention and control program that is equivalent to or better than the program specified in the Document previously described. Operators would be permitted to accomplish this either by performing the specific basic tasks described in the Document (the "task-by-task method"), or by revising their FAA-approved maintenance program to include such a program.

Paragraph (a) of the proposal sets forth the proposed compliance time for the implementation of the schedule for accomplishing the basic task for each affected aircraft area. The basic task would be required to be repeated at a time interval not to exceed the repeat interval for that area, as detailed in the Document.

Operators should note that the proposal does not contain a paragraph specifically to address repair actions. The FAA considers that any repairs would be carried out necessarily as a part of each basic task, as it is defined in the Document. As discussed previously, a "basic task" is defined in the Document as including not only the pertinent inspection, but any necessary repairs, application of corrosion inhibitors, and other follow-on procedures, as well. Paragraph (a)

contains a note to reference the portion of the Document that defines a basic task, and to emphasize the importance of these corrective actions.

Paragraph (b) of the proposal provides for an optional method of complying with the rule. In lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Document or an equivalent program approved by the FAA.

Paragraph (b) also would require that, subsequent to the accomplishment of the initial basic task, any extensions of repeat intervals specified in the Document must be approved by the FAA.

Any operator electing to comply with proposed paragraph (b) would be permitted to use an alternative recordkeeping method to that otherwise required by Federal Aviation Regulations (FAR) § 91.417 or § 121.380, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program. In response to questions raised previously concerning recordkeeping and record retention requirements as they relate to the programmatic approach proposed in this AD action and other similar proposals that have been issued applicable to other airplane models, the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Document; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this proposal, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording "the identification of the current inspection status of the aircraft." Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/inspection program to include the program specified in the Document, each operator's program would require a record of each inspection to be performed. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the

maintenance/inspection program revision, it will be possible to determine the current status of each basic task on each airplane. Once this cross-reference system has been established (normally within a year after the effective date of the AD), this recording provision of Sections 91 and 121 requires no additional recording beyond what would otherwise be required normally.

Section 121.380(a)(1) concerns "records necessary to show that all requirements for the issuance of an airworthiness release under Section 121.709 have been met." Section 91.417(a)(1) contains a similar requirement. These are also referred to as "dirty fingerprint records." This provision of Sections 91 and 121 requires most of the recording that would result from this proposed AD. Each time a basic task is performed, the operator would be required to make a "dirty fingerprint" record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, Sections 91 and 121 of the FAR impose requirements for record retention:

Section 121.380(b)(1) and Section 91.417(b)(1) require that the "dirty fingerprint" records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in paragraph 121.380(a)(2) [current status of AD's and current inspection status] be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

Due to numerous concerns expressed previously by operators regarding the recordkeeping obligations imposed by Section 121.380 with regard to similar rulemaking on corrosion prevention and control programs, the FAA has included in this proposal certain provisions for

alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to record AD status. [The FAA has developed guidance material that will contain information to be considered by FAA Principal Maintenance Inspectors (PMI) when reviewing proposals for alternative recordkeeping methods.]

Paragraph (c) of the proposal provides for increasing a repeat interval by up to 10% in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

Paragraph (d)(1) of the proposal sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is determined to exist. Within 7 days after such a determination is made, an operator would be required to accomplish one of the following actions:

1. Submit a report of the determination to the FAA and complete the basic task in the affected area on the remainder of the Model YS-11/-11A series airplanes in the operator's fleet; or
2. Submit a proposed schedule, for approval by the FAA, for performing the basic tasks in the affected area on the remainder of the operator's Model YS-11/-11A series fleet; or
3. Submit data substantiating that the Level 3 corrosion was an isolated occurrence.

Once the FAA has received such a report, it may, in conjunction with normal surveillance activities, request additional information regarding the results of the basic tasks performed on the remainder of the operator's Model YS-11/-11A series fleet.

Paragraph (d)(2) of the proposal specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model YS-11 series fleet is detected in a timely manner.

Paragraph (d)(3) of the proposal would require that, within the time schedule approved by the FAA, the operator must accomplish the basic tasks in the affected areas on the remaining airplanes in its Model YS-11/-11A series fleet to ensure that any other Level 3 corrosion is detected and repaired.

Paragraph (e) would require that, upon finding corrosion exceeding Level 1 during a repetitive inspection, an operator must adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for corrective action for the FAA's approval within 60 days after the determination of corrosion is made. That action, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that if corrosion is found and it is not considered representative of the operator's fleet, no further corrective action may be necessary, since a means to reduce any corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (a) or (b). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an airplane area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the corrective action to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f) of the proposal concerns adding airplanes to an operator's fleet, and the procedures that must be followed with regard to corrosion prevention and control. This paragraph differentiates between procedures applicable to added airplanes that previously were maintained in accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed requirements of this AD action, the first basic task in each aircraft area to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that

have not been maintained in accordance with the proposed requirements of this AD action, the first basic task in each aircraft area to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership. The proposed rule would require that the specified procedures be accomplished before any operator places into service any airplane subject to the requirements of the proposed AD.

Paragraph (g) of the proposal would require that reports of Level 2 and Level 3 corrosion be submitted to Mitsubishi within certain time periods after such corrosion is detected. A note has been included in this paragraph indicating that reporting to the FAA of any Level 2 or Level 3 corrosion found as a result of any opportunity inspections is highly desirable. Operators are not relieved, however, from reporting corrosion findings as required by FAR § 121.703.

#### Cost Impact

The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per basic task to accomplish the 30 basic tasks called out in the Document; this represents a total average of 240 work hours (this figure includes not only inspection time, but access and closure time as well).

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 for the 4-year average inspection cycle is estimated to be \$561,600, or \$14,400 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 FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators.

However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

#### Regulatory Impact

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:

**Mitsubishi Heavy Industries, Ltd.:** Docket 94-NM-167-AD.

*Applicability:* All Model YS-11 and -11A series airplanes, 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 (h) 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.

**Note 2:** This AD references MHI Publication No. YS-MR-301, "YS-11 Corrosion Control Program," dated November 1, 1993 (hereafter referred to as "the Document"), for basic tasks, definitions of corrosion levels, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

**Note 3:** As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)." For those operators operating under Federal Aviation

Regulation (FAR) Part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR Part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

To preclude degradation of the structural capabilities of the airplane due to the problems associated with corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, within a date two years after the effective date of this AD, complete each of the basic tasks specified in Section 4.3 of the Document in accordance with the procedures specified in the Document and the schedule specified in Figure 5 of the Document. Thereafter, repeat each basic task at a time interval not to exceed the repeat interval specified in Section 4 of the Document for that task.

**Note 4:** A "basic task," as defined in Section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of sealants or corrosion inhibitors; and other follow-on actions.

**Note 5:** Basic tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial basic task requirements of this paragraph.

**Note 6:** Where non-destructive inspection (NDI) methods are employed, in accordance with Section 4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR Section 43.13.

(b) As an alternative to the requirements of paragraph (a) of this AD: Within one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion control program specified in the Document; or to include an equivalent program that is approved by the FAA.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR § 91.417 or § 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial basic task, any extensions of repeat intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for a repeat interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any airplane area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the basic task in the affected aircraft zones on all Model YS-11/-11A series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the basic tasks in the affected aircraft zones on the remaining Model YS-11/-11A series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

**Note 7:** Notwithstanding the provisions of section 1.3 of the Document, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the basic tasks in the affected aircraft zones of the remaining Model YS-11/-11A series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination, implement a means, approved by the FAA, to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of basic tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first basic task in each aircraft zone to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each basic task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first basic task for each aircraft zone to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least every three months to Mitsubishi Heavy Industries, Ltd.,

in accordance with Section 3 of the Document.

**Note 8:** Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Los Angeles ACO.

**Note 9:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(i) 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.

(j) Reports of inspection results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

Issued in Renton, Washington, on April 10, 1995.

**S.R. Miller,**

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

[FR Doc. 95-9352 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-13-U

## 14 CFR Part 39

[Docket No. 94-NM-166-AD]

### Airworthiness Directives; British Aerospace Model Viscount 744, 745D, and 810 Airplanes

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model Viscount 744, 745D, and 810 airplanes. This proposal would require an inspection to detect corrosion of the tailplane assemblies, and correction of discrepancies. This proposal is prompted by a report of corrosion on the main spar top and bottom forward boom of the tailplane assemblies and reports of cracking in the upper root joint attachment fitting. The actions specified by the proposed AD are intended to prevent such cracking or corrosion of the main spar forward booms or the upper root joint attachment fitting, which consequently

could lead to the failure of the tailplane assemblies; this condition could result in reduced controllability of the airplane.

**DATES:** Comments must be received by May 30, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-166-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 94-NM-166-AD. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-166-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-166-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model Viscount 744, 754D, and 810 airplanes. The CAA advises that it has received a report of corrosion on the main spar top and bottom forward boom of the tailplane assemblies. Several incidents of cracking have also been discovered in the upper root joint attachment fitting. The effects of such cracking or corrosion could lead to the failure of the main spar forward booms or the upper root joint attachment fitting, which consequently could lead to the failure of the tailplane assemblies. This condition, if not corrected, could result in reduced controllability of the airplane.

British Aerospace has issued Viscount Alert Preliminary Technical Leaflet (PTL) 182, Issue 2, dated August 7, 1992 (for Model Viscount 810 airplanes); and Viscount PTL 313, Issue 2, dated February 1, 1993 (for Model Viscount 744, 754D, airplanes), which describe procedures for performing an inspection to detect corrosion of the tailplane assemblies, and correction of discrepancies. The CAA classified these PTL's as mandatory.

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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 an inspection to detect corrosion of the tailplane assemblies, and correction of discrepancies. The actions would be required to be accomplished in

accordance with the PTL's described previously.

The FAA estimates that 29 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 160 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$278,400, or \$9,600 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:

**British Aerospace Regional Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited, Vickers-Armstrongs Aircraft Limited):** Docket 94-NM-166-AD.

**Applicability:** All Model Viscount 744, 754D, and 810 airplanes, 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 prevent cracking or corrosion of the main spar forward booms or the upper root joint attachment fitting, which consequently could lead to the failure of the tailplane assemblies and reduce the controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 8 years of service since date of manufacture of this airplane, or within 18 months after the effective date of this AD, whichever occurs later, perform an inspection to detect corrosion of the tailplane assemblies, in accordance with British Aerospace Regional Aircraft Limited Viscount Alert Preliminary Technical Leaflet (PTL) 182, Issue 2, dated August 7, 1992 (for Model Viscount 810 airplanes), or Viscount PTL 313, Issue 2, dated February 1, 1993 (for Model Viscount 744, 754D, airplanes), as applicable. If corrosion is detected during the inspection, prior to further flight, correct the discrepancies in accordance with the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 8 years.

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

**Note 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 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 April 13, 1995.

**John J. Hickey,**

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

[FR Doc. 95-9624 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-13-U

### 14 CFR Part 39

[Docket No. 94-NM-112-AD]

#### Airworthiness Directives; British Aerospace Model Viscount 744, 745D, and 810 Airplanes

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model Viscount 744, 745D, and 810 airplanes. This proposal would require an inspection of certain fittings of the engine mount structure to determine whether fasteners have been installed in inspection holes and to determine whether those holes are oversized. It would also require various follow-on actions, depending upon the results of the inspection. This proposal is prompted by reports indicating that fasteners were installed in the inspection hole of the engine "W" frame socket fittings and the inspection hole was oversized due to fatigue cracking. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could lead to failure of the fasteners and consequent separation of the engine from the airframe.

**DATES:** Comments must be received by May 30, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-112-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

British Aerospace Regional Aircraft Ltd., Engineering Support Manager, Military Business Unit, Chadderton Works, Greengate, Middleton, Manchester M24 1SA, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-112-AD." The postcard will be date stamped and returned to the commenter.

##### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-112-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

##### Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace

Model Viscount 744, 745D, and 810 airplanes. The CAA advises that it has received a report indicating that drive screws were installed in the inspection hole of engine "W" frame socket fittings. Investigation revealed that these drive screws were installed in accordance with Gulfstream Customer Bulletin No. 241C. However, the fitting of the drive screws into the inspection holes has caused fatigue cracking. In another report, the inspection hole was oversized in excess of the original 0.125-inch diameter; with such oversizing of the inspection hole, the fitting is susceptible to the problems associated with premature fatigue cracking. These conditions, if not detected and corrected in a timely manner, could lead to failure of the fitting and consequent separation of the engine from the airframe.

British Aerospace has issued Preliminary Technical Leaflet (PTL) 501, dated May 1, 1994, which describes procedures for performing a detailed visual inspection of "W" frame socket fittings of the engine mount structure to determine whether drive screws or blind rivets have been installed in inspection holes, and to determine whether those holes are oversized. The PTL also describes various follow-on actions, including a nondestructive test (NDT) to detect discontinuity (i.e., cracks, corrosion, and mechanical damage) of holes, rework of the hole, and replacement of the "W" frame fitting with a new or serviceable part. The CAA classified this PTL as mandatory.

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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 performing a detailed visual inspection of "W" frame socket fittings of the engine mount structure to determine whether drive screws or blind rivets have been installed in inspection holes and to determine whether those holes are oversized. It would also require

various follow-on actions, depending upon the results of the inspection. The actions would be required to be accomplished in accordance with the PTL 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.

The FAA estimates that 29 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 25 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$43,500, or \$1,500 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:

**British Aerospace Regional Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited, Vickers-Armstrongs Aircraft Limited):** Docket 94-NM-112-AD.

*Applicability:* All Model Viscount 744, 745D, and 810 airplanes, 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 fatigue cracking, which could lead to the possible separation of the engine from the airframe, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a detailed visual inspection of "W" frame socket fittings of the engine mount structure to determine whether drive screws or blind rivets have been installed in inspection holes and to determine whether those holes are oversized,

in accordance with the Accomplishment Instructions, section 2.1 PART ONE, paragraphs A., B., C., D., E. and F., of British Aerospace Preliminary Technical Leaflet (PTL) 501, dated May 1, 1994.

(b) If drive screws or blind rivets are found installed, or if the inspection holes are found to be oversized, during the inspection required by paragraph (a) of this AD, at the next scheduled engine removal, but no later than 12 months after the effective date of this AD, perform a nondestructive test (NDT) to detect discontinuities (i.e., cracks, corrosion, and mechanical damage) at inspection holes; rework the hole or replace the "W" frame fitting with a new or serviceable part; and perform the specified follow-on actions; in accordance with the Accomplishment Instructions, section 2.2 PART TWO, paragraphs A., B., C., D., E., and F., of British Aerospace Preliminary Technical Leaflet (PTL) 501, dated May 1, 1994.

(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 April 13, 1995.

**John J. Hickey,**

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

[FR Doc. 95-9625 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-13-U

## 14 CFR Part 71

[Airspace Docket No. 94-ACE-17]

### Proposed Amendment to Class E Airspace; Washington, IA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Washington, IA. The development of a new standard instrument approach procedure (SIAP) at Washington Municipal Airport, Washington, IA, has made the proposal necessary. The intended effect of this proposal is to provide controlled airspace for aircraft executing the SIAP at Washington, IA.

**DATES:** Comments must be received on or before May 30, 1995.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE-530, Federal Aviation Administration, Docket No. 94-ACE-17, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, ACE-530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426-3408.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Docket No. 94-ACE-17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, which describes the application procedures.

##### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new Instrument Flight Rules (IFR) procedure at the Washington Municipal Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

##### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

##### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal

Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

**PART 71—[AMENDED]**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

*Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**ACE IA E5 Washington, IA [Revised]**

Washington Municipal Airport, IA.  
(Lat. 41°16'34"N, long. 91°40'25"W)

That airspace extending upward from 700 feet above the surface within 7-mile radius of the Washington Municipal airport and within 3.5 miles each side of the 191° bearing from the airport extending from the 7-mile radius to 13 miles south of the airport.

\* \* \* \* \*

**Herman J. Lyons, Jr.,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 95–9643 Filed 4–18–95; 8:45 am]

BILLING CODE 4910–13–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 144–4–6973a; FL–5194–5]

**Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District and Ventura County Air Pollution Control District**

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

**ACTION:** Notice of proposed rulemaking.

**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 bakery ovens and the coating of metal parts and products.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with

the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed (NPRM) will incorporate these rules into the federally approved SIP. In addition, final action on one of these rules (South Coast Air Quality Management District's Rule 1153) will serve as a final determination that a deficiency in the rule has been corrected and that any sanctions or Federal Implementation Plan (FIP) obligations are permanently stopped. An Interim Final Determination published in today's **Federal Register** will defer the imposition of sanctions until EPA takes final rulemaking action on this rule. EPA has evaluated each of these rules and is proposing to approve them 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:** Comments must be received on or before May 19, 1995.

**ADDRESSES:** Comments may be mailed to: Daniel A. Meer, Rulemaking Section [A–5–3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules 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 rules are also available for inspection at the following locations:

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 2020 "L" Street,  
Sacramento, CA 95814.  
South Coast Air Quality Management  
District, 21865 E. Copley Drive,  
Diamond Bar, CA 91765–4182.  
Ventura County Air Pollution Control  
District, 669 County Square Drive,  
Second Floor, Ventura, CA 93003.

**FOR FURTHER INFORMATION CONTACT:**  
Christine Vineyard, Rulemaking Section [A–5–3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1197.

**SUPPLEMENTARY INFORMATION:**

**Applicability**

The rules being proposed for approval into the California SIP include: South Coast Air Quality Management District (SCAQMD) Rule 1153, Commercial Bakery Ovens; and Ventura County Air Pollution Control District (VCAPCD) Rule 74.12, Surface Coatings of Metal Parts and Products. These rules were submitted by the California Air

Resources Board to EPA on February 24, 1995.

**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 CAA or pre-amended Act), that included the Los Angeles-South Coast Air Basin (LA Basin) and the Ventura County Area. 43 FR 8964; 40 CFR 81.305. Because these areas were 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 pre-amended 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.<sup>1</sup> EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The LA Basin is classified as extreme and the Ventura County Area is classified as severe;<sup>2</sup> therefore, these areas were subject to the RACT fix-up

<sup>1</sup> 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).

<sup>2</sup> The LA Basin and the Ventura County Area retained their designations of nonattainment and were 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).

requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on February 24, 1995, including the rules being acted on in this document. This document addresses EPA's proposed action for SCAQMD Rule 1153, Commercial Bakery Ovens; and VCAPCD Rule 74.12, Surface Coating of Metal Parts and Products. The SCAQMD adopted Rule 1153 on January 13, 1995 and the VCAPCD adopted Rule 74.12 on January 10, 1995. These submitted rules were found to be complete on March 10, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V<sup>3</sup> and are being proposed for approval into the SIP.

SCAQMD Rule 1153 controls VOC emissions from commercial bakery ovens; and VCAPCD Rule 74.12 controls VOC emissions from facilities that apply coatings to metal parts or products. VOCs contribute to the production of ground-level ozone and smog. SCAQMD Rule 1153 and VCAPCD Rule 74.12 were adopted as part of each district's efforts 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 proposed action for these rules.

#### EPA Evaluation and Proposed 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 VCAPCD Rule 74.12 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources—Surface Coating of Miscellaneous Metal Parts and Products", EPA-450/2-78-0-015, June 1978. For some source categories, such as commercial bakery ovens (SCAQMD Rule 1153), EPA did not publish a CTG. In these cases, the district may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas. EPA did publish an Alternative Control Technology Document (ACT) entitled, "Alternative Control Technology Document for Bakery Oven Emissions", EPA 453/R-92-017, December 1972 as guidance for states when developing rules controlling VOC emissions from bakeries. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD's submitted Rule 1153, Commercial Bakery Ovens, includes the following significant changes from the current SIP:

- Executive Officer discretion in specifying test methods was eliminated.
- The "exempt compounds" definition was updated.

VCAPCD submitted Rule 74.12, Surface Coating of Metal Parts and Products is a new rule and includes:

- Limits for the ROC content of metal surface coatings and solvents used to clean coating application equipment and metal surfaces prior to coating.
- The use of add-on equipment to control emissions of ROCs if noncompliant coatings are used.
- Requirements for monthly records of complying coatings and daily records of noncompliant coating applied.
- Test methods are included to determine compliance.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1153, Commercial Bakery Ovens; and VCAPCD Rule 74.12, Surface Coating of Metal Parts and Products are being proposed for approval 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 request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### 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 populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: April 12, 1995.

**John C. Wise,**

*Acting Regional Administrator.*

[FR Doc. 95-9707 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-W

<sup>3</sup> 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).

**40 CFR Part 63**

[FRL-5193-1]

**National Emission Standards for Hazardous Air Pollutants (NESHAP); Secondary Lead Smelters; PVC in Feedstock****AGENCY:** Environmental Protection Agency (EPA)**ACTION:** Proposed rule; amendments.

**SUMMARY:** Notice is given that the EPA is considering amending the proposed rule for secondary lead smelters (59 FR 29750, June 9, 1994). Information gathered since proposal indicates that the amount of polyvinyl chloride (PVC) plastic contained in lead-acid battery scrap is declining and should be relegated to trace quantities within the next few years. Polyvinyl chloride in scrap is a precursor to hydrochloric acid emissions. The EPA is considering whether limits for hydrochloric acid contained in the proposal should be withdrawn.

**DATES:** *Comments.* Comments must be received on or before May 4, 1995.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A-92-43, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below.

*Docket.* Docket No. A-92-43 contains supporting information used in developing the proposed standards for secondary lead smelters (59 FR 29750, June 9, 1994). The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M-1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 12 p.m. and 1 to 3 p.m., Monday through Friday. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning the proposed standards and the materials discussed in this notice contact Mr. Phil Mulrine at (919) 541-5289, Metals Group, Emissions Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** Since the proposal of standards for secondary lead

smelters (59 FR 29750, June 9, 1994), the EPA has continued to gather information relevant to the rulemaking.

In the notice of proposed standards for secondary lead smelters, the EPA stated, "All smelting furnaces that process broken batteries are potential sources of HCl and Cl<sub>2</sub> [chloride] emissions. Many used lead-acid batteries contain polyvinyl chloride (PVC) plastic separators between the battery grids, although the use of PVC plastic as a separator material has been discontinued by most battery manufacturers. These separators are typically not removed from the lead-bearing parts of the battery during the battery breaking and separation process. When the PVC plastic is burned in the smelting furnace, the chlorides are released as HCl, Cl<sub>2</sub>, and chlorinated hydrocarbons" (59 FR 29754).

Information gathered recently relevant to this specific topic indicate that the number of used lead-acid batteries in the scrap inventory that contain PVC plastic separators has declined sharply in recent years from approximately 1 percent of the total available scrap in 1990 to less than 0.1 percent in 1994 (Docket No. A-92-43, Item No. IV-D-32 and IV-D-34). This trend is expected to continue due to the fact that these separators are no longer manufactured in the United States (Docket No. A-92-43, Item No. IV-D-38). No other source of chlorides has been identified in the feedstocks to these furnaces. Consequently, the EPA also expects emissions of HCl and Cl<sub>2</sub> to follow a similar decline.

In light of this new information, the EPA is reconsidering the conclusion that secondary lead smelters will continue to be a source of HCl and Cl<sub>2</sub> emissions and the need to regulate these pollutants from this source category. At this time, the EPA is considering withdrawing the HCl/Cl<sub>2</sub> emission standards and associated monitoring requirements from the proposed NESHAP. The EPA welcomes comment on this new information and the ramifications it may have on the final rule.

Dated: April 7, 1995.

**Mary D. Nichols,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 95-9378 Filed 4-18-95; 8:45 am]

**BILLING CODE 6560-50-P**

**40 CFR Part 180**

[OPP-300385; FRL-4947-9]

**Potassium Oleate, Oxytetracycline, and S-ethyl diisobutylthiocarbamate; Proposed Tolerance Actions****AGENCY:** Environmental Protection Agency (EPA or "the Agency")**ACTION:** Proposed rule.

**SUMMARY:** For each of the pesticides subject to the actions listed in this proposed rule, EPA has completed the reregistration process and issued a Reregistration Eligibility Document (RED). In the reregistration process, all information to support a pesticide's continued registration is reviewed for adequacy and, when needed, supplemented with new scientific studies. Based on the RED tolerance assessments for the pesticide chemicals subject to this proposed rule, EPA is proposing the following actions: to delete the term potassium oleate from the tolerance exemption for "potassium oleate and related C<sub>12</sub>-C<sub>18</sub> fatty acid potassium salts," to increase the tolerance for oxytetracycline on peaches, and for the tolerance "S-ethyl diisobutylthiocarbamate," to change the chemical name to the common name "butylate", to delete certain terms, and to change commodity definitions to accord with Table II of Subdivision O.

**DATES:** Written comments, identified by the OPP document control number [300385], must be received on or before May 19, 1995.

**ADDRESSES:** By mail, submit comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** By mail: Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA 22202. The contacts for the specific chemicals are: Ben Chambliss (oxytetracycline), (703) 308-8174, David Chen (potassium oleate), (703) 308-8017, Paul Parsons (butylate), (703) 308-8037.

**I. Legal Authorization**

The Federal Food, Drug, and Cosmetic Act (FFDCA) [21 U.S.C. 301 et seq.] authorizes the establishment of tolerances (maximum legal residue levels) and exemptions from the

requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408 [21 U.S.C. 346(a)]. Without such tolerances or exemptions, a food containing pesticide residues is considered to be "adulterated" under section 402 of the FFDCFA, and hence may not legally be moved in interstate commerce [21 U.S.C. 342]. To establish a tolerance or an exemption under section 408 of the FFDCFA, EPA must make a finding that the promulgation of the rule would "protect the public health" [21 U.S.C. 346a(b)]. For a pesticide to be sold and distributed the pesticide must not only have appropriate tolerances under the FFDCFA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA, 7 U.S.C. 136 et seq.].

In 1988, Congress amended FIFRA and required EPA to review and reassess the potential hazards arising from currently registered uses of pesticides registered prior to November 1, 1984. As part of this process, the Agency must determine whether a pesticide is eligible for reregistration and if any subsequent actions are required to fully attain reregistration status. EPA has chosen to include in the reregistration process a reassessment of existing tolerances or exemptions from the need for a tolerance. Through this reassessment process, EPA can determine whether a tolerance must be amended, revoked, or established, or whether an exemption from the requirement of one or more tolerances must be amended or is necessary.

The procedure for establishing, amending, or repealing tolerances or exemptions from the requirement of tolerances is set forth in the Code of Federal Regulations 40 CFR parts 177 through 180. Pursuant to 40 CFR 180.32, EPA is proposing the amendment of the following tolerances. The Administrator of EPA or any person may initiate an action proposing to establish, amend, revoke, or exempt a tolerance for a pesticide registered for food uses. The proposal must explain the grounds for such a proposed action and will be published as a public notice. Each petition or request for a new tolerance, an amendment to an existing tolerance, or a new exemption from the requirement of a tolerance must be accompanied by a fee. Current Agency policy on tolerance actions identified during the reregistration process is to waive the payment of fees if the tolerance action concerns revision or revocation of an established tolerance, or if the proposed exemption from the requirement of a tolerance requires the

concurrent revocation of an approved tolerance. Comments submitted in response to the Agency's published proposals are reviewed; the Agency then publishes its final determination regarding the specific tolerance actions.

## II. Chemical-Specific Information and Proposed Actions

### A. Potassium Oleate: Deletion of Term

1. *Regulatory background.* Prior to March 1989, the Agency classified potassium salts of fatty acids [ $C_{12}$ - $C_{18}$  saturated and unsaturated fatty acids], potassium laureate, potassium myristate, potassium oleate, and potassium ricinoleate as separate active ingredients. In March 1989, the Agency decided to treat all potassium salts of fatty acids, and all combinations of these chemicals, as a single active ingredient because these active ingredients tend to exist as mixtures in pesticide products. In May 1992, EPA revisited its March 1989 decision. EPA concluded that for registration purposes only potassium salts of  $C_{12}$ - $C_{18}$ , saturated and unsaturated fatty acids, would be treated as a single active ingredient and that any other chain length (either shorter or longer) should be considered to be a different active ingredient.

Because of the generally low toxicity of potassium salts and the acceptability of naturally occurring fatty acids in food, in 1982 EPA determined that a tolerance is not needed to protect the public health and established an exemption from the requirement of a tolerance for potassium oleate and related salts of fatty acids (47 FR 1379).

2. *Proposed action.* Currently, under 40 CFR 180.1068, EPA has established exemptions from the requirement of tolerances for potassium oleate and related  $C_{12}$ - $C_{18}$  fatty acids of potassium salts for residues in or on all raw agricultural commodities. Because EPA now treats all  $C_{12}$ - $C_{18}$  fatty acids of potassium salts as a single active ingredient, and potassium oleate is a  $C_{18}$ -fatty acid, a separate term for potassium oleate is no longer needed. Therefore, EPA proposes that the term potassium oleate be deleted from 40 CFR 180.1068.

### B. Oxytetracycline: Amendment of the Tolerance on Peaches

1. *Regulatory background.* Tolerances of 0.35 and 0.1 ppm currently exist for the bactericide/fungicide oxytetracycline in or on pears and peaches, respectively, from foliar treatment or injection (40 CFR 180.337). The Agency's 1988 Registration Standard for oxytetracycline concluded

that EPA had adequate data to support registered uses on pears and peaches, including nectarines. However, an evaluation of available data indicate that residue uptake in peaches could exceed the existing 0.1 ppm tolerance level but would be less than 0.35 ppm. Therefore, EPA is proposing that the oxytetracycline tolerance for peaches be increased from 0.1 ppm to 0.35 ppm.

To determine whether a 0.35 ppm tolerance level is protective of the public health, EPA considered the following information:

a. A 2-year chronic feeding study in Osborne-Mendel rats with a No Observed Effect Level (NOEL) of 3,000 ppm, approximately 150 milligrams (mg)/kilogram (kg)/day (highest dose tested).

b. A 2-year chronic feeding study in Sprague-Dawley rats with a NOEL of 1,000 ppm, approximately 50 mg/kg/day (highest dose tested).

c. A 2-year chronic feeding study in dogs with a NOEL of 10,000 ppm, approximately 250 mg/kg/day (highest dose tested).

d. A mouse developmental toxicity study with a NOEL for maternal and developmental toxicity at 2,100 mg/kg (highest dose tested).

e. A dog study, undertaken to evaluate antimicrobial resistance to oxytetracycline, with a NOEL of 2 ppm (approximately 0.05 mg/kg/day).

In December of 1988, EPA completed a review of the available data for oxytetracycline and concluded that there is no evidence of carcinogenic effects in either the mouse or the rat study.

The reference dose (RfD) is established at 0.005 mg/kg/body weight per day based on a NOEL of 0.05 mg/kg body weight per day from the dog feeding study. An uncertainty factor of 10 to account for intraspecies variability was used.

The theoretical maximum residue contribution (TMRC) from existing tolerances is 0.000268 mg/kg/day; the proposed increase in the tolerance would contribute 0.000054 mg/kg/day. Existing tolerances and the proposed increase to the tolerance on peaches would utilize 5.35 percent of the RfD. The most highly exposed subgroup, non-nursing infants (less than 1 year old), had a TMRC of 0.001391 mg/kg/day, utilizing 27.81 percent of the RfD. The Agency believes that exposure at these levels carries no appreciable risk.

The nature of the residue is adequately understood and an adequate analytical method, a microbiological assay, is available for enforcement purposes.

2. *Proposed action.* Based on the data and information presented above, the Agency is proposing that the tolerance for peaches be increased from 0.1 to 0.35 ppm. In proposing this action, EPA believes that the tolerance level of 0.35 ppm for oxytetracycline residues in or on peaches is protective of the public health.

### C. Amendment to 40 CFR 180.232

1. *Background.* EPA has determined, as explained in the Reregistration Eligibility Document issued September 1993, that there are sufficient data to support the adequacy of the established S-ethyl diisobutylthiocarbamate tolerances listed in 40 CFR 180.232.

2. *Proposed action.* By this document, EPA proposes the following actions:

a. Amend the name S-ethyl diisobutylthiocarbamate in 40 CFR 180.232 to the common name "Butylate" so that the tolerance regulation may be more easily located.

b. Delete the term "negligible residues" in the tolerance entry because the regulation specifies a tolerance level.

c. Amend the commodity definitions listed in 40 CFR 180.232 to read as follows to conform to commodity definitions currently used by EPA:

i. "Corn grain (including popcorn)" is proposed to be revised to "Corn, field, grain" and "Corn, pop, grain."

ii. "Fresh corn including sweet corn (kernels plus cob with husk removed)" is proposed to be revised to "Corn, sweet (kernels plus cob with husk removed)."

iii. "Corn forage and fodder including sweet corn, field corn, and popcorn" is proposed to be revised to "Corn, field, fodder"; "Corn, field, forage"; "Corn, pop, fodder"; "Corn, pop, forage"; and "Corn, sweet, forage."

### III. Public Comment Procedures

Interested persons are invited to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by May 19, 1995. Comments must bear a notation indicating the document control number. Three copies of the comments should be submitted to either location listed under the ADDRESSES unit of this preamble.

Information submitted as a comment concerning this document may be claimed confidential by marking any or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of a comment that does not contain CBI must be submitted for

inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Any person who has registered or submitted an application for registration of a pesticide, under FIFRA as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCFA.

Documents considered and relied upon by EPA pertaining to this action, and all written comments filed pursuant to this proposed rule, will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA between 8 a.m. and 4 p.m., Monday through Friday, except public holidays. Any person who has registered, or who has submitted an application for registration under FIFRA of any of the pesticide chemicals listed in this proposed rule, may request that this proposal be referred to an advisory committee. Such a request must be made within 30 days of the publication of this proposal. To satisfy requirements for analysis specified by Executive Order 12866 and the Regulatory Flexibility Act, EPA has analyzed the impacts of this proposal. This analysis is available for public inspection in Rm. 1132 at the Virginia address given above.

### IV. 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 that is likely to result in 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 the rights and obligations of recipients thereof; 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 proposed rule is not a "significant regulatory action," because it does not meet any of the regulatory-significance criteria listed above.

#### B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 [Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.] and EPA has determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

#### C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 7, 1995.

**Peter Caulkins,**

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.232 is revised to read as follows:

#### § 180.232 Butylate; tolerances for residues.

Tolerances are established for the herbicide butylate in or on the raw agricultural commodities corn, field, grain; corn, pop, grain; corn, sweet (kernels plus cob with husk removed); corn, field, fodder; corn, field, forage; corn, pop, forage; and corn, sweet, forage at 0.1 part per million.

3. Section 180.337 is revised to read as follows:

**§ 180.337 Oxytetracycline; tolerances for residues.**

Tolerances are established for residues of the pesticide oxytetracycline in or on the following raw agricultural commodities:

Commodity	Parts per million
Peaches	0.35
Pears	0.35

4. Section 180.1068 is revised to read as follows:

**§ 180.1068 C<sub>12</sub>-C<sub>18</sub> fatty acid potassium salts; exemption from the requirement of a tolerance.**

C<sub>12</sub>-C<sub>18</sub> fatty acids [saturated and unsaturated] potassium salts are exempted from the requirement of a tolerance for residues in or on all raw agricultural commodities when used in accordance with good agricultural practice.

[FR Doc. 95-9534 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-F

**DEPARTMENT OF TRANSPORTATION****Maritime Administration****46 CFR Part 382**

[Docket No. R-158]

RIN AB19

**Determination of Fair and Reasonable Rates for the Carriage of Bulk and Packaged Preference Cargoes on U.S.-flag Commercial Vessels**

AGENCY: Maritime Administration, DOT.

ACTION: Advance Notice of proposed rulemaking.

**SUMMARY:** The Maritime Administration is soliciting comments from interested persons concerning the need for and content of a revised methodology for the determination of fair and reasonable rates. Fair and reasonable rate determinations are provided to U.S. government shippers of preference cargo, thereby creating ceiling rates which limit government costs and the revenue U.S.-flag operators receive for ocean cargo transportation.

**DATES:** Comments must be received before June 19, 1995.

**ADDRESSES:** Comments should be sent to the Secretary, Maritime Administration, room 7210, 400 7th St. SW., Washington DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Michael P. Ferris, Director Office of

Costs and Rates, Maritime Administration, Washington, DC 20590, Telephone (202) 366-2324.

**SUPPLEMENTARY INFORMATION:** Section 901(b) of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. § 1241(b), cited as the Cargo Preference Act of 1954, requires that, with respect to certain cargoes which are described as "government-impelled," such as food donation programs administered by the State Department or the Department of Agriculture, the cognizant government agency or agencies must take appropriate steps to assure that at least 50 percent of the gross tonnage of such cargoes transported on ocean vessels will be "transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at *fair and reasonable rates* for United States-flag vessels" (emphasis added). Section 901b of the Food Security Act of 1985 increased the 50 percent carriage requirement to 75 percent for agricultural commodities or products shipped under certain food donation programs. In 1989, MARAD issued regulations (46 CFR Part 382, hereafter the Rule) that initially became effective on January 1, 1990. The Rule contains regulations that govern the calculation of *fair and reasonable rates* (also referred to as guideline rates) for the carriage of bulk and packaged preference cargoes on U.S.-flag commercial vessels.

In an effort to encourage the development of a modern and efficient U.S.-flag bulk fleet and to help lower government-wide cargo preference program costs, the Maritime Administration is considering changes in its methodology for the determination of fair and reasonable rates. The Rule prescribes a methodology for determining fair and reasonable rates based on individual vessel costs. As a result, during periods of strong demand for bulk shipping, certain high cost vessels have been able to fix cargoes at rates that significantly exceed those of more efficient vessels. This poses a question of equity between the operators of these two groups of vessels and raises the possibility that under an alternative methodology government program costs could be reduced. Additionally, a possible result of the existing Rule is that modern, efficient low cost vessels are discouraged from entering the trade. The lower ceiling rates imposed on the most cost efficient vessels by the current methodology may not allow sufficient profit opportunities to justify the risk of a high capital cost investment.

MARAD is considering whether to conduct a rulemaking with respect to

the present methodology for determining fair and reasonable rates and is seeking information from the public as to an appropriate methodology to encourage efficient vessels to enter the trade resulting in lower program costs. MARAD has identified three alternative methodologies which it might consider as part of a rulemaking. In addition, the option exists of keeping the present methodology. The methodologies are:

**Individual Cost (Existing)**

The existing Rule is based on a methodology which utilizes an owner's actual costs for owning and operating the specific vessel used in the transportation of the preference cargo. Those costs are prorated over the cargo preference voyage and added to the voyage and cargo related costs. An allowance for overhead and profit is also included in the guideline rate.

**Foreign Market Differential**

Under this methodology, MARAD would calculate the added costs associated with owning and operating a vessel under the U.S.-flag resulting from U.S. laws and regulations and the U.S. standard of living. This procedure would identify a modern and efficient target vessel or vessels available worldwide and estimate its cost under foreign ownership and under U.S. ownership, if operated in the most efficient manner practical. The resulting cost differential would be prorated over specific voyages, as cargoes are tendered, and added to the foreign bids for such voyages to determine the fair and reasonable rate for U.S.-flag operators.

**Cost Averaging**

A methodology utilizing vessel cost averaging would be constructed in much the same manner as the current Rule, except that some level of average vessel costs would replace individual vessel costs in the calculation of the fair and reasonable rate. There are three basic cost areas which would be the most likely candidates for averaging: vessel operating costs, vessel capital costs, and fuel. Any one or a combination of any of the three cost areas could be included in a cost averaging methodology.

**Market Based**

Under a market based methodology, an operator's bid would be considered fair and reasonable if it were submitted in a competitive environment. A competitive environment would be established by a required number of qualified bids made by independent and

nonaffiliated U.S.-flag vessel operators. A market based methodology would actually be a combination of methodologies because a cost based determination would be made in instances where an insufficient number of independent bids were received. The cost based rate could be determined as prescribed in the existing Rule or by use of some other methodology like those described above. A review of the legislative history of the Cargo Preference Act of 1954, § 901(b) of the Act, would indicate that a market based methodology may require legislation to be implemented. Commenters may wish to address the legislative aspect of the market based methodology.

In order to administer cargo preference programs in a cost efficient manner, while developing a modern and efficient fleet, it may be necessary to change the existing methodology for determining fair and reasonable rates for U.S.-flag commercial vessels. Therefore, any comments on proposals to change the methodology in the regulations at 46 CFR Part 382 should specifically address any existing problems with the present methodology, specific suggestions for alternative methodologies, and a rationale for acceptance of any proposed methodologies. Comments will aid MARAD's evaluation of the Rule and the development of appropriate alternatives. MARAD is requesting that any person, corporation, or other entity having any interest in, or desiring to offer views and comments on, MARAD's fair and reasonable rate methodology, submit them in writing. After reviewing the comments, MARAD will decide whether to propose a change in the methodology employed for the determination of fair and reasonable rates, as well as what revisions to propose.

The public is advised that the purpose of this ANPRM is to solicit information and views from commenters that MARAD can use in evaluating its methodology of determining fair and reasonable rates for the carriage of bulk and packaged preference cargoes on U.S.-flag bulk vessels and in deciding whether to proceed with a rulemaking to amend 46 CFR Part 382. MARAD has separate regulations at 46 CFR Part 383 (the liner Rule) dealing with the carriage of less-than-shipload lots of bulk preference cargoes on vessels in a liner service. Common carrier liner services are substantially different from bulk services in their cost structure and service requirements. However, the information, ideas or views provided by commenters may have some impact on

any liner rulemaking and the public is invited to comment on such impact.

### Rulemaking Analysis and Notices

#### *Executive Order 12866 (Regulatory Planning and Review)*

This advance notice of proposed rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If a rule is actually promulgated, it would not be considered an economically significant regulatory action under Section 3(f) of E.O. 12866, since it has been determined that it would not result in an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

While any rule that might be promulgated would not involve any change in important Departmental policies, it would be considered significant because it addresses a matter of considerable importance to the maritime industry and would be expected to generate significant public interest. A preliminary regulatory evaluation will be prepared based on the comments to this advance notice of proposed rulemaking.

#### *Federalism*

The Maritime Administration has analyzed this advance notice of proposed rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that any rule that might be subsequently promulgated would not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

#### *Regulatory Flexibility Act*

The Maritime Administration certifies that any rule that might be promulgated subsequent to this advance notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

#### *Environmental Assessment*

Any rule that might be subsequently promulgated would not significantly affect the environment. Accordingly, an Environmental Impact Statement would not be required under the National Environmental Policy Act of 1969.

#### *Paperwork Reduction Act*

Any rule that might be promulgated would not significantly change the current requirement for the collection of information. The Office of Management

and Budget (OMB) has reviewed the current Rule under the Paperwork Reduction Act (44 U.S.C. S3501 *et seq.*), and has approved it under OMB Approval Number 2133-0514.

By order of the Maritime Administrator.

Dated: April 13, 1995.

**Joel C. Richard,**

*Secretary.*

[FR Doc. 95-9681 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-81-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 95-43, RM-8580]

### Radio Broadcasting Services; Grand Junction, CO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Grand Valley Public Radio Company, Inc. (petitioner), permittee of Station KAFM(FM), Channel 201A, Grand Junction, Colorado, seeking the allotment of Channel 264C1 to Grand Junction, Colorado, as that community's fifth local FM transmission service. Coordinates used for this proposal are 39-04-06 and 108-33-00.

**DATES:** Comments must be filed on or before June 5, 1995, and reply comments on or before June 20, 1995.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Harry F. Cole, Esq., Bechtel & Cole, Chartered, 1901 L St., NW, Washington, D.C. 20036.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-43, adopted April 3, 1995, and released April 14, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-

3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95-9627 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-F

#### 47 CFR Part 73

[MM Docket No. 95-44, RM-8602]

#### Radio Broadcasting Services; Fair Bluff, NC

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Atlantic Broadcasting Co., Inc., licensee of Station WDAR-FM, Channel 288C3, Darlington, South Carolina, requesting the deletion of vacant and unapplied-for Channel 287A at Fair Bluff, NC. In the alternative, petitioner requests that Channel 287A at Fair Bluff be site restricted 12.7 kilometers (7.9 miles) northeast, at coordinates 34-21-22 North Latitude and 78-54-36 West Longitude. The deletion or site restriction of the Fair Bluff channel could enable Station WDAR-FM to improve its coverage area by operating omnidirectionally.

**DATES:** Comments must be filed on or before June 5, 1995, and reply comments on or before June 20, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 1990 M Street, NW, Suite 510, Washington, D.C. 20036 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-44, adopted April 6, 1995, and released April 14, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC 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 contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95-9629 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-F

#### 47 CFR Part 73

[MM Docket No. 95-45, RM-8605]

#### Radio Broadcasting Services; Pahrump, NV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Gregory P. Wells seeking the allotment of Channel 236A to Pahrump, NV, as the community's second local FM service. Channel 236A can be allotted to Pahrump in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.1 kilometers (2.5 miles) west, at coordinates 36-13-12 North Latitude and 116-01-43 West

Longitude, to avoid a short-spacing to Station KWNR, Channel 238C, Henderson, NV.

**DATES:** Comments must be filed on or before June 5, 1995, and reply comments on or before June 20, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gregory P. Wells, P.O. Box 590, Suite 145, Pahrump, NV 89041 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-45, adopted April 6, 1995, and released April 14, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC 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 contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95-9630 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-F

**47 CFR Part 73**

[MM Docket No. 93-203, RM-8245, RM-8340; MM Docket No. 93-206, RM-8284; MM Docket No. 93-213, RM-8351; MM Docket 93-256, RM-8326]

**Radio Broadcasting Services; Isleboro and Winter Harbor, ME, Hermantown, MN, Balsam Lake, WI, Taylorville, IL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; withdrawal of.

**SUMMARY:** The Commission grants the requests of Lakeside Broadcasting, Inc. and Christopher DiPaola to withdraw their petitions for reconsideration and motions for stay of the *Order* in the above-listed proceedings which announced a thirty-day application filing window opening on January 6, 1995, and closing on February 6, 1995. See 59 FR 61327, November 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 93-203, et al., adopted March 24, 1995, and released April 10, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC 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 contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Douglas W. Webbink,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95-9631 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-F

**47 CFR Part 73**

[MM Docket No. 95-39; FCC 95-144]

**Broadcast Services; Financial Interest and Syndication Rules**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This Notice of Proposed Rule Making is needed to initiate the planned review of the FCC's financial interest and syndication rules prior to their

scheduled expiration date on November 10, 1995. The burden of proof in this proceeding is on those parties arguing for continuation of the rules; if these parties fail to carry this burden, the rules will be allowed to expire. The Commission also seeks comment on whether, in the event these parties do not meet their burden of proof, it should accelerate the expiration date of the rules.

**DATES:** Comments are due by May 30, 1995, and reply comments are due by June 14, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Charles Logan, (202) 776-1653.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 95-39, FCC 95-144, adopted and released on April 5, 1995. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857-3800.

**Synopsis of Notice of Proposed Rule Making**

1. The Commission's financial interest and syndication ("fin/syn") rules, originally adopted in 1970, placed significant restrictions on the ability of the established networks (ABC, CBS, and NBC) to own television programming and engage in the practice of syndication. In the Second Report and Order in MM Docket No. 90-162, 58 FR 28927 (May 18, 1993) ("Second R&O"), recon. granted in part, Memorandum Opinion and Order, 58 FR 65132 (Dec. 13, 1993), the Commission eliminated certain aspects of the fin/syn rules immediately, including restrictions on network acquisition of financial interests and passive syndication rights in network programming. The Commission also established a timetable for the expiration of the remaining rules, which include restrictions on network involvement in the active syndication and first-run markets, as well as anti-warehousing safeguards. Under this timetable, these remaining rules are now set to expire on November 10, 1995. The Commission's decision in the Second R&O was upheld on appeal by the United States Court of Appeals for the Seventh Circuit ("Seventh Circuit").

*Capital Cities/ABC, Inc. v. FCC*, 29 F.3d 309 (7th Cir. 1994).

2. The Commission also determined in the Second R&O that, prior to the scheduled expiration of the remaining fin/syn rules, it would conduct a review of network activities in the financial interest and syndication areas, and that this review would be initiated no later than six months prior to the rules' scheduled expiration date, *i.e.*, no later than May 10, 1995. This Notice of Proposed Rule Making ("NPRM") initiates this planned review. It provides an opportunity for comment on the accuracy of the Commission's conclusion in the Second R&O that the remaining fin/syn restrictions should be eliminated. The NPRM states that comments submitted by parties who oppose the scheduled expiration of these restrictions will need to prove that, based on the current status of the program production and distribution markets and the activities of the networks since 1993, the Commission should continue regulation in this area. Parties arguing for retention of fin/syn restrictions should support their positions with empirical data and economic analysis.

3. The Commission lists the following factors as being relevant to its review of the rules: (1) The extent to which a network-owned program is syndicated primarily to that network's affiliates; (2) patterns that reveal daily in the introduction of network programs (in which the networks had financial interests or syndication rights) into the syndication market; (3) the percentage of network programming in which a network has obtained a financial interest or syndication right; (4) the relative change in the number of independent producers creating and selling television shows to the networks; (5) each network's share of the first-run syndicated programming domestic market; (6) concentration of ownership in the program production industry; (7) audience shares of first-run syndicated programming carried by non-network affiliated stations during prime time; (8) the overall business practices of emerging networks, such as Fox, in the network television and syndication business; (9) network negotiating patterns, particularly the manner in which networks obtain financial interests and syndication rights and the extent to which successful negotiations over back-end rights influence network buying decisions; (10) network syndication practices, to the extent they are permitted; (11) the relationship and business arrangements between networks and third-party syndicators of off-network programming; (12) mergers

or acquisitions involving networks, studios, cable systems and other program providers since the Commission's 1993 fin/syn decision took effect; (13) the growth of additional networks, including the development of Fox and its position *vis-a-vis* the major three networks; and (14) the growth in the number and types of alternative outlets for sale of programming (e.g., the development of the Direct Broadcast Satellite service; cable penetration; wireless cable development). In addition to examining information submitted regarding the above factors, the Commission states that it will also take notice of the record developed in its pending proceeding regarding the Prime Time Access Rule to the extent it is relevant to its review of the fin/syn rules.

4. The NPRM provides that the burden in this proceeding will be on fin/syn proponents to demonstrate, as stated by the Seventh Circuit, "an excellent, a compelling reason" why the restrictions should be continued. *Capital Cities/ABC, Inc.*, 29 F.3d at 316. As the Commission stated in the Second R&O, it is prepared to presume that complete removal of all remaining restrictions will be appropriate, and is therefore placing the burden of proof on those that urge retaining fin/syn restrictions. If proponents of retaining the rules fail to demonstrate to the Commission that the rules should be left in place, or if the Commission does not take affirmative action to the contrary, the rules will automatically expire.

5. The Commission also seeks comment on whether, in the event parties arguing for the continuation of the fin/syn rules fail to carry their burden of proof, it should amend its rules to allow the remaining rules to expire before the presently scheduled expiration date of November 10, 1995. The Commission further seeks comment on whether doing so would unduly disrupt any business arrangements or practices that have been established in reliance on the presently scheduled expiration date.

#### Administrative Matters

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before May 30, 1995, and reply comments on or before June 14, 1995. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments and supporting comments. If parties want

each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

7. This is a non-restricted notice and comment rulemaking proceeding. Accordingly, *ex parte* presentations will be permitted, except during the Sunshine Agenda period, provided they are disclosed as set forth in the Commission's Rules. See 47 CFR 1.1202, 1.1203, 1.1206(a).

#### Initial Regulatory Flexibility Act Statement

8. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA")—set forth in Appendix A attached to the full text of the NPRM and set forth in paragraphs 10–15 below—of the expected impact on small entities of the proposal suggested in the NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

9. Reason for Action and Objectives: This NPRM is initiated to conduct a review of the Commission's financial interest and syndication ("fin/syn") rules as part of the timetable the Commission has previously established in scheduling the elimination of the rules. It also seeks comment on whether to accelerate the scheduled expiration date of the fin/syn rules in the event parties opposed to their elimination fail to persuade the Commission that the rules should be continued.

10. Legal Basis: Authority for the action proposed in this proceeding is contained in Section 4(i), 4(j), 301, 303(i), 303(r), 313, and 314 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(i), 303(r), 313, and 314.

11. Reporting, Record Keeping, and Other Compliance Requirements: None.

12. Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule: None.

13. Description, Potential Impact and Number of Small Entities Affected: The entities that could potentially be affected by this proceeding include television program producers and syndicators, television networks and their affiliate stations, and non-network television stations. It is anticipated that any rule changes arising out of this proceeding would have a minimal impact on the small entities that could be affected.

14. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: None.

#### List of Subjects in 47 CFR Part 73

Television broadcasting.  
Federal Communications Commission.  
**William F. Caton,**  
*Acting Secretary.*  
[FR Doc. 95–9632 Filed 4–18–95; 8:45 am]  
BILLING CODE 6712–01–M

#### 47 CFR Part 73

[MM Docket Nos. 94–150, 92–51, 87–154; FCC 95–139]

#### Broadcast Services; Television and Radio Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of motion to accelerate comment period.

SUMMARY: The Commission denies a Motion to Establish an Accelerated Procedural Schedule for the Limited Liability Companies Issue, filed by the Association of Black Owned Television Stations in this proceeding. The action is taken to respond to this motion that the deadlines for comments and reply comments with respect to the issue of Limited Liability Companies be accelerated. The intended effect of the action is to permit commenters the full period specified in the Notice of Proposed Rule Making in which to file comments in the proceeding.

DATES: Comments (as extended in a separate decision printed elsewhere in this **Federal Register**) are due May 17, 1995, and reply comments are due June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Mania Baghdadi, Mass Media Bureau (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order* in

MM Docket Nos. 94-150, 92-51, and 87-154; FCC 95-139, adopted April 3, 1995, and released April 7, 1995. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### Synopsis of the Order

1. The Commission denies the Motion to Establish an Accelerated Procedural Schedule for the LLC Issue ("Motion"), which the Association of Black Owned Television Stations ("ABOTS") filed in this proceeding on January 25, 1995. The Commission, in a Notice of Proposed Rule Making (60 FR 6483, February 2, 1995) established a comment deadline of April 17, 1995, and of May 17, 1995 for reply comments. ABOTS asked that the Commission accelerate the comment schedule with respect to Section VII (Limited Liability Companies and Other New Business Forms) of the Notice of Proposed Rule Making with comments due by February 10, 1995, and reply comments due by February 17, 1995. ABOTS also asked the Commission to expedite our disposition in the rule making regarding the issue of LLCs and to reach a decision by March 3, 1995, if possible. The Commission finds the concerns expressed by ABOTS in its Motion to be unfounded, and believes that an acceleration of the comment period and decisionmaking process would not be in the public interest. Thus, the Commission denies ABOTS' requests. In a separate decision adopted April 7, 1995, and printed elsewhere in this **Federal Register**, the Commission extends the time for filing comments in this proceeding to May 17, 1995, and the time for filing reply comments to June 19, 1995.

2. Accordingly, pursuant to Section 4(j) of the Communications Act, 47 U.S.C. 154(j) It Is Hereby Ordered that the Motion to Establish an Accelerated Procedural Schedule for the LLC Issue filed by the Association of Black Owned Television Stations is denied.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95-9570 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

[MM Docket No. 95-40; FCC 95-145]

### Broadcast Services; Network/Affiliate rule

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This Notice of Proposed Rule Making proposes to eliminate or modify the Commission's requirement that broadcast television stations file their network affiliation agreements with the Commission and that these filings be publicly available. This action is needed to determine if the costs of this rule exceed its benefits.

**DATES:** Comments are due by June 12, 1995, and reply comments are due by July 12, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Robert Kieschnick (202-739-0770) or Paul Gordon (202-776-1653), Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 95-40, FCC 95-145, adopted April 5, 1995 and released April 5, 1995. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### Synopsis of Notice of Proposed Rule Making

1. With this Notice of Proposed Rule Making (NPRM), the Commission continues its examination of rules regulating broadcast television network/affiliate relations in light of changes in the video marketplace. This NPRM proposes repeal or modification of 47 C.F.R. § 73.3613(a) (the "filing of affiliation contracts" rule). This rule requires television broadcast licensees to file copies of network affiliation contracts, agreements, and understandings with the Commission. The contract must be reduced to one written document, including the substance of any oral agreements, without reference to any other document. However, the rule does allow subsequent renewals, changes, or amendments to the contract to be set forth in separate filings that refer to the original contract. Notification of

cancellation or termination of the filed contracts is also required. This rule applies only to agreements with broadcast television networks that offer 15 or more hours of programming per week to 25 or more affiliates in 10 or more states. Thus, while ABC, CBS, NBC, and Fox are subject to the rule, the United Paramount Network and the Warner Brothers Network are not.

2. The primary purpose of requiring broadcast television stations to file their affiliation agreements with the Commission has been to give the Commission the ability to monitor these contractual relationships and ensure that the Commission's restrictions on these relationships are not violated in affiliation agreements. Also, by requiring affiliates to file their affiliation agreements with the Commission, the rule may chill any desire to engage in misbehavior, thereby reducing the likelihood that these agreements will contain provisions that violate the Commission's underlying network/affiliate rules.

3. Since 1985, when we last examined this rule, the video marketplace has changed dramatically. As pointed out in our recent Further Notice of Proposed Rule Making in MM Docket No. 91-221 (60 FR 6490, February 2, 1995) addressing broadcast television ownership, there has been an increase in the number of broadcast stations available for affiliation with a broadcast network in nearly every market. Moreover, new, aspiring networks have emerged.<sup>1</sup> As a result of these changes, the bargaining positions of broadcast television networks and commercial broadcast television stations have changed and differ market by market. The recent affiliate switches demonstrate the increased competition between broadcast networks for affiliation with broadcast television stations in different markets, and thus suggest that broadcast networks' market power over their affiliates has diminished to some extent.

4. Given the recent increased competition between broadcast networks for affiliates in different markets, we solicit comment on whether or not there is a continuing need for the Commission to monitor network/affiliate relationships through mandatory filings of their affiliation agreements. We also seek comment on the extent to which filing these contracts with the Commission is necessary to deter violations of the

<sup>1</sup> Fox now competes with ABC, CBS, and NBC. Further, United Paramount Network and Warner Brothers Network are beginning to develop as competitors to these networks.

network/affiliate rules. If we conclude that routine filing of agreements is not necessary to deter violations of the rules, we could relieve licensees of the duty to file affiliation agreements routinely, and instead simply require the production of such agreements upon Commission request.

5. Separate and apart from the issue of whether contracts should be filed with the Commission is the issue of whether licensees should be required to make these contracts available to the public. Making these agreements publicly available allows the general public to inspect them and to file complaints where abuses of the public interest are discovered. It also allows third parties (e.g., advertisers), whose commercial interests are affected by these agreements, to determine if their interests are harmed by these agreements. We solicit comment on the importance of these purposes and examples of the general public's use of these filings that illustrate the extent of the benefits from making these filings publicly available.

6. Turning to the possible costs of the rule, we note that there are direct and indirect costs to be considered. The direct costs of filing these agreements are the additional expenses incurred to prepare and submit the filings to the Commission over the expenses incurred to prepare affiliation agreements for their original purpose. We solicit evidence on the size of these costs incurred by filing affiliates.

7. The indirect costs of filing these agreements are more difficult to quantify, potentially more serious, and a result of our requirement that the filings be publicly available. First, networks must bargain with broadcast stations serving different markets to gain access to their potential audiences through affiliation agreements. As mentioned earlier, the number of potential parties to such contracts differs market by market, but generally represents a few potential parties on either side. By making compensation or other data in these filings publicly available, the Commission may facilitate the ability of parties either seeking or offering affiliation to avoid competition. For example, in markets where there are more commercial stations than broadcast networks interested in seeking affiliation agreements, networks might seek, through parallel action, to lower the compensation they pay potential affiliates and could use the public filings to ensure each party is performing as agreed.<sup>2</sup> Alternatively, in

markets where there are more broadcast networks seeking affiliation agreements than commercial broadcast stations available, commercial stations could seek to ensure that the compensation that each of them receives is higher than the compensation any one of them alone was willing to accept. In either example, the public availability of the affiliation compensation data facilitates joint monitoring to ensure similar behavior.<sup>3</sup> The Commission solicits comment on the potential for such behavior in light of current market conditions, estimates of the size of these indirect costs, and their consequences, if any, for viewers.

8. Second, making these filings publicly available alters the dynamic of the contracting process. For example, the requirement reduces a network's ability and willingness to craft contractual arrangements with one affiliate to recognize special market conditions of that affiliate. By way of illustration, a network may discern that a new affiliate requires improved local news coverage in order to compete against other television stations in its market and may wish to help fund such improvement because of the financial constraints that the new affiliate faces. However, the network may be reluctant to do so if its other affiliates can discover such improved or different terms and are likely to demand similar terms. Thus, by requiring contracts to be publicly available, our rules make it less likely that the terms are tailored to best suit the needs of the parties to the contract. Confidentiality of the financial terms of affiliates' contracts would break the linkage between concessions offered to one affiliate and negotiations with other affiliates. Networks would be able to tailor affiliation contracts solely to local conditions with less concern for repercussions in other markets. On the other hand, as the Commission previously concluded, public filing of these contracts enables weaker affiliates to attempt to ensure that they receive comparable or competitive compensation to other affiliates of a network, thereby strengthening their overall financial condition and ability to

166-172 for a discussion of influences on the bargaining position of broadcast television networks and commercial broadcast television stations in negotiating affiliation agreements.

<sup>3</sup> For a general overview of the manner in which data dissemination among competitors may facilitate cartel-like behavior, see N.R. Prance, *Price Data Dissemination as a Per Se Violation of the Sherman Act*, 45 U. Pitt. L. Rev. (1983) at 68-78; see also Donald S. Clark, *Price-Fixing without Collusion: An Antitrust Analysis of Facilitating Practices after Ethyl Corp.*, 1983 Wis. L. Rev. 887, 900-901; see also *MCI Telecom. Corp. v. AT&T*, 114 S. Ct. 2223, 2233 (1994) for an example of the Commission's concern over this issue.

serve the public. Consequently, we solicit comments on the advantages and disadvantages of a network's being able to tailor its contracts versus affiliates' desire to ensure comparable contracts, particularly in terms of the Commission's competition and diversity concerns.

9. We propose to eliminate the filing requirement and require broadcast television stations to make their affiliation agreements available to the Commission upon request. We will adopt this proposal if we conclude that the benefits of continuous monitoring of broadcast television station's affiliation agreements with broadcast television networks no longer exceed their costs. We tentatively conclude that we can continue to enforce our network/affiliate rules through a system of complaint initiated requests for affiliation contract information. Such a system would relieve licensees of the paperwork burden of filing contracts with the Commission, and would reduce the potential anticompetitive effects of general public disclosure. We solicit comment on this tentative conclusion and on whether we can rely on affiliates, or members of the public, to file such complaints.

10. Alternatively, we could continue to require contracts to be filed with the Commission, but maintain the confidentiality of the contracts by limiting access to authorized FCC employees. This modification of our rule would allow us to continue to monitor network/affiliate relations to protect the public interest, while at the same time reducing the indirect costs of the current filing requirement which arise from the public availability of these agreements. However, the Freedom of Information Act requires agencies to disclose documents in certain circumstances. Given that we did not exempt these filings from the Freedom of Information Act in our 1969 *Report and Order* in Docket No. 14710 (34 FR 5947, May 1, 1969), we also solicit comment on whether or not this proposal is a viable option.

11. Another alternative would be to continue the filing requirement but modify it to require that only redacted copies of contracts be made available to the public. These copies would omit any references to the values which determine the affiliate compensation and, possibly, other business sensitive terms. In this way, the public could continue to monitor the issues affecting program diversity in their community and we could continue to monitor the network-affiliate relationship. This option would preserve the benefit of general public scrutiny of these

<sup>2</sup> See B. M. Owen and S. S. Wildman, *Video Economics*, Harvard University Press, (1992) at

agreements, but reduce their potential negative effects on the competition for affiliations.

12. We could, of course, also maintain the rule as it currently stands. We would adopt this option only if we determine that the direct and indirect costs associated with these filings continue to be less than their benefits. We request that comments on the above proposals weigh the benefits and costs in a manner which justifies the particular recommendation a commenter makes.

#### Administrative Matters

13. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before June 12, 1995, and reply comments on or before July 12, 1995. To file formally in this proceeding, you must file an original plus five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554.

14. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

#### Initial Regulatory Flexibility Act Statement

15. *Reason for the Action:* This proceeding was initiated to review and update the Commission's rule concerning the filing of broadcast television network affiliation contracts.

16. *Objective of this Action:* The actions proposed in this Notice are intended to reduce concerns over the potential deleterious effects of making some or all the substance of broadcast television affiliation agreements publicly available.

17. *Legal Basis:* Authority for the actions proposed in this Notice may be found in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 and 303.

18. *Recording, Recordkeeping, and Other Compliance Requirements*

*Inherent in the Proposed Rule:* The proposals may reduce existing requirements.

19. *Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules:* None.

20. *Description, Potential Impact, and Number of Small Entities Involved:* Approximately 1,500 existing television broadcasters of all sizes may be affected by the proposals contained in this decision.

21. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the State Objectives:* The proposals contained in this NPRM are intended to simplify and ease the regulatory burden currently placed on commercial television broadcasters.

22. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared the above Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

23. This Notice of Proposed Rule Making is issued pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303.

#### List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95-9569 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01M

#### 47 CFR Part 73

[MM Docket Nos. 91-221 and 87-8; 94-149 and 91-140; and 94-150, 92-51 and 87-154; DA 95-761]

#### Mass Media Ownership Rules

AGENCY: Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Commission extends by 30 days the comment periods for three interrelated proceedings in order to afford commenters more time to collect data and perform necessary statistical analyses. The three proceedings involve (1) the television multiple ownership rules, (2) incentives to increase minority and female ownership of mass media facilities and (3) the Commission's rules regarding attribution of ownership interests. In all three proceedings, the Commission requested detailed analyses demonstrating the relative benefits and detriments of current and proposed rules.

**DATES:** Comments due May 17, 1995; reply comments due June 19, 1995.

**ADDRESSES:** Federal Communication Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Jane Hinckley Halprin, Mass Media Bureau, Policy and Rules Division, (202) 776-1653.

#### SUPPLEMENTARY INFORMATION:

#### Order Granting Extension of Time for Filing Comments and Reply Comments

Adopted: April 7, 1995;

Released: April 7, 1995.

By the Acting Chief, Mass Media Bureau:

1. On December 15, 1994, the Commission adopted three related rulemaking items. First, the Commission adopted a Further Notice of Proposed Rule Making regarding ownership of television stations. Further Notice of Proposed Rule Making in MM Docket Nos. 91-221 and 87-8, FCC 94-322, 60 Fed. Reg. 6490 (Feb. 2, 1995) (TV Ownership Further Notice). Second, the Commission adopted a Notice of Proposed Rule Making seeking comment on initiatives designed to increase minority and female ownership of the mass media. Notice of Proposed Rule Making in MM Docket Nos. 94-149 and 91-140, FCC 94-323, 60 Fed. Reg. 6068 (Feb. 1, 1995) (Minority/Female Ownership Notice). Third, the Commission adopted a Notice of Proposed Rule Making exploring modification of the Commission's rules regarding attribution of ownership interests. Notice of Proposed Rule Making in MM Docket Nos. 94-150, 92-51 and 87-154, FCC 94-324, 60 Fed. Reg. 6483 (Feb. 2, 1995) (Attribution Notice). Comments in all three proceedings are currently due on April 17, 1995, and reply comments are due on May 17, 1995.

2. The Commission has received a separate request for extension of the

comment periods in each of the three proceedings, as well as a fourth filing encompassing all the proceedings. On March 16, 1995, LIN Television Corporation, on behalf of several licensees, filed a request for a 60-day extension of time to respond to the TV Ownership Further Notice. On March 23, 1995, Communications Corporation of America, Pappas Stations Partnership and Fant Broadcasting Company of Nebraska, Inc., filed a joint motion for a 60-day extension of time to file comments in response to the Attribution Notice. A March 31, 1995, filing by American Women in Radio and Television (AWRT) seeks a 90-day extension of the comment dates for the Minority/Female Ownership Notice. The Minority Media and Telecommunications Council (MMTC) on April 3, 1995, filed a motion for a 90-day extension in all three proceedings. Petitioners primarily contend that additional time is necessary to satisfactorily complete the economic and statistical analyses sought by the Commission.

3. As set forth in Section 1.46 of the Commission's Rules, 47 C.F.R. § 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. We note that in all three proceedings, the Commission established a longer-than-usual initial comment period to provide interested parties sufficient opportunity to collect and analyze the type of data sought. Taking into consideration the circumstances outlined by petitioners, however, we believe that a 30-day extension of time to file comments and reply comments is warranted and should facilitate the development of a full and complete record on the issues raised in the three proceedings.

4. Accordingly, *it is ordered* that the Request for Extension of Time in MM Docket Nos. 91-221 and 87-8 filed by LIN Television Corporation; the Motion for Extension of Time in MM Docket Nos. 94-150, 92-51 and 87-154 filed by Communications Corporation of America, Pappas Stations Partnership and Fant Broadcasting Company of Nebraska, Inc.; the Request for Extension of Time filed by American Women in Radio and Television in MM Docket Nos. 94-149 and 91-140; and the Motion for Extension of Time filed by the Minority Media and Telecommunications Council in all three of the above-referenced proceedings ARE GRANTED to the extent detailed above and are otherwise DENIED.

6. *It is further ordered* that the time for filing comments in the three above-

captioned proceedings is Extended to May 17, 1995, and the time for filing reply comments is Extended to June 19, 1995.

7. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Sections 0.204(b), 0.283 and 1.45 of the Commission's Rules, 47 C.F.R. §§ 0.204(b), 0.283 and 1.45.

Federal Communications Commission.

**Renee Licht,**

*Acting Chief, Mass Media Bureau.*

[FR Doc. 95-9573 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-M

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List as Endangered or Threatened the Contiguous United States Population of the North American Wolverine**

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the contiguous United States population of the North American wolverine (*Gulo gulo luscus*) to the List of Threatened and Endangered Species. The Service finds the petition did not present substantial information indicating that listing the wolverine in the contiguous United States may be warranted.

**DATES:** The finding announced in this document was made on March 31, 1995.

**ADDRESSES:** Data, information, comments, or questions concerning this petition should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 100 North Park Avenue, Suite 320, Helena, Montana 59601. The petition, finding, and additional information are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Kemper McMaster, Field Supervisor (see **ADDRESSES** section) (telephone 406/449-5225).

## SUPPLEMENTARY INFORMATION:

### Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned act may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and a notice regarding the finding is to be published promptly in the **Federal Register**. This notice meets the latter requirement for the petition discussed below.

The Service has made a 90-day finding on a petition to list the North American wolverine (*Gulo gulo luscus*) in the contiguous United States. The petition, dated August 3, 1994, was submitted by the Biodiversity Legal Foundation, Boulder, Colorado, and the Predator Project, Bozeman, Montana, and was received by the Service on August 8, 1994. The petitioners requested that wolverine populations across their entire known historic range in the 48 contiguous United States be listed as threatened or endangered.

The wolverine has a holarctic distribution. Historically, in North America, wolverines occurred in the boreal forests throughout Alaska and Canada with the southern portion of the range extending into the contiguous United States (Has 1987). The petitioners provided information (e.g., Wilson 1982; Hash 1987) suggesting that wolverines historically occupied an extensive range in the contiguous United States, including Arizona, California, Colorado, Idaho, Indiana, Iowa, Maine, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Oregon, Ohio, Pennsylvania, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming; and that it has been extirpated from all but 10 of these States.

In making a finding as to whether a petition presents substantial commercial or scientific information indicating that the petitioned action may be warranted, the Service must consider whether the petition contains detailed narrative justification for the petitioned measure, describing past and present numbers and distribution of the species. Information regarding the status of the species over all or a significant portion

of its range also is examined. Moreover, the Service must determine if the information presented in the petition and available in its files definitely documents threats under the following five listing factors: (1) Destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) other man-made or natural factors affecting its continued existence.

For most States, particularly those east of the Rocky Mountains, the petitioners only cited historic reports of wolverines to support their delineation of wolverine distribution in the contiguous United States. The petition provided no information to confirm the accuracy of these historic reports. The petition presented no empirical data to assist the Service in assessing the historic or present population status of wolverines in those States where it possibly occurs or throughout the historic range suggested by the petitioners. Additionally, the petition contained little documentation of threats to the wolverine over all or a significant portion of its contiguous United States range. No substantiating data was provided to demonstrate that

the asserted threats had resulted in a significant decline in wolverine numbers.

The Service reviewed the petition and the included information, as well as other information available in the Service's files. The Service has concluded that neither the petition nor the information available in the Service's files contained substantial information to indicate that listing of the wolverine as threatened or endangered in the contiguous United States may be warranted.

The Service will continue to accept information on *Gulo gulo luscus* and *Gulo gulo lutenus* through the status review initiated in the September 18, 1985, Animal Notice of Review (50 FR 37958). Both subspecies will remain as category 2 candidates in the States shown in the November 15, 1994, Animal Notice of Review (59 FR 58982).

#### References Cited

- Hash, H.S. 1987. Wolverine. In M. Novak, J.A. Baker, M.E. Obbard, and B. Malloch (eds.) Wild furbearer management and conservation in North America. Ontario Trappers Assoc., North Bay. pp. 575-584.
- Wilson, D.E. 1982. Wolverine. in J.A. Chapman and G.A. Feldhamer (eds.) Wild mammals of North America. Johns Hopkins Univ. Press, Baltimore, MD. pp. 644-652.

The Service's 90-day finding contains more detailed information regarding the above decision. A copy may be obtained from the Field Supervisor (see ADDRESSES section).

#### Author

This document was prepared by Lori H. Nordstrom (see ADDRESSES section).

#### Authority

The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531-1544).

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

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

Dated: March 31, 1995.

#### Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95-9642 Filed 4-18-95; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register

Vol. 60, No. 75

Wednesday, April 19, 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

### Agricultural Research Service

#### Government Owned Inventions Available for Licensing

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

**ACTION:** Notice of Government Owned Inventions Available for Licensing.

**SUMMARY:** The inventions listed below are owned by the U.S. Government as represented by the Department of Agriculture, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on these inventions may be obtained by writing to: June Blalock, Technology Licensing Coordinator, USDA, ARS, Room 401, Bldg. 005, BARC-West, Beltsville, Maryland 20705; Phone 301-504-5989 or Fax 301-504-5060. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The inventions available for licensing are:

- 8-199,436, Method and Apparatus for Despining Cactus
- 8-273,244, System for Analyzing Moisture Content of Materials Such as Cotton
- 8-284,312, Microorganism Strains that Produce a High Proportion of Alternan to Dextran and Rapid Screening Method to Select Same
- 8-289,818, Low Enhancement Serotype 2 Vaccine for Marek's Diseases
- 8-334,085, A Direct Polymerase Chain Reaction Assay, or BIO-PCR

- 8-334,089, Enzymatic Process for the Isolation of Erucic Acid from Vegetable Oils
- 8-336,079, Bioactive Coating for Harvested Commodities
- 8-336,080, Controlled Release Fumigation of Harvested Agricultural Commodities
- 8-348,175, A Gonad-Specific Virus Which Causes Sterility in the Corn Earworm, *Helicoverpa zea*
- 8-352,650, System for Controlling Vertical Displacement of Agricultural Implements into the Soil
- 8-357,791, Assay for Enterohemorrhagic *Escherichia coli* 0157:H7 by the Polymerase Chain Reaction
- 8-373,177, Herbicidal Control of Sicklepod and Coffee Senna with *Colletotrichum gloeosporioides*
- 8-380,182, A Bifunctional Protein from Carrots (*Daucus carota*) with Aspartokinase and Homoserine dehydrogenase activities
- 8-390,833, Beneficial Insect Counting and Packaging Device
- 8-390,834, Electronic Grain Probe Insect Counter (EGPIC)
- 5,367,983, Device and Method for its Use as an Aid in Control of Ticks and Other Ectoparasites on Wildlife

**June Blalock,**

*Technology Licensing Coordinator.*

[FR Doc. 95-9666 Filed 4-18-95; 8:45 am]

BILLING CODE 3410-03-M

### Forest Service

#### Intergovernmental Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Intergovernmental Advisory Committee (IAC) will meet on May 4, 1995, at the Sheraton Portland Airport Hotel, 8235 N.E. Airport Way, Portland Oregon, 97230. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:00 a.m. on May 4 and continue until 5:00 p.m. Agenda items to be covered include: (1) A review and discussion of comments on the revised federal watershed analysis guide; (2) a discussion of watershed restoration projects and the federal "jobs-in-the-woods" program; (3) a report on role, function and staffing requirements of the IAC Research and Monitoring

subcommittee, and the Interorganization Resource Information Coordinating Council; (4) a discussion of recent federal legislative action relative to the Federal Advisory Committee Act (FACA) and its relation to the IAC; and (5) a discussion of topics to be addressed at future meetings. The IAC meeting will be open to the public. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503-326-6265).

Dated: April 5, 1995.

**Donald R. Knowles,**

*Designated Federal Official.*

[FR Doc. 95-9655 Filed 4-18-95; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* 1995 National Census Test.

*Form Number(s):* DH-1A thru DH-1E.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 2,550 hours.

*Number of Respondents:* 17,000.

*Avg Hours Per Response:* 9 minutes.

*Needs and Uses:* The 1995 National Census Test is designed to determine what impact features, which represent the integration of respondent-friendly design and image capture requirements, have on mail response and data quality as measured by item nonresponse. Specifically, features to be tested are: Color—Blue vs. Green, Stapled vs. Unstapled Booklet Form, Booklet Form vs. Single Sheet Form, and Minor Instructional Changes. Census short forms having these varying features will be mailed to a national sample of approximately 17,000 households. The

census day for this test is July 1, 1995. A second mailing will be sent to nonrespondents. There will be no other follow-up. Check-in rates and item nonresponse information will be tabulated and analyzed. A final report will be issued in December 1995. This survey is part of a program of research aimed at reducing costs and increase coverage in the decennial census. This test will help determine what form design features enhance the ability of questionnaires to be successfully electronically scanned and data captured and yet not degrade the mail response.

*Affected Public:* Individuals or households.

*Frequency:* One-time only.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: April 14, 1995.

**Gerald Taché,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 95-9697 Filed 4-18-95; 8:45 am]

BILLING CODE 3510-07-F

## Foreign-Trade Zones Board

[Docket 14-95]

### Foreign-Trade Zone 104—Savannah, Georgia, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Savannah Airport Commission, grantee of FTZ 104, requesting authority to expand its zone in the Savannah, Georgia, area, within the Savannah Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 12, 1995.

FTZ 104 was approved on April 18, 1984 (Board Order 256, 49 FR 17789; 4/25/84). The zone currently consists of two sites in the Savannah, Georgia, area:

*Site 1:* (32 acres) within the 3400-acre Savannah International Airport

*Site 2:* (13 acres) within the 800-acre Garden City Terminal of the Georgia Ports Authority on the Savannah River, Chatham County

The applicant is now requesting authority to expand the zone to include two new sites (proposed Sites 3 and 4):

*Proposed Site 3:* (1,820 acres)—Crossroads Business Center, located at I-95 and Godley Road, Chatham County, immediately northwest of the airport; and, *Proposed Site 4:* (300 acres)—SPA Industrial Park, located 1 mile east of the I-95/U.S. 80 interchange in Chatham County, immediately southwest of the airport.

Both sites are being developed by the Savannah Economic Development Authority.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 19, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 3, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 1120 Barnard Street, Room A-107, Savannah, Georgia 31401  
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: April 12, 1995.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 95-9684 Filed 4-18-95; 8:45 am]

BILLING CODE 3510-DS-P

[Docket A(32b1)-5-95]

### Foreign-Trade Zone 119—Minneapolis-St. Paul, MN; Request for Manufacturing Authority Tetra Rex Packaging Systems, Inc. (Liquid Packaging Equipment)

An application has been submitted to the Foreign-Trade Zones Board (the

Board) by the Greater Metropolitan Area Foreign Trade Zone Commission, grantee of FTZ 119 (Minneapolis-St. Paul Area), pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Tetra Rex Packaging Systems Inc. (Tetra Rex) (a subsidiary of Tetra Laval, Sweden), to manufacture liquid packaging equipment under zone procedures within FTZ 119. It was formally filed on April 12, 1995.

Tetra Rex operates a liquid packaging equipment manufacturing facility in the Mid-City Industrial Park, an approved site of FTZ 119. The Tetra Rex equipment is sold to food processors for the packaging of liquid food products in plastic and paper-based cartons. Certain components (about 40% of total) would be sourced from abroad, including: painter fillings, cultured crystals, plastic tubing, plastic bottles, parts of rubber, paper cartons, alloy steel fittings, stainless steel fittings/tubes, steel wire/chains, fasteners, copper tubing/fittings, pumps, fans, heat exchange units, filtering machines, parts of packing/sorting machines, drink preparation machines, valves, bearings, electrical components, semiconductors, calculating machines, thermometers, and measuring and regulating equipment (and parts). All foreign merchandise would be admitted in privileged foreign status (19 CFR 146.41). About 60 percent of the finished equipment is exported.

Zone procedures would exempt Tetra Rex from Customs duty payments on the foreign materials used in the export activity. On its domestic sales, the company would be able to defer Customs duty payments on the foreign merchandise until it is transferred from the zone for Customs entry. The application indicates that the savings from zone procedures would help improve the company's international competitiveness, primarily with respect to export activity.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 5, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 19, 1995).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room

3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: April 12, 1995.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 95-9685 Filed 4-18-95; 8:45 am]

BILLING CODE 3510-DS-P

## International Trade Administration

[C-475-815]

### Postponement of Final Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe ("Seamless Pipe") From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Wilkniss, Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482-0588.

POSTPONEMENT: On December 23, 1994, we aligned the final countervailing duty determination in this investigation with the final antidumping duty determination in the companion antidumping investigation of seamless pipe from Italy (59 FR 66296).

On February 16, 1995, we postponed the final antidumping determination in the companion antidumping investigation of seamless pipe from Italy until no later than June 12, 1995 (60 FR 9012).

Therefore, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended, the final countervailing duty determination in this investigation will also be postponed until no later than June 12, 1995.

The case briefs in this countervailing duty investigation are now due no later than May 2, 1995, and rebuttal briefs no later than May 7, 1995. We will not hold a public hearing in this investigation, because none of the interested parties requested a hearing.

This notice is published in accordance with 19 CFR 355.20(c)(3) (1994).

Dated: April 13, 1995.

**Barbara R. Stafford,**

*Deputy Assistant Secretary for Investigations.*

[FR Doc. 95-9682 Filed 4-18-95; 8:45 am]

BILLING CODE 3510-DS-P

[C-475-817]

### Postponement of Final Countervailing Duty Determination: Oil Country Tubular Goods ("OCTG") From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Wilkniss, Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482-0588.

POSTPONEMENT: On December 23, 1994, we aligned the final countervailing duty determination in this investigation with the final antidumping duty determination in the companion antidumping investigation of OCTG from Italy (59 FR 66295).

On February 15, 1995, we postponed the final antidumping determination in the companion antidumping investigation of OCTG from Italy until no later than June 19, 1995 (60 FR 8632).

Therefore, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended, the final countervailing duty determination in this investigation will also be postponed until no later than June 19, 1995.

The case briefs in this countervailing duty investigation are now due no later than May 2, 1995, and rebuttal briefs no later than May 7, 1995. We will not hold a public hearing in this investigation, because none of the interested parties requested a hearing.

This notice is published in accordance with 19 CFR 355.20(c)(3) (1994).

Dated: April 13, 1995.

**Barbara R. Stafford,**

*Deputy Assistant Secretary for Investigations.*

[FR Doc. 95-9683 Filed 4-18-95; 8:45 am]

BILLING CODE 3510-DS-P

### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5 (a)(3) and (4) of the regulations

and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

*Docket Number: 95-017. Applicant:* USEPA, Central Regional Laboratory, 536 S. Clark St., Chicago, IL 60605. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to determine the low concentrations of metals and other elemental constituents of waters, extracts of soils, sludges or sediments and extracts of fish or other tissue samples. *Application Accepted by Commissioner of Customs:* March 15, 1995.

*Docket Number: 95-018. Applicant:* Florida State University, National High Magnetic Field Laboratory, 1800 East Paul Dirac Drive, Tallahassee, FL 32306. *Instrument:* Mass Spectrometer, Model 262. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to determine isotope ratios by thermal ionization mass spectrometry. The isotopes of interest (Rb-Sr, Sm-Nd, Lu-Hf, U-Th-Pb) form the naturally occurring radioactive background. The studies will concentrate on the determination of the isotopic and inferred chemical diversity and heterogeneity of different chemical reservoirs of the earth. In addition, the instrument will be used for educational purposes in the course "Advanced Topics in Geochemistry." *Application Accepted by Commissioner of Customs:* March 16, 1995.

*Docket Number: 95-019. Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543. *Instrument:* Mass Spectrometer, Model IMS 1270. *Manufacturer:* Cameca Geologie, France. *Intended Use:* The instrument will be used for the following research activities:

A. The early evolution of the earth—determine ages of rocks based on the U-Pb decay systems in minerals such as zircon, monazite, sphene and baddelyite.

B. Upper mantle dynamics—determine trace element abundances in minerals and use as a natural tracer for deciphering geologic processes.

C. Crustal processes and evolution—investigations on how metamorphic fluids evolved, and how post-orogenic tectonic movements operate from the point of view of cooling of metamorphic and granitic terranes.

D. Environmental changes—investigating changes in biospheric environment by determining oxygen and carbon isotopic compositions in planktonic foraminifera shells.

E. Fundamental properties in geochemistry—numerous laboratory experiments conducted to determine distributions of trace elements between minerals and melts, rates of diffusion of elements in melts and minerals, and rates of mantle/melt reactions.

*Application Accepted by Commissioner of Customs:* March 16, 1995.

*Docket Number:* 95-020. *Applicant:* Masonic Medical Research Lab., 2150 Bleecker Street, Utica, NY 13501-1787. *Instrument:* Xenon Flashlamp System, Model XF-10. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for the study of the ionic basis of currents that contribute to arrhythmias in the heart. *Application Accepted by Commissioner of Customs:* March 17, 1995.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*  
[FR Doc. 95-9694 Filed 4-18-95; 8:45 am]  
BILLING CODE 3510-DS-F

### San Diego University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 94-123. *Applicant:* San Diego University, San Diego, CA 92182. *Instrument:* MicroVolume Stopped-Flow Analyser, Model SX-17MV. *Manufacturer:* Applied Photophysics, United Kingdom.

*Intended Use:* See notice at 59 FR 54437, October 31, 1994.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

*Reasons:* The foreign instrument provides: (1) A vertical drive system providing increased optical sensitivity and high signal/noise, (2) stop syringe operation and (3) non-simultaneous mixing of tri-component systems prior to spectral detection. The National Institutes of Health advises in its

memorandum dated February 16, 1995 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*  
[FR Doc. 95-9695 Filed 4-18-95; 8:45 am]  
BILLING CODE 3510-DS-F

### National Oceanic and Atmospheric Administration

[Docket No. 950410097-5097-01; I.D. 112294C]

#### Atlantic Sturgeon, Bluefish, and Weakfish; Interstate Fishery Management Plans

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

**ACTION:** Notice of determination of compliance; cancellation of moratoria.

**SUMMARY:** In accordance with the Atlantic Coastal Fisheries Cooperative Management Act of 1993 (Act), the Secretary of Commerce (Secretary) announces the cancellation of the planned Federal moratoria on Atlantic sturgeon, bluefish, and weakfish in the coastal waters of New Jersey that would have become effective on April 15, 1995. The intent to impose the moratoria was cancelled upon a notification to the Secretary from the Atlantic States Marine Fisheries Commission (Commission) that New Jersey was in compliance with the provisions of the Commission's Interstate Fishery Management Plans (FMPs) for Atlantic sturgeon, bluefish, and weakfish, and after the Secretary determined that the State of New Jersey is now in compliance.

**EFFECTIVE DATE:** The determination to impose the moratoria is cancelled on April 14, 1995.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, 301-713-2334.

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 8, 1994, the Secretary published a notice document in the **Federal Register** (59 FR 63326) that the

State of New Jersey was not in compliance with the Commission's FMPs for Atlantic sturgeon, bluefish, and weakfish. The notice document declared moratoria on fishing for these three species in the State waters of New Jersey, effective April 15, 1995, if the State of New Jersey was not in compliance by April 1, 1995. Details were provided in the December 8, 1994, notice, and are not repeated here.

The Act specifies that, if, after a moratorium is declared, the Secretary is notified by the Commission that it is withdrawing the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan(s). If the State is in compliance, the moratorium shall be cancelled.

#### Activities Pursuant to the Act

On March 21, 1995, the Secretary received a letter (dated March 15, 1995) from the Commission prepared pursuant to the Act. The Commission's letter stated that the State of New Jersey had now implemented regulations on Atlantic sturgeon, bluefish, and weakfish to meet the provisions of the Commission's FMPs, and, therefore, the Commission was withdrawing its determination of noncompliance.

#### Cancellation of Moratoria

Based on the Commission's March 15, 1995, letter, and information received from the State of New Jersey and the U.S. Fish and Wildlife Service, Department of the Interior, the Secretary has determined that New Jersey is now in compliance with the Commission's FMPs for Atlantic sturgeon, bluefish, and weakfish. Consequently, the Secretary no longer intends to impose the moratoria on fishing for these species in the State waters of New Jersey, and, therefore, the determination to impose the moratoria on New Jersey is cancelled.

Dated: April 14, 1995.

**Gary Matlock,**

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

[FR Doc. 95-9635 Filed 4-14-95; 11:04 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Conference Meeting of the National Advisory Panel on the Education of Handicapped Dependents

**AGENCY:** Department of Defense, Dependents Schools.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of a forthcoming meeting of the National Advisory Panel on the Education of Handicapped Dependents. This notice describes the functions of the Panel. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATES:** June 5-7, 1995.

**ADDRESSES:** Bavarian Arms Hotel, Nuernberg, Germany.

**FOR FURTHER INFORMATION CONTACT:**

Dr. Rebecca Posante, Special Education Coordinator, ODE, (703) 696-4493, extension 147.

**SUPPLEMENTARY INFORMATION:** The National Advisory Panel on the Education of Handicapped Dependents is established under the Individuals with Disabilities Education Act, as amended, (20 U.S.C., 1400 *et seq.*); the Defense Dependents' Education Act of 1978, as amended (20 U.S.C. 927(c)); and DoD Instruction 1342.12, 32 CFR Part 57. The Panel: (1) Reviews information regarding improvements in services provided to students with disabilities in DoDDS; (2) receives and considers the views of various parents, students, individuals with disabilities, and professional groups; (3) review the finding of fact and decision of each impartial due process hearing; (4) assists in developing and reporting such information and evaluations as may aid DoDDS in the performance of its duties; (5) makes recommendations based on program and operational information for changes in the budget, organization, and general management of the special education program, and in policy and procedure; (6) comments publicly on rules or standards regarding the education of children with disabilities; (7) submits an annual report of its activities and suggestions to the Director, DoDDS, by July 31 of each year. The Panel will review the following areas: the DoDDS strategic plan, the comprehensive system of personnel development, and the organizational structure of the special education program. This meeting is open to the public; however, due to space constraints, anyone wishing to attend should contact the ODE special education coordinator, Dr. Rebecca Posante, no later than May 31.

Dated: April 14, 1995.

**Patricia L. Toppings,**

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

[FR Doc. 95-9647 Filed 4-18-95; 8:45 am]

BILLING CODE 5000-04-M

**Department of the Army**

**Corps of Engineers**

**Availability of a Draft Environmental Impact Statement for Kennecott Utah Copper Corporation's Proposed North Expansion Tailings Modernization Project in Salt Lake County, UT**

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of availability.

**SUMMARY:** The Sacramento District, Utah Field Office of the U.S. Army Corps of Engineers (Corps) has prepared a Draft Environmental Impact Statement (DEIS) for the Kennecott Utah Copper Corporation (Kennecott) proposed North Expansion Tailings Modernization Project (Project) in Salt Lake County, Utah. The proposed Project provides tailings storage capacity required for the next 25 to 30 years of Kennecott's operation. The DEIS is available for public review and comment at the Salt Lake City Library, Main Branch, 209 East 500 South and the Salt Lake County Library System, Magna Branch, 8339 West 3500 South. Copies for distribution are available from Mr. Michael A. Schwinn, Project Manager, U.S. Army Corps of Engineers, Sacramento District, Utah Field Office, 1403 South 600 West, Suite A, Bountiful, Utah 84010.

**DATES:** A public hearing will be held at 6:00 p.m. on May 31, 1995 at the Main Auditorium, Utah Department of Natural Resources, 1636 West North Temple Street, Salt Lake City, Utah for all interested parties to comment on the DEIS. The 60-day comment period ends June 27, 1995.

**ADDRESSES:** To obtain a copy of the DEIS or to submit written comments on the DEIS, contact Mr. Michael A. Schwinn, Project Manager, U.S. Army Corps of Engineers, Sacramento District, Utah Field Office, 1403 South 600 West, Suite A, Bountiful, Utah 84010.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for a copy of the DEIS or questions to Mr. Michael A. Schwinn, Project Manager, (801) 295-8380.

**SUPPLEMENTARY INFORMATION:** Kennecott is proposing to expand its existing tailings impoundment by approximately 3500 acres. The proposed Project site of 4325 acres is directly to the north and northwest of the existing tailings impoundment. Kennecott has identified two primary needs for the proposed Project. First, as the existing tailings impoundment is nearing its operational capacity, Kennecott requires approximately 1.9 billion tons of storage capacity to support mining and

concentrating operations for the next 25 to 30 years. Since only approximately 0.3 to 0.4 billion tons of this material will be stored in the existing impoundment, additional capacity is required. The second need is for a seismic upgrade to the existing tailings impoundment. As more information has recently become available regarding the seismic nature of the Salt Lake Valley, Kennecott has identified a need to upgrade the existing facility.

Accordingly, the proposed action includes various engineering measures to upgrade the existing facility in the event of a large earthquake.

The proposed Project would provide approximately 3500 acres of additional tailings storage area. Approximately 1.6 billion tons of tailings would be stored in the proposed impoundment with an ultimate height of approximately 250 feet. Site preparation activities would include relocation of the Union Pacific Railroad mainline tracks, relocation of the C-7 Ditch, relocation of utility lines, the construction of a new bridge on Highway 202 over the relocated railroad lines, and modification of the Interstate 80 on and off ramps at the intersection with Highway 202.

Since the proposed action affects jurisdictional waters of the United States, Kennecott submitted a Clean Water Act Section 404 Permit Application to the Corps on June 10, 1994. The Corps determined that an EIS was required prior to making a permit decision.

The Corps published a notice of intent to prepare a DEIS for the proposed action on August 19, 1994 in the **Federal Register**. A public scoping meeting was held on September 19, 1994 and the written comment period remained open until November 7, 1994. Issues raised by interested agencies and parties are addressed in the DEIS. The Corps is coordinating the DEIS with the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and other Federal, state, and local agencies, as well as other interested parties.

Twelve alternatives are identified and analyzed in accordance with the U.S. Environmental Protection Agency section 404(b)(1) guidelines for their technical, logistic, and economic practicability in the DEIS. The North Expansion West, the North Expansion East, and the No Action alternatives are carried forward for complete analysis in the DEIS.

The DEIS has been prepared in compliance with the National Environmental Policy Act (NEPA), the Corps implementing procedures in 33 CFR 230, the Council for Environmental Quality regulations for implementing

NEPA in 40 CFR 1500, and U.S. Environmental Protection Agency (EPA) 404(b)(1) guidelines in 40 CFR 230.

The DEIS was filed with the U.S. Environmental Protection Agency for publication of its availability for public review and comment. Comments received on the DEIS will be considered in developing the Final Environmental Impact Statement (FEIS). The FEIS is anticipated to be available in August, 1995.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 95-9582 Filed 4-18-95; 8:45 am]

BILLING CODE 3710-GH-M

**DEPARTMENT OF ENERGY**

[FE Docket No. EA-103]

**Application to Export Electricity; North American Energy Conservation, Inc.**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** North American Energy Conservation, Inc. (NAEC) has requested

authorization to export electric energy to Canada. NAEC is a marketer of electric energy. It does not own or control any electric generation or transmission facilities.

**DATES:** Comments, protests, or requests to intervene must be submitted on or before June 5, 1995.

**ADDRESSES:** Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office), 202-586-9624 or Michael T. Skinker (Program Attorney), 202-586-6667.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On March 20, 1995, NAEC filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export

electric energy to Canada pursuant to section 202(e) of the Federal Power Act. NAEC neither owns nor controls any facilities for the transmission or distribution of electricity, nor does it have a franchised retail service area. Rather, NAEC is a power marketer authorized by the Federal Energy Regulatory Commission (FERC) to engage in the wholesale sale of electricity in interstate commerce at negotiated rates pursuant to its filed rate schedule.

The application asserts that NAEC's suppliers and/or customers have been utilities in the New England Power Pool, the New York Power Pool, the Pennsylvania New Jersey Interconnection, and utilities in the eastern provinces of Canada. NAEC claims that, although it holds title to the electricity it sells, actual power flows are coordinated by the operators of the utilities supplying, transmitting, and purchasing NAEC's power.

NAEC proposes to use the following cross border transmission facilities for which Presidential permits have been issued:

Presidential permit holder	Permit No.	Voltage	Location
Niagara Mohawk Power Corp .....	PP-31	230 kV	Devil's Hole, NY.
New York Power Authority .....	PP-30	230 kV	Devil's Hole, NY.
	PP-74	345 kV	Niagara Falls, NY.
	PP-56	765 kV	Fort Covington, NY.
	PP-25	230 kV	Massena, NY.
Long Sault .....	PP-24	115 kV	Massena, NY.
Joint Owners of Highgate .....	PP-82	345 kV	Highgate, VT.
Vermont Electric Trans. Co .....	PP-76	450 kV DC	Norton, VT.
		345 kV	Sandy Pond to Millbury #3.
		345 kV	Millbury #3 to West Medway.
Maine Electric Power Co .....	PP-43	345 kV	Houlton, ME.

NAEC requests that FE: (1) Authorize it to export electric energy to Canada utilizing the transmission facilities identified above, without limitation as to amount or timing of the electricity exported, for a period of time no less than the term of the transmission contracts under which NAEC purchases transmission services for such exports; (2) authorize it to commence exports of electric energy utilizing non-firm transmission services immediately upon providing copies of the FERC transmission tariffs under which NAEC purchases such transmission services; (3) authorize it to commence exports of electric energy utilizing firm transmission service within 30 days of providing copies of the FERC transmission tariffs under which NAEC purchases such transmission services; and (4) waive the following regulatory requirements:

(a) Section 205.301 that requires export applications be filed six months in advance of initiation of a proposed export;

(b) Section 205.302(f) that requires a description of the transmission facilities through which the electric energy will be delivered;

(c) Section 205.302(g) that requires a technical discussion of the proposed electricity export's reliability, fuel use, and system stability impact on the applicant's present and prospective electric power supply system;

(d) Section 205.303(a) that requires a copy of the transmission agreement;

(e) Section 205.303(c) that requires maps showing the applicant's overall electric system, as well as detailed maps;

(f) Section 205.303(f) that requires an explanation of the operating procedures to be used to inform neighboring electric utilities in the U.S. of the available

capacity and energy which may be in excess of the applicant's requirements before delivery of such capacity to the foreign purchaser, and

(g) Section 205.308 that requires an export authorization recipient to file, among other documentation, annual reports of international transactions in addition to the information it is required to file with the FERC.

**Procedural Matters**

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly

with: Robert M. Beningson, North American Energy Conservation, Inc., 280 Park Avenue, Suite 2700 West, New York, NY 10017 (212) 557-6200 (Facsimile 212-557-5678); with a copy to Robert M. Beningson, 74 Haviland Road, Stamford, CT 06903; AND Jeffrey Meyers and Harriet Moses, Esq., LeBoeuf, Lamb, Greene & MacRae, 125 W. 55th Street, New York, NY 10019-5389 (212) 424-8224 (Facsimile 212-424-8500).

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE 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 petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed action will not impair the sufficiency of electric supply within the United States or will not impede or tend to impede the coordination in the public interest of facilities in accordance with section 202(e) of the Federal Power Act.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on April 13, 1995.

**Anthony J. Como,**

*Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 95-9692 Filed 4-18-95; 8:45 am]

BILLING CODE 6450-01-P

#### **Financial Assistance Award: Carsonite International Corporation**

**AGENCY:** Department of Energy.

**ACTION:** Notice of Intent.

**SUMMARY:** The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE-FG01-95EE15625 to Carsonite International Corporation. The proposed grant will provide funding in the estimated amount of \$99,030 by the Department of Energy for the purpose of saving energy through development of the inventor's "Carsonite Noise Barrier Wall".

**SUPPLEMENTARY INFORMATION:** The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Carsonite International Corporation is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The subject invention is an innovative thoroughfare noise barrier. The total design consists of a mobile production unit that travels to the roadside and fills fiberglass modules with locally shredded automobile and truck tires. For each one-mile stretch of wall, the invention proposes to reduce by 6 billion Btu the energy normally required to produce cement walls. Mr. Donald Shemanski, Sr., president of Carsonite, has assembled a staff consisting of an engineer, technicians and shop and plant personnel. Mr. Schmanski, who will serve as the principal investigator on this project, has spent 25 years working with heat-resistant plastic materials for the aerospace industry and is experienced in working with fiber-reinforced composites.

The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation. This award will be made 14 calendar days after publication to allow for public comment.

**FOR FURTHER INFORMATION CONTACT:**

Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR-531.21, 1000 Independence Ave., S.W., Washington, D.C. 20585.

The anticipated term of the proposed grant is 24 months from the date of award.

**Lynn Warner,**

*Contracting Officer, Office of Placement and Administration.*

[FR Doc. 95-9690 Filed 4-18-95; 8:45 am]

BILLING CODE 6450-01-P

#### **Financial Assistance Award: Incisive Engineering, Inc.**

**AGENCY:** Department of Energy.

**ACTION:** Notice of Intent.

**SUMMARY:** The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE-FG01-95EE15633 to Incisive Engineering, Inc. The proposed grant will provide funding in the estimated amount of \$98,000 by the Department of Energy for the purpose of saving energy through development of the inventor's "Complex-Mode Vibration-Fluidized Bed for Coal Pyrolysis."

**SUPPLEMENTARY INFORMATION:** The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Incisive Engineering, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The technology, if proven economical, will substantially augment the nation's fuel supply and provide a critically-needed alternative fuel for future generations. This vibrating bed design for a coal flash pyrolysis unit prevents agglomeration of coal particles by using a complex combination of linear, whirl, and oscillatory motion. The energy required for this vibratory motion requires only 10 percent of the power to run a gas fluidized bed. The design also avoids significant heat loss inherent in fluidized-bed and other designs. By recirculating lime-ash from the furnace back to the pyrolysis unit to serve as the heat source, IEI's technology consumes only enough energy required to drive the pyrolysis reaction. Specifically, IEI estimates that less than two percent of heat generated in the process is lost, a tremendous savings over the present technology, which may lose up to half the energy generated during pyrolysis. The grantee will design, build, and test a complex-mode vibration-fluidized bed for coal pyrolysis that will produce liquid and gaseous fuel from crushed coal. The inventor and principal

investigator, Arthur P. Fraas has 22 years experience in converting coal to gaseous and liquid fuels. For the past three years he has focused intensely on complex-mode vibration-fluidized beds. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation. This award will be made 14 calendar days after publication to allow for public comment.

**FOR FURTHER INFORMATION CONTACT:** Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR-531.21, 1000 Independence Ave., S.W., Washington, D.C. 20585.

The anticipated term of the proposed grant is 24 months from the date of award.

**Lynn Warner,**

*Contracting Officer, Office of Placement and Administration.*

[FR Doc. 95-9691 Filed 4-18-95; 8:45 am]

BILLING CODE 6450-01-P

## Office of Fossil Energy

[FE Docket No. 95-21-NG]

### Cabot Oil & Gas Trading Corporation; Order Granting Blanket Authorization to Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Cabot Oil & Gas Trading Corporation authorization to import up to 5 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery after March 31, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., April 6, 1995.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 95-9687 Filed 4-18-95; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 95-19-NG]

### Northern States Power Company (Wisconsin); Order Granting Blanket Authorization to Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.  
**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northern States Power Company (Wisconsin) blanket authorization to import up to 20 Bcf of natural gas from Canada over a period of two years beginning on the date of first delivery. This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on April 4, 1995.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 95-9688 Filed 4-18-95; 8:45 am]

BILLING CODE 6450-01-P

## Federal Energy Regulatory Commission

[Docket No. RP95-232-000]

### Northwest Pipeline Corp.; Notice of Proposed Change in FERC Gas Tariff

April 13, 1995.

Take notice that on April 11, 1995, Northwest Pipeline Corporation (Northwest), tendered for filing and acceptance as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet with a proposed effective date of May 4, 1995:

Second Revised Sheet No. 265

Northwest states that the purpose of this filing is to propose changes to Section 22.3(a) of the Capacity Release provisions contained in Northwest's General Terms and Conditions of its FERC Gas Tariff. These changes are necessary to conform Northwest's Tariff with the capacity release changes made in the Commission's Order No. 577.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 20, 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 in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-9603 Filed 4-18-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-233-000]

### Colorado Interstate Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

April 13, 1995.

Take notice that on April 11, 1995, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets, as listed below, to be effective May 15, 1995.

Third Revised Sheet No. 35  
Third Revised Sheet No. 36  
Third Revised Sheet No. 57  
Third Revised Sheet No. 58  
Second Revised Sheet No. 69  
First Revised Sheet No. 70  
Third Revised Sheet No. 101  
Third Revised Sheet No. 102  
First Revised Sheet No. 123  
Third Revised Sheet No. 127  
Second Revised Sheet No. 128

CIG states the purpose of this filing is to add a provision to CIG's tariff addressing situations where the nominating procedures required by an interconnecting pipeline are not compatible with CIG's nomination procedures. CIG further states anytime a minor change is necessary to CIG's nomination procedures at an interconnect with another natural gas pipeline, CIG will post the change on its electronic bulletin board and notify each affected Shipper.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such petitions or protests should be filed on or before April 20, 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 in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-9604 Filed 4-18-95; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CP95-315-000]**

**K N Interstate Gas Transmission Co.; Notice of Request Under Blanket Authorization**

April 13, 1995.

Take notice that on April 11, 1995, K N Interstate Gas Transmission Co. (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228-8304, filed in Docket No. CP95-315-000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a new delivery tap under K N Interstate's blanket certificate issued in Docket No. CP83-140-000, *et al.*, 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.

K N Interstate proposes to install and operate a new delivery tap in Hamilton County, Nebraska. The tap will be added as a delivery point under an existing transportation agreement between K N Interstate and K N Energy, Inc. (K N) and will be used by K N to facilitate the delivery of natural gas to a direct retail commercial customer.

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. 95-9595 Filed 4-18-95; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CP95-317-000]**

**Williams Natural Gas Co.; Notice of Application**

April 13, 1995.

Take notice that on April 11, 1995, Williams Natural Gas Company (WNG), Post Office Box 3288, Tulsa, Oklahoma 74101, filed an application pursuant to Section 7(b) of the Natural Gas Act for an order permitting the abandonment of approximately 25.8 miles of 26-inch pipeline and appurtenant facilities located in Texas County, Oklahoma, by conveyance to Williams Gas Processing—Mid-Continent Region Company (WGP-MCR), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG will convey approximately 25.8 miles of its 26-inch Straight to Blackwell pipeline and appurtenant facilities. WNG states that Williams Field Services Company (WFS), an affiliate of WGP-MCR, has begun construction of a processing plant, the Baker Plant, adjacent to WNG's 26-inch Straight to Blackwell pipeline at a location approximately one mile east of the Interconnection between the Liberal-Baker sub-system and WNG's 26-inch Straight to Blackwell line and approximately 25.8 miles east of the Straight compressor station. WNG states that the plant will process gas from both the Straight sub-system and the Liberal-Baker sub-system. WNG asserts that after the construction of the WFS processing plant, WNG's 26-inch Straight to Blackwell pipeline will function as the final segment of gathering facilities, delivering gas from both the Straight sub-system and the Liberal-Baker sub-system as well as gas from third-party gathering systems to the new processing plant.

WNG notes that the Commission issued a Preliminary Determination on Abandonment Application and on Jurisdictional Status of Facilities in Docket No. CP94-196-000 and held that it would not make a determination that a similar pipeline located upstream of

the Hobart Ranch Plant was gathering until the plant was operational. WNG states that it waited to file this application until construction began on the Baker Plant, to avoid those concerns. WNG claims that the Baker Plant is scheduled to be operating by November 1, 1995 pursuant to requirements in the construction contract. WNG requests that the Commission process this abandonment application but it does not request an order until the Baker Plant is operating.

WNG states that the total original cost of the pipeline was approximately \$713,771, with a depreciated net book value of approximately \$21,077 as of January 31, 1995. WNG proposes to convey the subject pipeline to WGP-MCR effective on the last day of the calendar month following the calendar month in which the Commission issues a final order, acceptable to WNG and WGP-MCR, approving the abandonment.

WNG does not believe that a separate Section 4 filing seeking authority to terminate services on this line segment is required. WNG states that this line segment which will be transferred to WGP-MCR is currently part of the Production Area portion of WNG's transmission system and, upon abandonment, will become part of WGP-MCR's gathering facilities. Therefore, WNG states that the line segment will be subject to the Section 4 filing WNG is required to make in Docket No. CP94-196-000.

Any person desiring to be heard or to make a protest with reference to said application should, on or before May 3, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 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 Section 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

Commission is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-9596 Filed 4-18-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT95-33-000]

**Trunkline Gas Co; Proposed Changes in FERC Gas Tariff**

April 13, 1995.

Take notice that on April 11, 1995, Trunkline Gas Company (Trunkline), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets, as listed on Appendix A attached to the filing, proposed to be effective October 1, 1994, December 1, 1994, January 15, 1995, February 1, 1995 and March 1, 1995.

Trunkline states that this filing is being made in compliance with Section 154.41(b) of the Commission's Regulations. Trunkline states that the revised tariff sheets reflect updates to the Index of Firm Customers.

Trunkline states that copies of this filing are being mailed to all affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 20, 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 persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-9597 Filed 4-18-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-394-002]

**Panhandle Eastern Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff**

April 13, 1995.

Take notice that on April 11, 1995, Panhandle Eastern Pipe Line Company (Panhandle), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing. The proposed effective dates of the revised tariff sheets are October 1, 1994, November 1, 1994, April 1, 1995, and May 1, 1995, as applicable.

Panhandle states that this filing is in compliance with Federal Energy Regulatory Commission's order dated March 27, 1995, on Report of Technical Conference which required Panhandle to update the calculations of the firm and interruptible surcharges based on firm and interruptible billing determinants prior to the application of the required discount adjustments.

Panhandle states that these revised billing determinants, which are unadjusted for Panhandle's actual discounting experience, result in no change to the existing surcharge of \$0.01 applicable to Rate Schedules FT, EFT, no change to the existing surcharge of 0.06¢ applicable to Rate Schedule SCT, and a decrease in the Volumetric Surcharge applicable to Rate Schedules IT and EIT from 0.03¢ to 0.02¢, as compared to Panhandle's September 6, 1994 filing in this docket.

Panhandle states that copies of its filing have been served on all affected customers, all parties to this proceeding and applicable state regulatory commissions.

Any person desiring to protest the said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before April 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-9598 Filed 4-18-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-96-000, et al.]

**CNG Transmission Corp.; Notice of Informal Settlement Conference**

April 13, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, April 20, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact David Cain (202) 208-0917 or Gary Denking (202) 208-2215.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-9599 Filed 4-18-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-422-002]

**Texas Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff**

April 13, 1995.

Take notice that on April 10, 1995, Texas Gas Transmission Corporation (Texas Gas), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet:

First Revised Sheet No. 177

Texas Gas states that the instant filing is being made to comply with the Commission Order issued March 27, 1995, which directed Texas Gas to revise Section 16 of the General Terms and Conditions to its FERC Gas Tariff, First Revised Volume No. 1, to clarify that future fuel percentage rate filings will reflect seasonal rather than levelized annual rates and provide for filings to be made 60 days prior to the November 1 effective date for annual EFRP filings. Texas Gas has requested an effective date for the revised tariff sheet of March 27, 1995.

Texas Gas states that copies of the revised tariff sheet are being mailed to all of Texas Gas's jurisdictional customers, interested state commissions, and those appearing on the official service list in Docket No. RP94-422-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before April 20, 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-9600 Filed 4-18-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-145-000]

#### **Northwest Pipeline Corp.; Technical Conference**

April 13, 1995.

In the order issued on March 1, 1995, in this docket, the Commission directed staff to convene a technical conference to address the concerns raised by the protests to the filing.

Take notice that the conference has been scheduled for Tuesday, April 25, 1995, at 9 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-9601 Filed 4-18-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-173-001]

#### **Koch Gateway Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff**

April 13, 1995.

Take notice that on April 10, 1995, Koch Gateway Pipeline Company (Koch Gateway), tendered for filing to become part of its FERC Gas Tariff Fifth Revised Volume No. 1, the following tariff sheets:

Substitute Third Revised Sheet No. 502

Substitute First Revised Sheet No. 1403

Substitute Second Revised Sheet No. 1409

Koch Gateway states that pursuant to the Federal Energy Regulatory

Commission's (Commission) Order dated March 31, 1995, Koch Gateway submits certain clarifications and changes to the above referenced tariff sheets. Koch Gateway is also seeking clarification of the changes that were required on Second Revised Sheet Nos. 1 and 1501. Koch Gateway was ordered to make changes to these sheets; however, no specific changes were discussed in the Commission's Order, all as more fully set forth on the application which is on file with the Commission.

Koch Gateway also states that the revised tariff sheets are being served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's regulations. All such protests should be filed on or before April 20, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-9602 Filed 4-18-95; 8:45 am]

BILLING CODE 6717-01-M

#### **ENVIRONMENTAL PROTECTION AGENCY**

[FRL-5194-3]

#### **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; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before May 19, 1995.

**FOR FURTHER INFORMATION OR A COPY CALL:**

Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 0827.04.

#### **SUPPLEMENTARY INFORMATION:**

##### **Office of Water**

*Title:* Construction Grants Program under the Clean Water Act (EPA ICR No. 0827.04; OMB Control No. 2040-0027). This is a request for extension of a currently approved information collection.

*Abstract:* Under the Construction Grants Program, municipalities and Indian Tribes may obtain grants for wastewater treatment construction projects. The requirements for this program are at 40 CFR part 35, subpart I, and Title II of the Clean Water Act. The grantees must submit information to EPA or delegated States, and the States that award construction grants must submit information to EPA. The information required is necessary to ensure national accountability, adequate public participation, fiscal and project integrity, and consistent management directed to achieve environmental objectives.

EPA is currently phasing out this program and replacing it with the State Revolving Fund (SRF) Program under Title VI of the Clean Water Act. This ICR is being reviewed to cover the information requirements for the Construction Grants Program over the next 3 years during the transitional stage to the SRF Program. EPA projects that approximately 37 grants will be issued under the Construction Grants Program over the next 3 years.

*Burden Statement:* The public reporting burden for this collection of information is estimated to average 13.5 hours per respondent. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

*Respondents:* States, Territories, Municipalities, Indian Tribes.

*Estimated No. of Respondents:* 217.

*Estimated Total Annual Burden on Respondents:* 2,929 hours.

*Frequency of Collection:* On occasion.

Send comments regarding the burden estimate, or any other aspects of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 0827.04 and OMB Control No. 2040-0027 in any correspondence.

Ms. Sandy Farmer, EPA ICR No. 0827.04, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460, and

Mr. Tim Hunt, OMB Control No. 2040-0027, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503.

Dated: April 13, 1995.

**Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 95-9664 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-M

[OPP-38511; FRL-4911-8]

**Dichlorvos (DDVP); Deletion of Certain Uses and Directions**

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

**ACTION:** Notice; Intent to delete certain dichlorvos (DDVP) uses.

**SUMMARY:** This notice, issued pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136d(f)(1), announces EPA's receipt of a request from Amvac Chemical Corp. of Los Angeles, CA, the sole technical registrant of dichlorvos, for the amendment of its dichlorvos registrations through voluntary deletion of the following uses from its technical (EPA Reg. No. 5481-96) and end-use labels, and a request to waive the 90-day comment period on this notice: in or on domestic dwellings (except for impregnated resin strips, total-release foggers, crack and crevice applications, and spot applications); rangeland grasses; greenhouses; tomatoes; tobacco; tobacco warehouses; food service establishments (except nonfood-handling areas); food-manufacturing establishments: bottling plants (including wineries, breweries, and soft drink plants), frozen food plants (including pizza plants and ice cream plants) (except nonfood-manufacturing areas); food-processing establishments: meat, poultry, and seafood slaughtering and/or packing plants (including those for edible fats and oils), frozen food plants (including those for fruits and vegetables), dairy product plants (including milk-processing plants) (except nonfood-processing areas); all aerial applications; and aircraft and buses. EPA intends to approve the proposed amendments at the close of the comment period unless Amvac withdraws or amends its request.

**DATES:** Written comments must be submitted on or before May 19, 1995.

**ADDRESSES:** Submit written comments in triplicate, identified by the docket control number, [OPP-38511], to: Public Response and Program Resources

Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** By mail: Dennis Utterback, Special Review and Reregistration Division (7508C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, third floor, Crystal Station #1, 2805 Jefferson Davis Hwy., Arlington, VA, (703)-308-8026; e-mail: utterback.dennis@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** This notice provides background on Agency actions regarding dichlorvos, lists the uses Amvac Chemical Corp. is proposing to delete and the uses it intends to support, and states the provisions for existing stocks.

**I. Introduction**

Dichlorvos is the commonly accepted name for 2,2-dichlorovinyl dimethyl phosphate, an organophosphate insecticide. Technical dichlorvos is produced by Amvac Chemical Corp. (Amvac) and is available as a 99.99% active ingredient technical product for formulating dichlorvos end-use products. Dichlorvos is a contact and stomach poison with fumigant action resulting in cholinesterase inhibition. Dichlorvos is used in the formulation of insecticide products for a wide range of uses in home and commercial establishments, as aerosols, liquid sprays, wettable powders, emulsifiable concentrates, soluble concentrates, pour-ons, granulars, and impregnated materials (resin strips and flea collars).

There are two ongoing activities which may affect the proposed use deletions specified in this notice: the dichlorvos Special Review and the pending revocation of the pesticide food additive regulation for packaged and bagged processed nonperishable food. Anyone interested in retaining these uses proposed for deletion in this notice should be aware that future action by EPA resulting from the Special Review or food additive regulation revocation may alter the status of one or more dichlorvos uses.

On February 24, 1988, EPA initiated a Special Review (previously referred to as an RPAR) for pesticide products containing dichlorvos. EPA determined that exposure to dichlorvos from the registered uses may pose an unreasonable carcinogenic risk and inadequate margins of exposure for

cholinesterase inhibition to exposed individuals. The risks of concern detailed in the 1988 notice were for the general population from consumption of foods containing residues of dichlorvos, for those involved in the application of dichlorvos, for workers reentering treated areas, for residents/occupants of treated areas, for people exposed to pets treated with dichlorvos, and for pets treated with dichlorvos. EPA expects to issue a proposed determination, as a result of the Special Review, in 1995.

In the **Federal Register** of October 3, 1991 (56 FR 50190), EPA proposed under section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA) to revoke the food additive regulation for residues of the pesticide dichlorvos in or on packaged or bagged nonperishable processed food. The final rule revoking the food additive regulation was published on November 10, 1993, with an effective date of 120 days later. EPA later stayed the effective date indefinitely, pending Agency consideration of a petition from Amvac. This revocation remains stayed. If this action becomes effective it will mean the packaged and bagged processed nonperishable food treated with dichlorvos will likely be adulterated under FFDCA and the food may not be legally sold. However, a food additive regulation revocation by itself would not prohibit the legal sale or use of dichlorvos, under FIFRA, on packaged and bagged processed nonperishable food. To rectify this situation, EPA intends to cancel the related uses as soon as possible after any food additive regulation revocation becomes final.

**II. Deleted Uses**

Amvac Chemical Corp., the sole registrant of the technical grade of the active ingredient dichlorvos, has requested to amend its dichlorvos registrations by deleting all uses and directions for use in or on domestic dwellings (except for impregnated resin strips, total-release foggers, crack and crevice applications, and spot applications); rangeland grasses; greenhouses; tomatoes; tobacco; tobacco warehouses; food service establishments (except nonfood-handling areas); food-manufacturing establishments: bottling plants (including wineries, breweries, and soft drink plants), frozen food plants (including pizza plants and ice cream plants) (except nonfood-manufacturing areas); food-processing establishments: meat, poultry, and seafood slaughtering and/or packing plants (including those for edible fats and oils), frozen food plants (including those for fruits and vegetables), dairy product plants (including milk-

processing plants) (except nonfood-processing areas); all aerial applications; and aircraft and buses.

### III. Uses Supported

Amvac, manufacturer of technical-grade dichlorvos, is supporting the following uses under reregistration. A detailed technical label will be sent to every dichlorvos registrant to provide guidance as to the specific uses that can be formulated from this technical product. The only uses for which this product could be used to formulate end-use products would be as follows:

#### *Domestic Uses*

Use of impregnated resin pest strip in campers, trailers, homes, cabins, garages, basements, and garbage cans. Use of total-release fogger (less than 1% active ingredient) in homes, cabins, garages, and basements. Use of total-release fogger (greater than 1% active ingredient) and nontotal-release aerosol in homes, cabins, garages, and basements only by a licensed pest control operator (PCO). Use of nontotal-release fogger and liquid formulations only by PCO in domestic dwellings. Dog and cat flea collars.

#### *Agricultural Uses*

Use of impregnated resin pest strip over nonperishable packaged and bagged or bulk stored raw and processed commodities. Use of impregnated resin strip and total-release fogger (less than 1% active ingredient) in animal buildings and dairy milk rooms. Use of commercial aerosol/foggers only by PCO in warehouses, silos, bulk bins, and in food-processing, food-manufacturing, and food-handling and storage plants containing nonperishable packaged or bagged or bulk raw or processed food commodities and the nonfood areas of these sites. Liquid formulations for a variety of agricultural uses including animal premises and direct livestock animal treatment. Liquid formulations for use in mushroom houses and only for use by PCO. Liquid formulations for use only in commercial application equipment for space treatment and for use by PCO in warehouses, silos, bulk bins and food-processing, food-manufacturing, and food service establishments containing nonperishable, packaged, or bagged raw or processed food commodities or bulk raw or processed food commodities, and non-food handling areas. Use of nontotal-release aerosol only by PCO in animal buildings and dairy barns (milk rooms).

#### *Other Uses*

Use of impregnated dispenser in enclosed outdoor utility equipment. Use of impregnated resin pest strip in museum collections, insect traps, garbage cans, catch basins, and trash dumpsters. Use of total-release fogger (greater than 1% active ingredient) and only by PCO in warehouses, railroad cars, theaters, and industrial plants. Liquid formulations for crack and crevice use only (not space spray) and only by PCO in nonfood areas of commercial, industrial, and institutional sites, kennels, outside surfaces of buildings, refuse dumps, refuse and solid waste containers, and wine cellars. Liquid formulations only for veterinary use for direct application to domestic animals.

### IV. Scope of this Notice

This notice pertains to all Amvac end-use registrations and technical registrations. On the effective date of this document, Amvac must delete the appropriate uses from its labels. Since Amvac is the sole registrant of the technical-grade dichlorvos, there will no longer be a manufacturing use product available from which to formulate any dichlorvos-registered products for the uses Amvac is requesting to delete, unless Amvac withdraws its request. End-use registrants are being notified by certified mail of Amvac's decision to delete these uses. End-use registrants who purchase technical dichlorvos with a revised label may only formulate their products for the uses allowed on the technical label. For purposes of public information, Amvac will allow dichlorvos to be formulated for those uses listed in Section III of this notice. Any registrant that does not change its label to conform to the new technical label will be in violation of FIFRA. If any of the end-use registrants (or any other persons) desire to retain any of the uses for which deletion is requested, they are encouraged to contact Amvac to seek retention of that use. EPA intends to approve the proposed amendments at the close of the comment period unless Amvac withdraws or amends its request. The following list specifies the registrations affected by this notice: 5481-9, 5481-13, 5481-41, 5481-73, 5481-96, 5481-200, 5481-201, 5481-202, 5481-203, 5481-204, 5481-205, 5481-206, 5481-207, 5481-208, 5481-216, 5481-217, 5481-220, 5481-240, 5481-241, 5481-334, 5481-338, 5481-340, 5481-341, 5481-342, 5481-343, 5481-344, 5481-345, 5481-346, 5481-347, 5481-348.

### V. Existing Stocks Provisions

Under the authority of FIFRA section 6(a)(1), EPA will establish certain limitations on the distribution and use of existing stocks of dichlorvos products subject to any final cancellation notice. EPA defines the term "existing stock" to mean any quantity of dichlorvos products in the United States on the effective date an application for amendment of registration is granted by the Agency. Such existing stocks include dichlorvos products that have been formulated, packaged, and labeled and are being held for shipment or release or have been shipped or released into commerce.

The Agency will permit Amvac to sell and distribute existing stocks of products with current labels for up to 1 year after the effective date of an amendment. Any sale or distribution of such products by Amvac after that 1-year period which do not bear labeling consistent with any amendment granted pursuant to this notice will be a violation of federal law. Any existing stocks remaining in the possession of all other persons after 1 year may continue to be sold, distributed, and used until such existing stocks are exhausted.

EPA reserves the right to amend this existing stocks provision should conditions warrant such amendment. Users need to be aware that it is their responsibility to determine whether residues of dichlorvos-treated food will result in illegal residues under FFDCA.

### VI. Comments

Persons interested in commenting on the proposed use deletions are invited to submit their written comments on or before May 19, 1995 to the address given above. Registrants should be aware that EPA will consider these comments in the context of other ongoing Agency activities relating to dichlorvos.

#### **List of Subjects**

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: April 7, 1995.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

[FR Doc. 95-9166 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-34074; FRL 4944-6]

**Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

**DATES:** Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on July 18, 1995.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5761; e-mail: hollins.james@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION****I. Introduction**

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the

**Federal Register.** Thereafter, the Administrator may approve such a request.

**II. Intent to Delete Uses**

This notice announces receipt by the Agency of applications from registrants to delete uses in the nine pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before July 18, 1995 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000264-00465	MOCAP 10G	Ethoprop	All turf uses except golf courses
000352-00341	Manzate 200 Fungicide	Mancozeb	Flowers, foliage plants, ornamental uses
000352-00449	Manzate 200 DF Fungicide	Mancozeb	Flowers, foliage plants, ornamental uses
034704-00308	Trinox 80% Soluble Powder	Trichlorfon	All field crops, seed field crops, vegetables
000655-00079	Prentox 25% Malathion Dust Concentrate	Malathion	Avocado, barley, birdsfoot trefoil, blue berries, cherries, field and sweet corn, cotton seed, cucumbers, currant, endive, garlic, gooseberries, grapes, grapefruit, kumquats, leeks, lemons, limes, lespediza, head and leaf lettuce, oats, onions, oranges, pepper, white potatoes, raisins, rice, wild rice, rye, sorghum, squash, strawberries, tangerines, tomatoes, vetch, wheat, alfalfa, clover, lupine, lupine seed
000655-00549	Prentox Malathion W-25	Malathion	Broccoli, cabbage, kale, mustard, tomatoes, turnips, blueberries, grapes, beef cattle
000655-00551	Prentox 5% Malathion Dust	Malathion	Beans, broccoli, cabbage, kale, mustard greens, peas, potatoes, turnips, beef cattle
045385-00043	Chem-Tox MAL 50% EC	Malathion	Household insects, cattle, horses, poultry, dogs, cats, goats, sheep, hogs, apples, peaches, pears, berries, asparagus, cole crops, celery, eggplant, endive, peas, beans, spinach, beets
051036-00104	Malathion 5EC	Malathion	Asparagus, carrots, anise, radish, watercress, almonds, apples, filberts, pears, pineapples, plums, prunes, quince, peanuts, safflower, soybeans, tobacco, cattlefeed blocks, citrus pulp, livestock (hogs, sheep, goats, horses, beef cattle, poultry, cats, dogs), forest trees (deciduous, pines (eastern & red), mattresses, wineries, dry milk processing plants, food establishments, melons, pumpkins, all stored grains

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000264	Rhone-Poulenc Ag Co., P.O. 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
000352	Dupont Ag Products, Registration & Regulatory Affairs, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—  
Continued

Company No.	Company Name and Address
000655	Prentiss Incorporated, CB 2000, Floral Park, NY 11002.
034704	Platte Chemical Co., P.O. Box 667, Greeley, CO 80632.
045385	CTX, Inc., 481 Scotland Rd., McHenry, IL 60050.
051036	Micro Flo Co., P.O. Box 5948, Lakeland, FL 33807.

**III. Existing Stocks Provisions**

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

**List of Subjects**

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 28, 1995.

**Daniel M. Barolo,**

Director, Office of Pesticide Programs.

[FR Doc. 95-9531 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66211; FRL 4945-9]

**Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations**

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

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

**DATES:** Unless a request is withdrawn by July 18, 1995, orders will be issued canceling all of these registrations.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson

Davis Highway, Arlington, VA 22202, (703) 305-5761; e-mail: hollins.james@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:****I. Introduction**

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be canceled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

**II. Intent to Cancel**

This notice announces receipt by the Agency of requests to cancel some 19 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000655-00765	Prentox Dursban IG Granular Insecticide	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate
000869-00204	Green Light Termite and Home Pest Killer	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate
000869-00208	Green Light Roach and Flea Concentrate	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate
001016 AZ-94-0009	Ucarcide 250 Preservative	Glutaraldehyde
002517-00017	Dog Flea and Tick Powder	1-Naphthyl- <i>N</i> -methylcarbamate
004166-20002	Sodium Hypochlorite Solution	Sodium hypochlorite
006175-00004	Paradust	1-Naphthyl- <i>N</i> -methylcarbamate
006175-00009	Yard & Kennel Dust	1-Naphthyl- <i>N</i> -methylcarbamate
006175-00036	Four-Fold Insecticide Powder	1-Naphthyl- <i>N</i> -methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone Cube Resins other than rotenone
007364-00040	Algimycin Glb-X-II	2-Chloro-4,6-bis(ethylamino)- <i>s</i> -triazine
008818-00004	Metronidazole	2-Methyl-5-nitroimidazole-1-ethanol
010370-00046	Ford's Dursban 1 G	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate
010370-00056	Ford's Dursban 1G-S.F.	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate
040840-00002	Sentry Senticide 230	Potassium <i>N</i> -methyldithiocarbamate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
040849-00050	Enforcer Dot Flea Killer for Carpets	Disodium cyanodithioimidocarbonate
042291-00003	Brom-A-Spa Bromide Salts Solution	Boron sodium oxide (B <sub>8</sub> N <sub>a</sub> 2 <sub>o</sub> 13), tetrahydrate (12280-03-4)
051036-00121	Chlorpyrifos U.L.V. Mosquito Concentrate	Sodium bromide
059639 AZ-94-0006	Danitol 2.4 EC Spray (Insecticide-Miticide)	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
059639 AZ-94-0007	Orthene 75 S Soluble Powder	alpha-Cyano-3-phenoxybenzyl2,2,3,3-tetramethylcyclopropanecarboxylate
		O,S-Dimethyl acetylphosphoramidothioate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued canceling all of these registrations.

Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The

following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000655	Prentiss Inc., 21 Vernon Street, C.B. 2000, Floral Park, NY 11001.
000869	Green Light Co., Box 17985, San Antonio, TX 78217.
001016	Union Carbide Corp., UCC Linde Division, 200 Cottontale Lane, Somerset, NJ 08875.
002517	Conagra Pet Products, 2258 Darbytown Rd., Richmond, VA 23231.
004166	Dominion Chemical Co., Box 1069, Petersburg, VA 23804.
006175	Agribusiness Marketers Inc., Director of Regulatory Affairs, 421 E. Hawley St, Mundelein, IL 60060.
007364	Great Lakes Biochemical Co., Inc., 6120 W. Douglas Ave., Milwaukee, WI 53218.
008818	Searle, (OO-II-4), P.O. Box 5110, Chicago, IL 60680.
010370	Agrevo Environmental Health, 95 Chestnut Ridge Rd, Montvale, NJ 07645.
040840	Sentry Water Management Corp., 1534 Route 23, Box 1717, Wayne, NJ 07470.
040849	Enforcer Products Inc., c/o RegWest Co., Box 2220, Greeley, CO 80632.
042291	Great Lakes Biochemical Co., c/o Robarb Inc., 6120 W. Douglas Ave, Milwaukee, WI 53218.
051036	Micro-Flo Co, Box 5948, Lakeland, FL 33807.
059639	Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596.

### III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before July 18, 1995. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

### IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order.

The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the

hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

### List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 30, 1995.

**Daniel M. Barolo,**

Director, Office of Pesticide Programs.

[FR Doc. 95-9533 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66210; FRL 4944-5]

**Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations**

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

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a

notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

**DATES:** Unless a request is withdrawn by July 18, 1995, orders will be issued cancelling all of these registrations.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5761; hollins.james@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

**II. Intent to Cancel**

This notice announces receipt by the Agency of requests to cancel some 22 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000264-00471	Mocap 5G Nematicide - Insecticide	O-Ethyl S,S-dipropyl phosphorodithioate
000264-00497	Mocap 10% Granular Restricted Use Nematicide - Insecticide	O-Ethyl S,S-dipropyl phosphorodithioate
000275-00057	Pro-Shear	N-(Phenylmethyl)-1H-purin-6-amine
000279 SD-91-0001	Furadan 4F	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
000279 SD-92-0008	Furadan 4F	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
000748-00249	Rez Stain & Wood Preservative Solid Color Oil	N-((Trichloromethyl)thio)phthalimide Bis(tributyltin) oxide
000748-00250	Rez Stain & Wood Preservative Semi-Transparent-Oil	N-((Trichloromethyl)thio)phthalimide Bis(tributyltin) oxide
000769-00849	Pratt Fruit Tree Spray	Methoxychlor ( 2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate Sulfur
000802-00241	Lilly/Miller Envy 2, 4-D	cis-N-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide 2,4-Dichlorophenoxyacetic acid
000802 CA-93-0012	Lilly/Miller Envy 2, 4-D	Triethylamine 2,4-dichlorophenoxyacetate 2,4-Dichlorophenoxyacetic acid Triethylamine 2,4-dichlorophenoxyacetate
003125 WA-80-0069	Meta-Systox-R Spray Concentrate	S-(2-(Ethylsulfanyl)ethyl) O,O-dimethyl phosphorothioate
005870-20003	C-13	Sodium hypochlorite
005870-20004	Chemcide	Sodium hypochlorite
007313-00005	Olympic Semi-Transparent Weather Screen	N-((Trichloromethyl)thio)phthalimide Bis(tributyltin) oxide
007313-00007	Olympic Wood Preservative (green)	Copper naphthenate
007313-00008	Olympic Solid Color Weather Screen	N-((Trichloromethyl)thio)phthalimide Bis(tributyltin) oxide
008590-00362	Garden Insecticide Dust with Diazinon	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
010693-00002	Flo Kem Emulsion Bowl Cleaner Deodzs. Disinfects Bleach	Hydrogen chloride Alkyl* dimethyl benzyl ammonium chloride *(50%C <sub>14</sub> , 40%C <sub>12</sub> , 10%C <sub>16</sub> )
010693-00009	Flo Kem Royal Flush Bowl Cleaner	Hydrogen chloride Nonylphenoxypolyethoxyethanol - iodine complex

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
025293-00001	Ex-O-Dine	Phosphoric acid Nonylphenoxyethoxyethanol - iodine complex Phosphoric acid
048211-00076	Kitten & Bear Retard	1,2-Dihydro-3,6-pyridazinedione, potassium salt
060256 CA-90-0028	Florel Plant Growth Regulator	(2-Chloroethyl)phosphonic acid

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000275	Abbott Laboratories, Chemical & Agricultural Products Div., 1401 Sheridan Rd., D-28R, Bldg A1, North Chicago, IL 60064.
000279	FMC Corp., Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103.
000748	PPG Industries, Inc., Product Safety, One PPG Place, Pittsburgh, PA 15272.
000769	Sureco Inc., 10008 N Dale Mabry, Ste., 121, Tampa, FL 33618.
000802	Chas. H. Lilly Co., Box 83179, Portland, OR 97283.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
005870	Texo Corp., 2801 Highland Ave, Cincinnati, OH 45212.
007313	PPG Architectural Finishes, Inc., Coatings & Resins Group, 151 Colfax Street, Box 127, Springdale, PA 15144.
008590	Universal Cooperatives Inc., Agent For: Agway Inc., Box 460, Minneapolis, MN 55440.
010693	Flo-Kem Inc., 19402 Susana Rd., Rancho Dominguez, CA 90221.
025293	Eckert R P Co., 1140 Ferris Rd., Amelia, OH 45102.
048211	Intercon Chemical, 1100 Central Industrial Dr., St. Louis, MO 63110.
060256	California Seed Association, 1521 "I" St., Sacramento, CA 95814.

### III. Loss of Active Ingredients

Unless the request for cancellation is withdrawn, one pesticide active ingredients will no longer appear in any

registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the

registrant to explore the possibility of their withdrawing the request for cancellation. This active ingredient is listed in the following Table 3, with the EPA Company Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

Cas No.	Chemical Name	EPA Company No.
2646-78-8	Triethylamine 2,4-dichlorophenoxyacetate	000802

### IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before July 18, 1995. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation

and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

### V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing

stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

#### List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 28, 1995.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

[FR Doc. 95-9663 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-300381; FRL-4944-1]

#### Propargite; Request for Comment on Petition to Revoke Certain Feed Additive Regulations

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

**ACTION:** Notice; receipt and availability of petition.

**SUMMARY:** This document announces the receipt of and solicits comments on a petition proposing the revocation of the section 409 feed additive regulation established under the Federal Food, Drug and Cosmetic Act (FFDCA, 21 U.S.C. 348a), for propargite on dried apple pomace. This notice sets forth the basis for the petitioner's proposal and provides opportunity for comment by the public.

**DATES:** Written comments, identified by the document control number [OPP-300381], must be received on or before May 19, 1995.

**ADDRESSES:** By mail, requests for copies of the petition and comments should be forwarded to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Copies of the

petition will be available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Branch, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-5805.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection at the address and hours given above.

**FOR FURTHER INFORMATION CONTACT:** By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. WF32C5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, Telephone: 703-308-8028; e-mail: Nazmi.Niloufar@epamail.epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### Introduction

##### A. Statutory Framework

The Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 136 et seq.) authorizes the establishment of tolerances and exemptions from tolerances for the residues of pesticides in or on raw agricultural commodities (RAC's), and section 409 of the act authorizes promulgation of food additive regulations for pesticide residues in processed foods.

Under section 408, EPA establishes tolerances, or exemptions from tolerances when appropriate, for pesticide residues in raw agricultural commodities. Food additive regulations setting maximum permissible levels of pesticide residues in processed foods are established under section 409.

Section 409 food additive regulations are required, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, no section 409 food additive regulation is required if any pesticide residue in a processed food resulting from use on a

RAC has been removed to the extent possible by good manufacturing practices and is below the tolerance for that pesticide in or on that RAC. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to processed food. Thus, a section 409 food additive regulation is only necessary to prevent foods from being deemed adulterated when despite the use of good manufacturing practices the concentration of the pesticide residue in a processed food is greater than the tolerance prescribed for the raw agricultural commodity, or if the processed food itself is treated or comes in contact with a pesticide. Monitoring and enforcement are carried out by the Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

The establishment of a food additive regulation under section 409 requires a finding that use of the pesticide will be "safe" (21 U.S.C. 348(C)(3)). Section 409 also contains the Delaney clause, which specifically provides that, with limited exceptions, no additive may be approved if it has been found to induce cancer in man or animals (21 U.S.C. 348(C)(5)).

In setting both section 408 tolerances and section 409 food additive regulations, EPA reviews residue chemistry and toxicology data. To be acceptable, tolerances must be both high enough to cover residues likely to be left when the pesticide is used in accordance with its labeling and low enough to protect the public health. With respect to section 408 tolerances, EPA determines the highest levels of residues that might be present in a raw agricultural commodity based on controlled field trials conducted under the conditions allowed by the product's labeling that are expected to yield maximum residues. Generally, EPA's policy concerning whether a section 409 food additive regulation is needed depends on whether there is a possibility that the processing of a raw agricultural commodity containing pesticide residues would result in residues in the processed food at a level greater than the raw food tolerance.

#### II. Petitions

Uniroyal Chemical Co. has submitted a petition requesting the revocation of the feed additive regulation (FAR) established under section 409 of the FFDCA for propargite on dried apple pomace. This regulation is codified in 40 CFR 186.5000 and is established at 80 parts per million (ppm).

In June 1994, EPA updated Table II of the Pesticide Assessment Guidelines, Subdivision O, Residue Chemistry. Table II provides a listing of all significant food and feed commodities, both raw and processed, for which residue data are collected and tolerances or FARs are established. The Agency requires data for only those feed items considered to be "significant." Feed items are considered to be "significant" if (1) the U.S. annual production of the crop is greater than 500 million pounds and the maximum amount in the livestock diet is greater than 10 percent; or (2) the commodity is grown mainly as a livestock feed. Based on the above criteria, the Agency has determined that dried apple pomace is not a significant feed item and has removed it from Table II.

The Petitioner requests that the Agency revoke the section 409 FAR for this feed item because it is no longer necessary.

It should be noted that in the **Federal Register** of July 1, 1994 (59 FR 33941), EPA issued a proposed rule to revoke the section 409 food additive regulations for propargite because the Agency has determined that propargite induces cancer in animals. Thus, the regulation violates the Delaney clause in section 409 of the FFDCa. The Agency has not yet proposed similar action for the feed additive regulation for propargite on dried apple pomace. If this petition is granted, dried apple pomace will be removed from the list of pesticides that violate the Delaney clause and no further action will be required under section 408 of the FFDCa for the raw agricultural commodity apples.

Pursuant to 40 CFR 177.125 and 177.30, EPA may issue an order ruling on the petition or may issue a proposal in response to the petition and seek further comment. If EPA issues an order in response to the petition, any person adversely affected by the order may file written objections and a request for a hearing on those objections with EPA on or before the 30th day after date of the publication of the order (40 CFR 178.20).

#### List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping.

Dated: April 3, 1995.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

[FR Doc. 95-9061 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180968; FRL 4946-6]

#### Propazine; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

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

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Colorado Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide propazine (CAS 139-40-2) to treat up to 272,000 acres of sorghum to control various weeds. The Applicant proposes the use of a new (unregistered) chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before May 4, 1995.

**ADDRESSES:** Three copies of written comments, bearing the identification notation "OPP-180968," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection

Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308-8417; e-mail: beard.andrea@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of propazine on sorghum to control pigweed. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Sorghum is grown as a rotational crop with cotton and wheat, in order to comply with the soil conservation requirements. Propazine, which was formerly registered for use on sorghum, was voluntarily canceled by the former Registrant, who did not wish to support its re-registration. The Applicant claims that this has left many sorghum growers with no pre-emergent herbicides that will adequately control certain broadleaf weeds, especially pigweed. The Applicant states that other available herbicides have serious limitations on their use, making them unsuitable for control of pigweed in sorghum. The Applicant claims that significant economic losses will occur without the availability of propazine.

Although the original Registrant of propazine has decided not to support this chemical through re-registration, another company has committed to support the data requirements for this use. Propazine was once registered for this use, but has now been voluntarily canceled and is therefore considered to be a new chemical.

The Applicant proposes to apply propazine at a maximum rate of 2.3 lbs. active ingredient (4.6 pt. of product) per acre, by ground or air, to a maximum of 272,000 acres of sorghum, with one application allowed per crop growing season. Therefore, use under this exemption could potentially amount to a maximum total of 625,600 lbs. of active ingredient (156,400 gal. of product). This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for

opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Colorado Department of Agriculture.

**List of Subjects**

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: April 5, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95-9532 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-00405; FRL-4943-5]

**Publication of Addenda for Data Reporting E, K, and N Requirements for Pesticide Assessment Guidelines**

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

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of a new addenda which includes a Data Reporting Guideline (DRG) for those environmental chemistry methods associated with Subdivision E, K, and N. This DRG is not intended to introduce any new data requirements or revisions into the existing guidelines. Its purpose is to further clarify technical aspects of the existing Pesticide Assessment Guidelines and to provide a format for organizing and submitting soil and water methods and their supporting data in order to facilitate their review. EPA recognizes there are sections of the DRG that do not apply to specific soil and water methods; therefore, registrants should exercise scientific judgement in deciding which sections apply to their methods.

**ADDRESSES:** Copies of this addenda to the Guidelines can be obtained from the National Technical Information Services (NTIS) at the following address: NTIS, ATTN: Order Desk, 5285 Port Royal Road, Springfield, VA 22161, Telephone: 703-487-4650.

EPA's written response to Public Comments can be obtained from the pesticide public docket at the following address: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20640. In person or by telephone: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Donald A. Marlow, Chief, Analytical Chemistry Branch (7503W), Biological and Economic Analysis Division, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Station 1, Rm. CS 44J1, 2800 Crystal Drive, Arlington, VA, 703-308-8198.

**SUPPLEMENTARY INFORMATION:** The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires the registration of all pesticides that are manufactured for use in the United States. In order to obtain a registration from EPA, manufacturers must demonstrate that their pesticides do not cause any unreasonable adverse effects to human health and the environment. It is now considered appropriate to provide available soil and water residue methods to EPA because of the increased public concern regarding the contamination of the environment with pesticides. They will validate some of those methods and may assemble them into a new manual in order to make them available to address potential environmental problems. This DRG provides more detailed technical guidance regarding those analytical methods and amends Pesticide Assessment Guidelines E, K, and N referred to earlier.

These methods may be validated in an EPA laboratory to determine if they identify and quantify the pesticide parent compound, toxicologically significant metabolites(s) and degradate(s) at the level indicated. The results from the soil and water method validation program may be used to support regulatory decisions regarding the reliability and validity of the chemistry data sent to the Agency with exposure, environmental fate, and ecological effects studies.

The Data Reporting Guideline (DRG) provides the registrant with a detailed format for submitting soil and water

methods to the Agency. Each method should be complete and meet the technical requirements identified in the DRG. Those methods should be sent to the Agency to support specific exposure, environmental fate, and ecological effects studies during the normal registration and reregistration cycle. Each study for which environmental chemistry methods are needed has been clearly identified below. Soil and water methods should be clearly written and capable of being repeated by chemists in Federal and state laboratories.

The Agency has developed a new Data Reporting Guideline for the Pesticide Assessment Guidelines (E, K, and N) and these requirements impact the studies identified below:

- Subdivision E—Hazard Evaluation
  - Series 71-5—Simulated and Actual Field Testing for Mammals and Birds
  - Series 72-7—Simulated and Actual Field Testing for Aquatic Organisms
- Subdivision K—Reentry Protection
  - Series 132-1—Soil Dislodgeable Residue Dissipation Studies
- Subdivision N—Environmental Fate
  - Series 164-1—Terrestrial Field Dissipation Studies\*
  - Series 164-2—Aquatic Field Dissipation Studies
  - Series 164-3—Forest Field Dissipation Studies
  - Series 164-5—Long Term Soil Dissipation Studies\*
  - Series 165-3—Accumulation Studies in Irrigation Crops
  - Series 166-1—Groundwater Study

\*In practice these studies are considered to be equivalent because they evaluate the persistent nature of pesticide residues in soil.

These addenda supercede the paragraphs in the respective guidelines and the other addenda issued by the Pesticide Program regarding soil and water methods sent to the Agency for the studies identified above.

While these addenda to the Guidelines are not mandatory, data submitters are strongly encouraged to follow the format to assure that reports will be consistent, thereby increasing the efficiency of pesticide registration, reregistration, and other regulatory activities.

The specific citation for this addenda with the NTIS ordering number and price are as follows:

Document Title	NTIS Accession No.	EPA Document No.	Hardcopy Price
Pesticide Assessment Guideline Subdivision E:			

Document Title	NTIS Accession No.	EPA Document No.	Hardcopy Price
Hazard Evaluation Series 71-5	PB83-153908	540/09-82-024	\$19.50
Series 72-7	PB83-153908	540/09-82-024	\$19.50
Addendum No. 2 Data Reporting Guideline for Soil and Water Methods to Support Hazard Evaluation Studies			
<b>Subdivision K:</b> Reentry Protection Series 132-1b	PB85-120962	540/09-84-001	\$19.50
The Data Reporting Guideline for Soil and Water Methods will be attached to the new Reentry Protection Guideline.			
<b>Subdivision N:</b> Environmental Fate Series 164-1	B83-153973	540/09-82-021	\$27.00
Series 164-2	B83-153973	540/09-82-021	\$27.00
Series 164-3	B83-153973	540/09-82-021	\$27.00
Series 164-5	B83-153973	540/09-82-021	\$27.00
Series 165-3	B83-153973	540/09-82-021	\$27.00
Series 166-1—Guidance to be issued by EPA in the near future.			
Addendum No 9. Data Reporting Guideline for Soil and Water Methods to Support Environmental Fate Studies			

Orders may be placed by mail or telephone. All orders should specify whether the document is requested in hardcopy or microfiche form since prices vary for hardcopy but they will cost \$9.00 for microfiche. There is an additional \$4.00 to \$8.00 handling charge for each order, depending on the total cost of the order. Payment may be made by using an existing NTIS deposit account; charging to VISA, Mastercard, American Express or check or money order. The order should cite the document title, NTIS ordering number for the document, kind of document (microfiche or hardcopy), and the price.

#### List of Subjects

Environmental protection.

Dated: April 7, 1995.

#### Allen L. Jennings,

Director, Biological and Economic Analysis Division, Office of Pesticide Programs.

[FR Doc. 95-9535 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-F

#### Office of Pollution Prevention and Toxics

[OPPTS-44616; FRL-4949-7]

#### TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** This notice announces the receipt of test data on 1,3,5-trimethylbenzene (CAS No. 108-67-8), submitted pursuant to a final test rule

under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

#### FOR FURTHER INFORMATION CONTACT:

James Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

#### I. Test Data Submissions

Test data for 1,3,5-trimethylbenzene were submitted by Koch Industries, Inc., pursuant to a test rule at 40 CFR 799.5075. They were received by EPA on February 9, 1995. The submission describes a 14-day oral gavage toxicity study in rats with a recovery group. This chemical is used as an intermediate in the production of an antioxidant for plastics.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

#### II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44616). This record includes copies of all studies reported in this notice. The record is available for inspection from

12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. B-607 Northeast Mall, 401 M Street SW., Washington, DC 20460.

**Authority:** 15 U.S.C. 2603.

#### List of Subjects

Environmental protection, Test data.

Dated: April 10, 1995.

#### Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95-9662 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-U

#### FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 95-35; DA 95-705]

#### Designation of Amateur License Renewal Application for Hearing

AGENCY: Federal Communications Commission.

ACTION: Hearing designation order.

**SUMMARY:** This Order designates the application of George E. Rodgers to renew his amateur radio station license (N3LR) and his Amateur Extra Class operator license for hearing on the basis of a criminal conviction.

**FOR FURTHER INFORMATION:** Thomas D. Fitz-Gibbon, Enforcement Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, D.C. 20554; or telephone (202) 418-0693.

**SUPPLEMENTARY INFORMATION:** 1. This is a summary of the Order adopted March

31, 1995, and released April 12, 1995. The complete text of this Order may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

2. The Order asserted that Mr. George E. Rodgers has applied for renewal of his amateur service station and operator licenses.

3. The Order asserted further that, in *Commonwealth of Pennsylvania v. Rodgers*, Docket No. 2300-93 (Court of Common Pleas, Chester County, Pa.), Mr. Rodgers was convicted upon four counts of violating Section 6301(a) [corruption of minors] of the Pennsylvania Criminal Code and upon four counts of violating Section 3126(a)(1) [indecent assault] of the Pennsylvania Criminal Code.

4. The Order alleged that, in view of the criminal convictions described above, Mr. Rodgers apparently lacks the requisite qualifications for a renewal of his amateur service licenses.

5. The Order designated Mr. Rodger's application for hearing before an Administrative Law Judge and at a time and location to be determined by the order of the Chief Administrative Law Judge upon the following issues:

(a) To determine whether, in light of the facts determined in *Commonwealth of Pennsylvania v. Rodgers, supra*, George E. Rodgers is qualified to renew his amateur service licenses.

(b) To determine, in light of the foregoing issue, whether granting George E. Rodger's application would serve the public interest, convenience and necessity.

6. The Order placed the burden on proceeding with the introduction of evidence and the burden of proof upon the respondent as to all issues.

Federal Communications Commission.

**Howard Davenport,**

Chief, Enforcement Division.

[FR Doc. 95-9633 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-M

## Accounting and Reporting Requirements for Video Dialtone Service

In Reply Refer To: RAO Letter 25, DA 95-703.

Adopted: March 31, 1995.

Released: April 3, 1995.

Responsible Accounting Officer:

Re: Accounting and Reporting Requirements for Video Dialtone Service

### I. Introduction

This letter provides guidance on video dialtone accounting to local

exchange carriers ("LECs") that receive Section 214 authorizations to provide video dialtone service.<sup>1</sup> It sets forth specific guidance on the requirements for accounting classifications, subsidiary records, and amendments to cost allocation manuals ("CAMs") for LECs that provide video dialtone service.<sup>2</sup>

### II. Background

In 1991 and 1992, the Commission adopted policies and rules to permit LECs to assume an expanded role in the provision of video services in their telephone service areas.<sup>3</sup> In its 1991 and 1992 Orders, the Commission established a regulatory framework for telephone companies to provide video service on a common carrier basis and provide various related nonregulated services consistent with the cross-ownership restrictions imposed by the Cable Communications Policy Act of 1984 ("1984 Cable Act").<sup>4</sup> This regulatory framework is called "video dialtone."

On November 7, 1994, the Commission issued the *Video Dialtone Reconsideration Order* ("VDT Recon Order"). In that Order, the Commission reaffirmed its basic video dialtone framework adopted in the *Second Report and Order*, and, among other things, set forth accounting and reporting requirements for LECs that offer video dialtone service. The Commission required carriers offering video dialtone to establish two sets of subsidiary accounting records: one to capture the investment, expense and revenue wholly dedicated to video dialtone; the other to capture the

<sup>1</sup> This includes video dialtone trials and commercial applications.

<sup>2</sup> LECs with annual operating revenues of \$100 million or more are required to file a CAM with the Commission. CAMs contain information regarding the carriers' allocation of costs between regulated and nonregulated activities. See 47 C.F.R. § 64.903.

<sup>3</sup> See Telephone Company-Cable Television Cross-Ownership Rules, Section 63.54-63.58, Further Notice of Proposed Rulemaking, *First Report and Order and Second Further Notice of Inquiry*, 56 FR 65464 (Dec. 17, 1991) (*First Report and Order*), recon., 7 FCC Rcd 5069 (1992), *aff'd*, National Cable Television Association v FCC, No. 91-1649 (D.C. Cir. Aug. 26, 1994) (*NCTA v. FCC*); Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, *Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking*, 57 FR 41106 (Sep. 9, 1992) (*Second Report and Order*), *aff'd*, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 59 FR 63909 (Dec. 12, 1994) ("VDT Recon Order"), appeal pending *sub nom.* Mankato Citizens Telephone Company v. FCC, No. 92-1404 (D.C. Cir. filed September 9, 1992).

<sup>4</sup> Cable Communications Policy Act of 1984, Pub. L. No. 98-549, § 613(b), 98 Stat. 2779 (codified at 47 U.S.C. § 533(b)).

investment, expense and revenue shared between video dialtone and other services.<sup>5</sup> Wholly dedicated refers to investment, expense and revenue related exclusively to providing video dialtone service. Shared refers to investment, expense and revenue related to providing video dialtone and other services on a joint or common basis.<sup>6</sup>

The *VDT Recon Order* requires LECs to file a summary of these subsidiary accounting records with the Commission on a quarterly basis. The Commission delegated authority to the Common Carrier Bureau to define the content and format of both the subsidiary accounting records and the quarterly reports, and to provide accounting guidance where necessary for uniform classification of video dialtone investment, expense and revenue.<sup>7</sup> Finally, the *VDT Recon Order* required LECs to file revisions to their CAMs to reflect the provision of video dialtone service.

### III. Accounting Classification

The Commission did not change its Part 32, Uniform System of Accounts for Telecommunications Companies ("USOA") in the *VDT Recon Order*, but it did require carriers to establish subsidiary accounting records, consistent with that system, in order to isolate video dialtone costs and revenues from other LEC costs and revenues.<sup>8</sup> We therefore require LECs to maintain in subsidiary records, by USOA accounts, all wholly dedicated and shared investment, expense, and revenue related to providing video dialtone service. Finally, consistent with Part 32 of the Commission's rules, Class A companies shall use Class A detail level accounts and Class B companies shall use Class B detail level accounts in recording video dialtone investment, expense and revenue in subsidiary records.<sup>9</sup>

#### A. Investment Classifications

For accounting classification purposes, video dialtone investment shall include all plant wholly dedicated to video dialtone or shared between video dialtone and other services. Wholly dedicated investment is defined

<sup>5</sup> *VDT Recon Order* at para. 173.

<sup>6</sup> By "other services" we mean telephone and other services provided by LECs.

<sup>7</sup> In this Responsible Accounting Officer ("RAO") Letter, we only address the accounting classifications, format and content requirements for LEC subsidiary records and CAM filing requirements. We plan to address the format and content for LEC video dialtone quarterly reports in a separate notice and comment proceeding.

<sup>8</sup> *VDT Recon Order* at para. 173.

<sup>9</sup> 47 C.F.R. § 32.11

as investment that is used exclusively for the provision of video dialtone service. Shared investment is defined as investment that is common to, or used jointly to provide video dialtone and other services. Under the *VDT Recon Order*, LECs must separately track both wholly dedicated and shared video dialtone investment. This requirement covers both new investment purchased for the provision of video dialtone and existing plant converted to video dialtone use. To track net investment, subsidiary records must identify, for each plant account, all accumulated depreciation, amortization and deferred income taxes associated with wholly dedicated and shared video dialtone investment.

In addition, the Commission conditioned LEC authorizations to provide video dialtone service on a requirement that LECs keep subsidiary records to identify, by Part 32 plant account, the cost of plant that is replaced or retired due to either the deployment of video dialtone plant or the deployment of fiber optic network upgrades as mandated under state authority in study areas where VDT deployment occurs.<sup>10</sup>

#### B. Expense Classification

Video dialtone expense shall include all expenses identified with the exclusive or shared provision of video dialtone service. In addition to ongoing expenses incurred in the provision of video dialtone service, these expenses shall include all expenses incurred during the initial development and deployment stages of video dialtone, such as research and development expense and legal services expense.

In order to implement the Commission's requirement that the Common Carrier Bureau ensure that LEC proposed expense allocations and overhead loadings associated with video dialtone tariff filing are reasonable, we will require separate subsidiary records for dedicated and shared video dialtone expenses.<sup>11</sup> Carriers must also separately identify depreciation and amortization expense associated with wholly dedicated and shared video dialtone investment by each Part 32 plant account.

We recognize that some of the expenses that fall into the shared category may be the type of expenses that are tracked by function codes and some may be the type that are not tracked by function codes. Expenses not

tracked by function codes are support functions, such as network support, general support, corporate operations and general administrative. Expenses tracked by function codes shall be identified as video dialtone expense using the tracking mechanism.<sup>12</sup> Expenses not tracked by function codes shall be so identified and shall be classified as shared video dialtone expenses. These expenses will be subject to overhead allocation for the video dialtone tariff filing.

#### IV. Subsidiary Accounting Records

As required by the *VDT Recon Order*, LECs shall create subsidiary accounting records that identify investment and expense wholly dedicated to video dialtone, or shared between video dialtone and other services.<sup>13</sup> Carriers shall ensure that subsidiary accounting record entries are readily identifiable by account title, account number, subaccount identification, and study area. These records shall also include all initial and ongoing transactions that directly impact investment, expense and revenue accounts. In order to enhance our ability to verify LEC compliance with the Commission's established video dialtone accounting and reporting requirements, carriers shall be required to have internal accounting controls and a complete audit trail for each subsidiary account record. Subsidiary accounting records must be reconcilable with total amounts reported in the Part 32 accounts. In addition, LECs shall maintain these records until such time as the Commission decides otherwise. These requirements do not preclude carriers from creating subaccounts, if necessary, to capture data necessary to provide subsidiary record information.

Consistent with the Commission's requirements on accounting

<sup>12</sup> All employees that incur video dialtone costs must employ existing time reporting procedures using some type of function codes. For example, carriers that currently utilize time reporting tracking mechanisms in order to identify regulated and nonregulated activities of support functions, such as legal services, must continue to use similar accounting tracking mechanisms for identifying video dialtone expenses. In addition, expenses incurred or services provided by LEC affiliates for LEC provision of video dialtone service must be identified with unique function codes that indicate video dialtone expense.

<sup>13</sup> In the *VDT Recon Order*, the Commission determined that it was not necessary to make permanent changes to the Commission's USOA for LEC provision of video dialtone. The Commission, however, required that LECs offering video dialtone service create subsidiary records to capture wholly dedicated and shared video dialtone costs. See *VDT Recon Order* at para 173. Under the Commission's rules, subsidiary records categories are defined as " \* \* \* segregations of certain regulated costs, expenses and revenues which must be maintained and are subject to specific reporting requirements of this Commission." See 47 C.F.R. § 32.9000.

classifications and reporting, carriers shall capture all costs incurred for the provision of video dialtone, including the preliminary planning, and research and development expenses incurred prior to the Commission's approval of Section 214 application. Upon receiving Section 214 authorization from the Commission, carriers must establish subsidiary accounting records and report the results of these records to the Commission on a quarterly basis.

Subsidiary accounting records for investment accounts must include, but shall not be limited to, all telephone plant in service accounts, associated accumulated depreciation, deferred taxes and any associated land and support assets which contain costs related to the provision of video dialtone service. Subsidiary accounting records for video dialtone investment accounts must also identify the investment's location and whether that investment is wholly dedicated to video dialtone or shared between video dialtone and other services. LECs shall maintain subsidiary accounting records so that the content of these records can be traced from the continuing property records ("CPRs") through the accounting system to the general ledger and to the equipment's physical location.

Carriers shall use tracking codes that allow video dialtone expense to be extracted and summarized from the Part 32 USOA expense accounts. Carriers may create tracking codes that are compatible with their existing internal accounting systems. Carriers may use either field reporting codes, job function codes, location codes, or any other identification codes that permits such expenses to be audited.

Subsidiary accounting records for expense shall include all plant-specific operations expense, plant-nonspecific operations expense, customer operations expense accounts that contain any costs related to the provision of video dialtone service. Subsidiary accounting records for video dialtone should separately identify revenues from intrastate and interstate tariffs.<sup>14</sup> Carriers shall identify by subsidiary record category any nonregulated video dialtone revenues.

#### V. Cost Allocation Manual Filing Requirements

LECs offering video dialtone service must amend their CAMs to reflect both

<sup>14</sup> Carriers shall record revenues in Part 32 accounts consistent with the category of video dialtone service set forth in a carrier's tariff provisions. See 47 C.F.R. § 32.4999.

<sup>10</sup> See, e.g., Application of New Jersey Bell Telephone Company for Authority pursuant to Section 214 of the Communications Act of 1934, 9 FCC Rcd 3677, 3690 at para. 72 (1994).

<sup>11</sup> *VDT Recon Order* at para. 221.

their regulated and nonregulated video dialtone service as follows:

LECs are required, pursuant to the *VDT Recon Order*, to amend their CAMs prior to providing nonregulated products or services related to video dialtone.<sup>15</sup> We require carriers that receive Section 214 authorizations to provide video dialtone service to implement these requirements by revising Section II (Nonregulated Activities) of their CAMs to include a detailed description of proposed nonregulated video dialtone services that they seek to provide.

CAM revisions must include a statement indicating whether nonregulated video dialtone service is provided through a stand-alone video dialtone system, or a system shared with telephony. Carriers must also establish a new subsection in Section II of their CAMs that identifies all costs incurred in the planning and development of nonregulated activities provided in conjunction with video dialtone service. LECs that currently include enhanced services planning in their CAMs as a nonregulated activity associated with their provision of telephone service, shall be required to amend their CAMs to specifically identify any planning associated with the provision of nonregulated video dialtone service. In addition, LECs shall amend their existing "Nonregulated Services Matrix"—which shows nonregulated products/services and the USOA accounts associated with these nonregulated products/services—to list each individual USOA account affected by the provision of any nonregulated video dialtone activity.

LECs must also amend Section VI (Cost Apportionment Tables) of their CAMs, so that existing cost allocation tables include apportionment procedures for investment and expense used in the provision of regulated and nonregulated video dialtone service. We require LECs to justify and/or amend, if necessary, their existing cost apportionment methodology and allocators for their provision of video dialtone service. LECs that choose not to modify their cost apportionment methodology or allocators for video dialtone, must also explain why their existing methodology or allocation factors are still valid for their regulated, nonregulated and common cost pools. In addition, because the allocation for nonregulated usage of common network plant is determined by a three-year forecast of investment usage, LECs shall revise their forecast usage allocator to reflect accurately the provision of any

nonregulated video dialtone service offered on common network plant. Moreover, carriers that currently do not provide nonregulated services that use common network plant, but "reasonably anticipate" offering such services during the plant's three-year forecast usage period, shall include revised apportionment procedures for the nonregulated usage of network plant in the Section VI, Cost Apportionment Tables.<sup>16</sup>

Finally, we require LECs to amend their CAMs to identify any affiliate transactions related to their provision of video dialtone service. LECs must amend Section V (Affiliate Transactions) of their CAMs by listing all transactions with affiliates that involve video dialtone service. This listing must contain a brief description of the nature, terms and frequency of each transaction. LECs that currently list transactions involving affiliates providing video related services in existing CAMs, must amend such CAMs to indicate which, if any, specific transactions relate to the provision of video dialtone service.

As required by the *VDT Recon Order*, LECs shall file CAM revisions within thirty days after the effective date of their Section 214 authorization and at least sixty days prior to providing nonregulated products or services related to video dialtone.

#### VI. Accounting Consistency/Uniformity Issues

In reviewing various LEC Section 214 applications for video dialtone service, we have found certain inconsistencies in the accounting classification of asynchronous transfer mode ("ATM") equipment. LECs have described ATM equipment as providing the basic connection between the various video servers and various destinations. Some LECs have provisionally classified ATM equipment in Account 2212, Digital electronic switching; other LECs have classified the same type of equipment in Account 2232, Circuit equipment. Based on our analysis of video dialtone ATM equipment and LEC descriptions of the functional purpose of such equipment, we find that, although certain carriers have classified ATM equipment as switches, the equipment does not perform the functions performed by traditional network switches.<sup>17</sup> We find

<sup>16</sup> See American Telephone & Telegraph Company's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 4 FCC Rcd 6930 at para. 6-7 (1989).

<sup>17</sup> The criteria for switch classification are met if equipment performs some, but not necessarily all, of the following basic switching functions: (1) *Attending*—monitors for off-hook signals; (2)

based on the data before us, that ATM video dialtone equipment does not, at this stage of LEC video dialtone deployment, meet established criteria for classification as a switch. Therefore, carriers shall classify ATM equipment as circuit equipment and record it in Account 2232, Circuit equipment. Our decision regarding the accounting classification for video dialtone ATM equipment does not in any way preclude LECs from demonstrating at a future date any functional change that should alter this classification.

Finally, we intend to amend RAO Letter No. 6 shortly to incorporate video dialtone plant investment within our existing itemized list of telecommunications plant in service.<sup>18</sup>

This letter is issued pursuant to authority delegated under § 0.291 of the Commission's Rules, 47 C.F.R. § 0.291. Applications for review under Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, must be filed within 30 days of the date of this letter. See 47 C.F.R. § 1.4(b)(2).

If you have any questions, please contact Kenneth Ackerman or Daniel Gonzalez at (202) 418-0810.

**Kenneth P. Moran,**

*Chief, Accounting and Audits Division,  
Common Carrier Bureau.*

[FR Doc. 95-9574 Filed 4-17-95; 8:45 am]

BILLING CODE 6712-01-M

#### FEDERAL EMERGENCY MANAGEMENT AGENCY

##### Public Information Collection Requirements Submitted to OMB for Review

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

*Control*—determines call destination and assigns call to available line or trunk; (3) *Busy testing*—determines whether the called line/trunk is busy; (4) *Information receiving*—receives control and busy test results; (5) *Information transmitting*—transmits control and busy test results to tell the alerting and interconnection functions whether to complete the call; (6) *Interconnection*—connects subscriber line to subscriber line or subscriber line to trunk; (7) *Alerting*—rings the called subscriber's line or other signalling means if the call is destined for another exchange; (8) *Supervising*—monitors for call termination so the line can be released. See Responsible Accounting Officer Letter 21, 7 FCC Rcd 6075 (1992).

<sup>18</sup> See Revised Responsible Accounting Officer Letter 6, 4 FCC Rcd 1965 (1989).

<sup>15</sup> *VDT Recon Order* at 330, para. 181.

**DATES:** Comments on this information collection must be submitted on or before June 19, 1995.

**ADDRESSES:** Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

**FOR FURTHER INFORMATION CONTACT:** Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2624.  
*Type:* Extension of OMB Control Number 3067-0234.

*Title:* National Fire Academy Resident Evaluation Form.

**Abstract:** The National Fire Academy Resident Course Evaluation Form (FEMA Form 95-20) is used in all on-site resident deliveries of NFA courses. The form is used primarily to assess the effectiveness of the course materials and instructor delivery. The introduction/demographic information is used in developing needs assessments and identifying the student population's representation.

*Type of Respondents:* Individuals.  
*Estimate of Total Annual Reporting and Recordkeeping Burden:* 1,000 hours.  
*Number of Respondents:* 4,000.  
*Estimated Average Burden Time per Response:* 15 minutes.

*Frequency of Response:* One-time. One evaluation form per course completed.

Dated: April 10, 1995.

**Wesley C. Moore,**

*Director, Program Services Division,  
Operations Support Directorate.*

[FR Doc. 95-9661 Filed 4-18-95; 8:45 am]

BILLING CODE 6718-01-M

### Public Information Collection Requirements Submitted to OMB for Review

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**DATES:** Comments on this information collection must be submitted on or before June 19, 1995.

**ADDRESSES:** Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

**FOR FURTHER INFORMATION CONTACT:** Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2624.  
*Type:* Extension of OMB Control Number 3067-0233.

*Title:* National Fire Academy Field Course Evaluation Form.

**Abstract:** The National Fire Academy Field Course Evaluation Form (FEMA Form 95-45) is used in all field deliveries of NFA courses. The form is primarily used to assess the effectiveness of the course materials and instructor delivery. The demographic information is used in developing needs assessments and identifying the student population's representation.

*Type of Respondents:* Individuals.  
*Estimate of Total Annual Reporting and Recordkeeping Burden:* 5,000.  
*Number of Respondents:* 20,000.  
*Estimated Average Burden Time per Response:* 15 minutes.  
*Frequency of Response:* One-time. One evaluation form per course completed.

Dated: April 10, 1995.

**Wesley C. Moore,**

*Director, Program Services Division,  
Operations Support Directorate.*

[FR Doc. 95-9660 Filed 4-18-95; 8:45 am]

BILLING CODE 6718-01-M

### FEDERAL MARITIME COMMISSION

#### Automated Tariff Filing and Information System Firms Certified for Batch Filing Capability of at Least One Type of Tariff as of April 12, 1995; Notice

Calcutta, East Coast of India and Bangladesh/U.S.A. Conference, Metuchen, New Jersey  
Dart Maritime Service, Bethlehem, Pennsylvania

Distribution Publications, Inc. ("DPI"), Oakland, California  
D.X.I., Inc., Pittsburgh, Pennsylvania  
Effective Tariff Management Corporation ("ETM"), Bowie, Maryland  
Expeditors International ("EI"), Seattle, Washington  
Flexible Business Systems, Inc., Miami, Florida  
Glenserve Company, Glendora, New Jersey  
Insight Consulting Group, Saddle Brook, NJ  
Japan-Atlantic and Gulf Freight Conference, Tokyo, Japan  
Japan-Puerto Rico & Virgin Island Freight Conference, Tokyo, Japan  
King Ocean Central America, S.A. ("KOCA"), Gundo Alt, Panama  
King Ocean Service de Venezuela, S.A. ("KOSDV"), Chuao, Caracas  
Logistical Concepts Ltd. ("LCL"), Drexel Hill, Pennsylvania  
Maersk Inc., San Francisco, California  
Maritime Management International, Inc., Miami, Florida  
Matson Navigation Company, Inc., San Francisco, California  
Matson Terminals, Inc., San Francisco, California  
Miller Traffic Service, Inc., Maywood, California  
Nippon Yusen Kaisha ("NYK"), San Francisco, California  
NVO Tariff Services, Fremont, California  
NX Corp., Columbia, Maryland  
Ocean Tariff Bureau, Long Beach, California  
Pacific Coast Tariff Bureau ("PCTB"), San Francisco, California  
Paramount Tariff Services, Ltd. ("PTS"), Torrance, California  
Rijnhaave Information Services, Inc., and World Tariff Services, Inc. ("WTS"), Union, New Jersey  
Simple Transportation Solutions International, Titusville, Florida  
Star Shipping A/S, San Francisco, California  
Sumner Tariff Services, Inc., Washington, D.C.  
Tariff Data Services, Houston, Texas  
Transamericas T.I.S., Inc., Falls Church, Virginia  
Transax Systems, Bridgewater, New Jersey  
Trans-Pacific Freight Conference of Japan, Tokyo, Japan  
Transportation Services, Inc. ("TSI"), Fort Lauderdale, Florida  
U.S. Traffic Service, Torrance, California  
Wallenius Lines AB, Woodcliff Lake, New Jersey  
Wallenius Lines North America, Inc., Woodcliff Lake, New Jersey  
Zim Container Service, Inc., New York, New York

**Note:** In the certification process, some certificants used software developed by other firms and may not be holding themselves out to file tariffs for the public, generally.

**Joseph T. Farrell,**

*Acting Secretary.*

[FR Doc. 95-9548 Filed 4-18-95; 8:45 am]

BILLING CODE 67301-01-M

## FEDERAL RESERVE SYSTEM

### Community Capital Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 12, 1995.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Community Capital Corporation*, Greenwood, South Carolina; to acquire 100 percent of the voting shares of *Clemson Bank & Trust*, Clemson, South Carolina (in organization).

**B. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *First Grayson Bancshares, Inc., Employee Stock Ownership Plan*, Whitesboro, Texas; to become bank holding company by acquiring 15.82 percent of the voting shares of *First Grayson Bancshares, Inc.*, Whitesboro, Texas, and thereby indirectly acquire

*Security Bank of Whitesboro*, Whitesboro, Texas.

2. *Metroplex North Bancshares, Inc., Employee Stock Ownership Plan*, Whitesboro, Texas; to become a bank holding company by acquiring 17.87 percent of the voting shares of *Metroplex North Bancshares, Inc.*, Whitesboro, Texas, and thereby indirectly acquire *The First Bank of Celeste*, Celeste, Texas.

Board of Governors of the Federal Reserve System, April 13, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95-9634 Filed 4-18-95; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Clinical Laboratory Improvement Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

*Name:* Clinical Laboratory Improvement Advisory Committee.

*Times and Dates:* 8:30 a.m.-4:30 p.m., May 10, 1995; 8 a.m.-3:30 p.m., May 11, 1995.

*Place:* CDC, Auditorium A, Building 2, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

*Matters To Be Discussed:* The agenda will include an update from CDC on the implementation of the Clinical Laboratory Improvement Amendments, including the current process for reviewing tests for waived status, a discussion of the ongoing review of the regulatory burden and benefits of laboratory personnel requirements, and quality control standards.

Agenda items are subject to change as priorities dictate.

*Contact Person for Additional Information:* John C. Ridderhof, Dr.P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway,

NE., Mailstop G-25, Atlanta, Georgia 30341-3724, telephone 404/488-7660.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95-9618 Filed 4-18-95; 8:45 am]

BILLING CODE 4163-18-M

### National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Medical Classification Systems: Meeting

Pursuant to Pub. L. 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

*Name:* NCVHS Subcommittee on Medical Classification Systems.

*Time and Date:* 9 a.m.-5 p.m., May 16, 1995.

*Place:* Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

*Status:* Open.

*Purpose:* The subcommittee will discuss: the procedure classification systems for managed care; replacement for the International Classification of Diseases-9-Clinical Modification, Volume III, revision of Physicians' Current Procedural Terminology 4; and discuss the subcommittee's work plan.

*Contact Person for More Information:* Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050.

Dated: April 13, 1995.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95-9619 Filed 4-18-95; 8:45 am]

BILLING CODE 4163-18-M

## Food and Drug Administration

[Docket No. 94N-0299]

### Plasmalab Donor Centers, Inc.; Revocation of U.S. License No. 1072-001

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 1072-001) and the product license issued to *Plasmalab Donor Centers, Inc.*, doing business as *Douglas Plasmalab*, for the manufacture

of Source Plasma. This revocation notice affects only the Douglas Plasmalab, Douglas, AZ, facility and has no bearing on other establishment and product licenses issued to Plasmalab Donor Centers, Inc. In a letter to FDA dated March 28, 1994, the firm requested that the establishment and product licenses issued to its Douglas Plasmalab, Douglas, AZ, facility be revoked and thereby waived its opportunity for a hearing on the matter.

**DATES:** The revocation of the establishment license (U.S. License No. 1072-001) and product license became effective June 8, 1994.

**FOR FURTHER INFORMATION CONTACT:** Timothy W. Beth, Center for Biologics Evaluation and Research (HFM-635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-3074.

**SUPPLEMENTARY INFORMATION:** FDA has revoked the establishment license (U.S. License No. 1072-001) and the product license for the manufacture of Source Plasma issued to Plasmalab Donor Centers, Inc., doing business as Douglas Plasmalab at 11 J Ave., Douglas, AZ 85607.

FDA inspected Douglas Plasmalab at 11 J Ave., Douglas, AZ, from February 10, 1994, through March 9, 1994, following the report by the establishment of an error from the reinfusion of the wrong red blood cells to a donor undergoing plasmapheresis. The inspection revealed serious deviations from Federal regulations. FDA has determined that these deviations constitute a danger to health. These deficiencies included, but were not limited to, the following: (1) Failure to follow procedures designed to prevent the infusion of one donor's red blood cells into another donor (21 CFR 640.65(b)(3)); (2) failure to follow procedures designed to prevent contamination of red blood cells for reinfusion (21 CFR 640.64(e)); (3) failure to limit the frequency of Source Plasma donation to two times within a 7-day period (21 CFR 640.65(b)(5)); (4) failure to maintain accurate and concurrent records to document the performance of each significant step in the collection, processing, and storage of each unit of blood and blood components (21 CFR 606.160); and (5) failure to maintain adequate and complete standard operating procedures that are available to personnel in the areas where the procedures are performed for all steps in the collection, processing, storage, and distribution of Source Plasma (21 CFR 606.100(b)). The inspection indicated serious noncompliance with the donor protection standards which are intended

to assure a continuous and healthy donor population, as well as with standards designed to assure the continued safety, purity, potency, and quality of products manufactured.

In addition to the inspection, the agency conducted a concurrent investigation that involved interviews with individuals knowledgeable of the daily operations of Douglas Plasmalab. This investigation revealed that deviations routinely occurred in important areas of the plasmapheresis operation. These deviations included, but were not limited to, the following: Maintenance of inaccurate red blood cell reinfusion records, forced and unfiltered reinfusion of whole blood into donors whose donation of blood exceeded the legally allowable limit, and reinfusion of red blood cells which may have been contaminated through a break in the closed sterile system of collection.

FDA concluded that the serious nature of the deficiencies noted during the inspection and concurrent investigation at Douglas Plasmalab was a direct consequence of the establishment's disregard for the applicable regulations and standards in the license applications and constitutes a danger to public health warranting suspension pursuant to 21 CFR 601.6(a). In a letter to the firm dated March 17, 1994, FDA suspended and confirmed telephone notice of the suspension of the establishment license (U.S. License No. 1072-001) and the product license for Source Plasma. In a letter to FDA dated March 28, 1994, Plasmalab Donor Centers, Inc., voluntarily requested that its Douglas Plasmalab licenses be revoked and thereby waived its opportunity for a hearing. The agency granted the request by letter to the firm dated, June 8, 1994, which revoked the establishment license (U.S. License No. 1072-001) and the product license for the manufacture of Source Plasma.

FDA has placed copies of the letters relevant to the license revocation on file under the docket number found in brackets in the heading of this document with the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under 21 CFR 601.5, section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21

CFR 5.68) the establishment license (U.S. License No. 1072-001) and the product license for the manufacture of Source Plasma issued to Plasmalab Donor Centers, Inc., Douglas, AZ, were revoked, effective June 8, 1994.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: April 8, 1995.

**Kathryn C. Zoon,**

*Director, Center for Biologics Evaluation and Research.*

[FR Doc. 95-9578 Filed 4-18-95; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 94N-0298]

**Putnam County Blood Bank, Inc.;  
Revocation of U.S. License No. 1121**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 1121) and the product licenses issued to Putnam County Blood Bank, Inc., (PCBB) for the manufacture of Whole Blood, Red Blood Cells, Platelets, and Plasma. In a letter to FDA dated April 29, 1994, the firm requested that its establishment and product licenses be revoked and thereby waived its opportunity for a hearing on the matter.

**DATES:** The revocation of the establishment license (U.S. License No. 1121) and product licenses became effective June 3, 1994.

**FOR FURTHER INFORMATION CONTACT:** Timothy W. Beth, Center for Biologics Evaluation and Research (HFM-635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-3074.

**SUPPLEMENTARY INFORMATION:** FDA conducted an inspection of PCBB, 2919 Kennedy St., Palatka, FL 32077, from September 1, 1992, through October 6, 1992. The inspection revealed serious deviations from Federal regulations. FDA determined these deviations to constitute a danger to public health. These deficiencies included, but were not limited to, the following: (1) Failure to establish scientifically sound and appropriate specifications, standards, and test procedures to assure that blood and blood components are safe, pure, potent, and effective (21 CFR 606.140(a) and 610.45(c)), and (2) failure to institute systems capable of precluding release of unsuitable blood and blood components (21 CFR 640.3(b) and (c) and 606.160(b)(1)(ii) and (e)).

Because of these serious deviations, FDA concluded that the management at PCBB did not adequately demonstrate the ability to operate the establishment in a manner that assured compliance with Federal regulations or accepted standard operating procedures, or to ensure that personnel were adequately trained and supervised and had a thorough understanding of the procedures that they performed as required by 21 CFR 600.10(a) and (b) and 606.20(a) and (b). These conditions at PCBB were considered to constitute a danger to public health warranting license suspension pursuant to 21 CFR 601.5(b) and 601.6(a). FDA accordingly suspended the firm's licenses by letter dated November 6, 1992.

In addition to the suspension of establishment and product licenses, and in order to preclude the distribution of violative units, and to address those questionable units already in distribution channels, FDA requested that PCBB immediately and concurrently perform the following: (1) Review test records for antibody to the human immunodeficiency virus (Type I), and then identify and defer all donors who may have been misinterpreted as suitable due to improper donor reentry procedures; (2) develop and implement a plan to identify and defer all donors who, during the medical history interview, have provided information which may deem such donors as ineligible, and (3) identify and recall all units collected from such donors, and notify all consignees of transfusable and nontransfusible blood and blood components of the test/medical history of the units. In a letter to the firm dated March 9, 1994, FDA concluded that the recall was complete.

In a letter to FDA dated April 29, 1994, PCBB voluntarily requested that its licenses be revoked and thereby waived its opportunity for a hearing. The agency granted the request in a letter dated June 3, 1994, which revoked the establishment and product licenses.

FDA has placed copies of the letters relevant to the license revocation on file under the docket number found in brackets in the heading of this document with the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under 21 CFR 601.5, section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and

redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 1121) and the product licenses for the manufacture of Whole Blood, Red Blood Cells, Platelets, and Plasma issued to Putnam County Blood Bank, Inc., Palatka, FL, were revoked, effective June 3, 1994.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: April 11, 1995.

**Kathryn C. Zoon,**

*Director, Center for Biologics Evaluation and Research.*

[FR Doc. 95-9577 Filed 4-18-95; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 95N-0090]

**Dietary Supplements: Notice of Withdrawal of Regulatory Guidance**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that it has withdrawn a number of import alerts, import bulletins, and compliance policy guides involving dietary supplements. FDA has taken these actions to conform its regulatory guidance to the changes made to the Federal Food, Drug, and Cosmetic Act (the act) by the Dietary Supplement Health and Education Act (DSHEA).

**FOR FURTHER INFORMATION CONTACT:** Loretta A. Branch Carey, Center for Food Safety and Applied Nutrition (HFS-456), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-205-5372.

**SUPPLEMENTARY INFORMATION:** On October 25, 1994, the President signed into law the DSHEA (Pub. L. 103-417). Among the most significant changes in the act made by the DSHEA is the addition of section 201(s)(6) (21 U.S.C. 321(s)(6)), which exempts dietary ingredients of dietary supplements from coverage under the food additive provisions of the act (section 3(b) of the DSHEA). As a result of this change, such ingredients are no longer subject to a premarket safety review.

In response to this change, FDA has reviewed the regulatory guidance that it issues to its field offices to conform that guidance to the change. As a result of this review, FDA has found that it is appropriate to withdraw the following import alerts, import bulletins, and compliance policy guides because they are no longer consistent with the act.

**A. Compliance Policy Guides**

1. CPG 7117.04, entitled "Botanical Products for use as Food"
2. CPG 7118.01, entitled "Dietary Supplements-Misbranding Nutritionally Insignificant Ingredients"

**B. Import Alerts**

1. 24-14 Products containing Bracken
2. 26-02 Flaxseed/Linseed Oil
3. 54-03 Carnitine
4. 54-05 Ultra Bios 2000 Food Supplement
5. 66-02 Ginseng
6. 66-04 Oil of Evening Primrose

**C. Import Bulletins**

1. 31-B01 Selfheal Flower, *Prunella Vulgaris*
2. 54-B06 Tricosanthis
3. 66-B62 Ephedra

The Agency continues to review and revise the remaining related import alerts, bulletins, and compliance policy guides, in order to comply with DSHEA.

FDA notes that it does not usually give notice in the **Federal Register** of its issuance or withdrawal of import alerts or bulletins. It is doing so in this instance, however, because of the ongoing congressional interest in FDA's implementation of the DSHEA. FDA advises that issuing this notice does not mark any type of change in the agency's usual procedures for issuing or withdrawing these alerts or bulletins.

In response to the DSHEA, FDA has also reassessed its general enforcement priorities with respect to dietary supplements. FDA advises that in enforcing the act with respect to these products, its primary focus is likely to be, as it always has been, on safety concerns. The agency advises, however, that its regulatory priorities are subject to adjustment in response to changing circumstances. For example, the labeling of dietary supplements will likely be given a higher priority by the agency after December 31, 1996, when compliance with FDA's nutrition labeling and nutrient content claim regulations for dietary supplements is to begin.

Dated: April 13, 1995.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 95-9702 Filed 4-18-95; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 84N-0102]

**Cumulative List of Orphan-Drug and Biological Designations**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a cumulative list of designated orphan drugs and biologics as of December 31, 1994. FDA has announced the availability of previous lists, which are brought up to date monthly, identifying the drugs and biologics granted orphan-drug designation pursuant to the Federal Food, Drug, and Cosmetic Act (the act).

**ADDRESSES:** Copies of the list of current orphan-drug designations and of any future lists are or will be available from the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and the Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4718.

**FOR FURTHER INFORMATION CONTACT:** Peter L. Vaccari, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4718.

**SUPPLEMENTARY INFORMATION:** FDA's Office of Orphan Products Development (OPD) reviews and acts on applications submitted by sponsors seeking orphan-drug designation under section 526 of the act (21 U.S.C. 360bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a list of designated orphan drugs and biologics. This list is made current on a monthly basis and is available upon request from OPD (contact identified above). At the end of each calendar year, the agency publishes an up-to-date cumulative list of designated orphan drugs and biologics, including the names of designated compounds, the specific disease or condition for which the compounds are designated, and the sponsors' names and addresses. The cumulative list of compounds receiving orphan-drug designation through 1988 was published in the **Federal Register** of April 21, 1989 (54 FR 16294). This list is available on request from FDA's Dockets Management Branch (address above). Those requesting a copy should specify Docket No. 84N-0102, which is the docket number for this notice.

The list that is the subject of this notice consists of designated orphan drugs and biologics through December 31, 1994, and, therefore, brings the May 9, 1994 (59 FR 23888) publication up to date.

The orphan-drug designation of a drug or biologic applies only to the sponsor who requested the designation. Each sponsor interested in developing

an orphan drug or biologic must apply for orphan-drug designation in order to obtain exclusive marketing rights. Any request for designation must be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested. (See 53 FR 47577, November 23, 1988.) Copies of the regulations (see 57 FR 62076, December 29, 1992) for use in preparing an application for orphan-drug designation may be obtained from OPD (address above).

The names used in the cumulative list for the drug and biological products that have not been approved or licensed for marketing may not be the established or proper names approved by FDA for those products if they are eventually approved or licensed for marketing. Because these products are investigational, some may not have been reviewed for purposes of assigning the most appropriate established proper name.

Dated: April 13, 1995.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 95-9700 Filed 4-18-95; 8:45 am]

BILLING CODE 4160-01-F

## Health Resources and Services Administration

### Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committees have been filed with the Library of Congress:

Departments of Family Medicine Review Committee

Faculty Development Review Committee

Graduate Training in Family Medicine

Review Committee

Predoctoral Training Review Committee

Residency Training Review Committee

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, D.C. Copies may be obtained from: Ms. Sherry Whipple, Executive Secretary, Room 9A-27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6874.

Dated: April 14, 1995.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 95-9699 Filed 4-18-95; 8:45 am]

BILLING CODE 4160-15-P

## National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the National Institute of Neurological Disorders and Stroke (NINDS).

The National Advisory Neurological Disorders and Stroke Council and its subcommittee meetings will be open to the public as indicated below. Attendance by the public will be limited to space available.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed for the meeting.

*Name of Committee:* The Planning Subcommittee of the National Advisory Neurological Disorders and Stroke Council.

*Date:* May 31, 1995.

*Place:* National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* 1:30 p.m.-3 p.m.

*Agenda:* To discuss program planning and fiscal matters.

*Closed:* 3 p.m.-recess.

*Name of Committee:* National Advisory Neurological Disorders and Stroke Council.

*Dates:* June 1-2, 1995.

*Place:* National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* June 1, 9 a.m.-2 p.m.

*Agenda:* A report by the Director, NINDS; a report by the Director, Division of Extramural Activities, NINDS; and a presentation by an NINDS grantee.

*Closed:* June 1, 2 p.m.-recess; June 2, 8:30 a.m.-adjournment.

*Executive Secretary:* Constance W. Atwell, Ph.D., Director, Division of Extramural Activities, NINDS, National Institutes of

Health, Bethesda, MD 20892, Telephone: (301) 496-9248.

The following meetings will be totally closed to review and evaluate grant applications.

*Name of Committee:* Neurological Disorders Program Project Review A Committee.

*Date:* June 5-7, 1995.

*Time:* June 5, 7:30 p.m.-recess; June 6, 8:30 a.m.-recess; June 7, 8:30 a.m.-adjournment.

*Place:* Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Dr. Katherine Woodbury, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C14, Bethesda, MD 20892, (301) 496-9223.

*Name of Committee:* Training Grant and Career Development Review Committee.

*Date:* June 15-16, 1995.

*Time:* June 15, 7:30 p.m.-recess; June 16, 8 a.m.-adjournment.

*Place:* Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20892.

*Contact Person:* Dr. Alfred Gordon, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C14, Bethesda, MD 20892, (301) 496-9223.

*Name of Committee:* Neurological Disorders Program Project Review B Committee.

*Date:* June 26-28, 1995.

*Time:* June 26, 8 a.m.-recess; June 27, 8 a.m.-recess; June 28, 8 a.m.-adjournment.

*Place:* Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Dr. Paul Sheehy, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C10, Bethesda, MD 20892, (301) 496-9223.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences).

*Dated:* April 11, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95-9607 Filed 4-18-95; 8:45 am]

**BILLING CODE 4140-01-M**

**National Institute on Deafness and Other Communication Disorders; Notice of a Meeting of the Epidemiology and Biometry Research Program Working Group of the National Deafness and Other Communication Disorders (NDCD) Advisory Council**

Notice is hereby given of the meeting of the Epidemiology and Biometry Research Program Working Group of the NDCD Advisory Council on April 27, 1995. The meeting will take place from 11 a.m. to 4 p.m. in Conference Room 3C05, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting, which is open to the public, will be held to discuss concept

clearance of several scientific projects in the hearing and other communication disorders areas. Attendance by the public is limited to the space available.

Summaries of the meeting and a roster of members may be obtained from Ms. Debbie D'Angelo, Program Analyst, National Institute on Deafness and Other Communication Disorders, Executive Plaza South, Room 430, 6120 Executive Blvd., Bethesda, Maryland 20892, 301-402-1843, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. D'Angelo in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

*Dated:* April 12, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95-9608 Filed 4-18-95; 8:45 am]

**BILLING CODE 4140-01-M**

**National Cancer Institute; Notice of Meetings**

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the National Cancer Institute for May and June 1995.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice and for the review of concepts being considered for funding. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, for the review and discussion of previous site visit reports and evaluation of current contracts and for the critique and evaluation of extramural/intramural programmatic and personnel policies, including consideration of personnel qualifications and performance and the competence of individual investigators. These contracts and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the programs, projects, and contracts, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room

630E, 6130 Executive Blvd MSC 7405, Bethesda, Maryland 20892-7405, (301-496-5708) will provide a summary of the meetings and the roster of committee members, upon request. Other information pertaining to the meetings may be obtained from the contact person indicated below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed for that particular meeting.

*Committee Name:* Board of Scientific Counselors, Division of Cancer Prevention and Control.

*Contact Person:* Ms. Linda M. Bremerman, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Rm 232, 6130 Executive Blvd., Rockville, MD 20892-7094, Telephone: (301) 496-8526.

*Date of Meeting:* May 4-5, 1995.

*Place of Meeting:* Building 31, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* May 4, 1995 10:45 am to 5 pm May 5, 1995 8:30 am to 11:30 am.

*Agenda:* Review progress of programs within the Division and review of concepts being considered for funding.

*Closed:* May 5, 1995 11:30 am to adjournment.

*Agenda:* Extramural/Intramural programmatic and personnel policies of a sensitive nature and consideration of personnel qualifications and performance and the competence of individual investigators.

*Committee Name:* Cancer Control Science and Surveillance Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control.

*Contact Person:* Ms. Linda M. Bremerman, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Rm 232, 6130 Executive Blvd., Rockville, MD 20892-7994, Telephone: (301) 496-8526.

*Date of Meeting:* May 4, 1995.

*Place of Meeting:* Building 31, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* 8:30 a.m. to 10:30 a.m.

*Agenda:* Discuss current and future programs of the subcommittee and review of concepts being considered for funding.

*Committee Name:* Cancer Prevention Research Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control.

*Contact Person:* Ms. Linda M. Bremerman, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Rm 232, 5130 Executive Blvd., Rockville, MD 20892-7094, Telephone: (301) 496-8526.

*Date of Meeting:* May 4, 1995.

*Place of Meeting:* Building 31, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* 8:30 a.m. to 10:30 a.m.

*Agenda:* Discuss current and future programs of the subcommittee and review of concepts being considered for funding.

*Committee Name:* Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers.

*Contact Person:* Dr. Ihor J. Masnyk, Executive Secretary, National Cancer Institute, NIH, Bldg 31A, Room 3A11, 9000 Rockville Pike, Bethesda, MD 20892, Telephone: (301) 496-3251.

*Date of Meeting:* June 13, 1995.

*Place of Meeting:* Building 31, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* 1 p.m. to adjournment.

*Agenda:* Program review and concept review of proposed research projects.

*Committee Name:* Board of Scientific Counselors, Division of Cancer Etiology.

*Contact Person:* Dr. Jerry M. Rice, Acting Executive Secretary, National Cancer Institute, NIH, Bldg 31A, Room 11A03, 9000 Rockville Pike, Bethesda, MD 20892, Telephone: (301) 496-6618.

*Date of Meeting:* June 15-16, 1995.

*Place of Meeting:* Building 31, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* June 15, 1995 9 a.m. to recess.

*Agenda:* Discussion and review of the Division budget and review of concepts for grants and contracts.

*Closed:* June 16, 1995 9 a.m. to adjournment.

*Agenda:* Review, discussion and evaluation of individual programs and projects.

*Committee Name:* Frederick Cancer Research and Development Center Advisory Committee.

*Contact Person:* Dr. Cedric W. Long, Executive Secretary, National Cancer Institute, NIH, FCRDC, P.O. Box B, Frederick, MD 21702-1201, Telephone: (301) 846-1108.

*Date of Meeting:* June 26-27, 1995.

*Place of Meeting:* Executive Board Room, Building 549, NCI Frederick Cancer Research and Development Center, Frederick, MD 21702.

*Open:* June 16, 1995 8:30 a.m. to approximately 11 a.m.

*Agenda:* To discuss administrative matters such as future meetings, budget, and information items related to the operation of the NCI Frederick Cancer Research and Development Center.

*Closed:* June 26, 1995 11 a.m. to recess—June 27, 1995 8 a.m. to adjournment.

*Agenda:* Discussion of the previous site visit report and response for the Laboratory of Molecular Virology and Carcinogenesis and site visit review of the AIDS Vaccine Program and AIDS projects being conducted by the laboratory of Cell and Molecular Structure.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: April 13, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95-9609 Filed 4-18-95; 8:45 am]

BILLING CODE 4140-01-M

### Division of Research Grants; 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 Division of Research Grants Special Emphasis Panel (SEP) meetings:

#### Purpose/Agenda:

To review individual grant applications.  
*Name of SEP:* Behavioral and Neurosciences.

*Date:* May 5, 1995.

*Time:* 2 p.m.

*Place:* NIH, Westwood Building, Room 325C Telephone Conference.

*Contact Person:* Dr. Leonard Jakubczak, Scientific Review Admin., 5333 Westbard Ave., Room 325C, Bethesda, MD 20892, (301) 594-7198.

*Name of SEP:* Behavioral and Neurosciences.

*Date:* May 8, 1995.

*Time:* 2 p.m.

*Place:* NIH, Westwood Building, Room 325C Telephone Conference.

*Contact Person:* Dr. Leonard Jakubczak, Scientific Review Admin., 5333 Westbard Ave., Room 325C, Bethesda, MD 20892, (301) 594-7198.

*Name of SEP:* Multidisciplinary Sciences.

*Date:* May 31, 1995.

*Time:* 1 p.m.

*Place:* NIH, Rockledge II, Room 5114, Telephone Conference.

*Contact Person:* Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5114, Bethesda, MD 20892, (301) 594-7276.

*Name of SEP:* Clinical Sciences.

*Date:* June 5, 1995.

*Time:* 8:30 a.m.

*Place:* ANA Hotel, Washington, DC.

*Contact Person:* Dr. Mushtaq Khan, Scientific Review Admin., 6701 Rockledge Drive, Room 4045, Bethesda, MD 20892, (301) 594-7168.

*Name of SEP:* Multidisciplinary Sciences.

*Date:* June 7-9, 1995.

*Time:* 8:30 p.m.

*Place:* Parc 55 Hotel, San Francisco, CA.

*Contact Person:* Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 594-7376.

*Name of SEP:* Chemistry and Related Sciences.

*Date:* June 29-30, 1995.

*Time:* 8:30 a.m.

*Place:* ANA Westin Hotel, Washington, DC.

*Contact Person:* Dr. Paul Strudler, Scientific Review Administrator, 6701 Rockledge Drive, Room 4144, Bethesda, MD 20892, (301) 594-7152.

The meetings will be closed in accordance with the provisions 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.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 13, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95-9610 Filed 4-18-95; 8:45 am]

BILLING CODE 4140-01-M

### National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, May 25-26, 1995, to be held at the National Institutes of Health, Building 31, Conference Room 6, Bethesda, Maryland. This meeting will be open to the public on Thursday, May 25, from 8:30 a.m. to 3:30 p.m. for the NIA 20th Anniversary Symposium; and on Friday, May 26, from 8:00 to 10:00 a.m. for a status report by the Director, NIA; a report on the Working Group on Program; and a discussion of the Minority Dissertation Award Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on Friday, May 26 from 10:00 a.m. to adjournment for the review, discussion and evaluation of grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496-9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496-9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: April 11, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95-9611 Filed 4-18-95; 8:45 am]

BILLING CODE 4140-01-M

### Meetings of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee on May 17-19, 1995, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting of the full Council will be held in Conference Room 6, Building 31C, and the meeting of the subcommittee will be in Conference Room 7, Building 31C.

The meeting of the Planning Subcommittee will be open to the public on May 17 from 2:30 pm until 3:30 pm for the discussion of policy issues. The meeting of the full Council will be open to the public on May 18 from 8:30 am until recess for a report from the Institute Director and discussion of extramural policies and procedures at the National Institutes of Health and the National Institute on Deafness and Other Communication Disorders and on May 19 from 8:30 am to approximately 9:30 am for a report on extramural programs of the Division of Human Communication. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Planning Subcommittee on May 17 will be closed to the public from 3:30 pm to adjournment. The meeting of the full Council will be closed to the public on May 19 from approximately 9:30 am

until adjournment. The closed portions of the meetings will be for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meetings may be obtained from Dr. Earleen F. Elkins, Executive Secretary, National Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400C, 6120 Executive Blvd., MS7180, Bethesda, Maryland 20892, 301-496-8693. A summary of the meetings and rosters of the members may also be obtained from her office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Elkins at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: April 11, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95-9612 Filed 4-18-95; 8:45 am]

BILLING CODE 4140-01-M

### Substance Abuse and Mental Health Services Administration

#### Supplemental Awards to Current Grantees in the CSAP Substance Abuse Prevention Demonstration Grant Program for High Risk Populations: Module B: Female Adolescents

**AGENCY:** Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

**ACTION:** Availability of supplemental funds for currently funded grantees in CSAP's Substance Abuse Prevention Demonstration Grant Program for high risk populations: Module B: Female Adolescents.

**SUMMARY:** This notice informs the public that CSAP is making available approximately \$600,000 in FY 1995 for up to 13 supplemental awards to existing grantees funded under its

Substance Abuse Prevention Demonstration Grant Program for High Risk Populations Program: Module B: Female Adolescents (hereafter referred to as Female Adolescent demonstration grantees). Limiting the use of these supplemental funds to currently funded Female Adolescent demonstration grantees permits more efficient use of available funds by making use of existing grant infrastructures and intervening with active clients in ongoing Female Adolescent projects.

This supplemental funding is designed to support the development of gender-specific training and media literacy activities and their integration into ongoing grant efforts to prevent alcohol, tobacco and other drug (ATOD) use among high risk female adolescent clients.

Female Adolescent grantees are encouraged to apply for these funds. Funds will support initiatives that expand upon existing efforts or add new or different program activities selected from these two areas. Specifically, the supplemental funds are available to supplement up to 13 Female Adolescent grants to design, implement, and evaluate effective, gender-specific training and media literacy activities that will strengthen and enhance currently funded Female Adolescent ATOD prevention projects.

All Female Adolescent demonstration grantees, funded as of September 30, 1994 and in year one of a five-year grant award, are invited to apply for supplemental funds. Awards will be limited to one year and can not exceed a total (direct plus indirect costs) of \$50,000. The receipt date for applications is June 20, 1995.

The application receipt, review, and award process will be handled in an expedited manner. Applications will be reviewed for merit by a panel of expert Federal reviewers and supplements will be awarded on the basis of merit and availability of funds no later than September 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Ulonda B. Shamwell, M.S.W., Chief, Perinatal Addiction Prevention Branch, Division of Demonstrations for High Risk Populations, CSAP, Rockwall II-Room 9B-03, 5600 Fishers Lane, Rockville, MD 20857. Telephone (301) 443-4564.

**Authority:** Awards will be made under the authority of section 517 of the Public Health Service Act, as amended.

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.144.

Dated: April 12, 1995.

**Richard Kopanda,**

*Acting Executive Officer, SAMHSA.*

[FR Doc. 95-9626 Filed 4-18-95; 8:45 am]

BILLING CODE 4162-20-P

**Center for Substance Abuse Prevention; Notice of Meeting**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in May 1995.

The Council meeting will include a discussion of administrative matters, announcements, SAMHSA and CSAP National Advisory Council subcommittee reports, and reports on the SAMHSA Strategic Plan Field Meetings.

A summary of this meeting and a roster of committee members may be obtained from: Ms. Vera Hunter, Acting Committee Management Officer, CSAP, Rockwall II Building, Suite 7A-140, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443-9540.

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

*Committee Name:* Center for Substance Abuse Prevention National Advisory Council.

*Meeting Date(s):* May 25-26, 1995.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

*Open:* May 25, 1995—8:30 a.m.—Adjournment; May 26, 1995—8:00 a.m.—Adjournment.

*Contact:* Yuth Nimit, Ph.D., Rockwall II Building, Suite 7A-140; Telephone (301) 443-9540.

Dated: April 14, 1995.

**Jeri Lipov,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 95-9698 Filed 4-18-95; 8:45 am]

BILLING CODE 4162-20-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[CO-076-1220-00]

**Recreation Management; Visitor Use Restrictions for Ruby Canyon; Colorado**

**AGENCY:** Bureau of Land Management, Department of Interior.

**ACTION:** Notice of supplementary visitor use restrictions.

**SUMMARY:** This order, issued under the authority of 43 CFR 8364.1(d), prohibits any campfire except when contained in stoves, grills, or firepans, and it requires visitors to pack out their trash and human waste along a Colorado River corridor.

The identified public lands are in Colorado, Mesa County, under the management jurisdiction of the Bureau of Land Management, Grand Junction Resource Area, Grand Junction District. The river corridor includes all public lands within one-fourth of a mile on either side of the Colorado River from the Loma Launch Site to the Colorado-Utah state line. The area is located in T. 1 N., R. 3 W., Sections 6, 7, 8, 9, 10, 16, 17 and 18, Ute P.M.; T. 10 S., R. 103 W. Sections 5, 6, 7, 8, 15, 16, 17, 18, 19 and 22, 6th P.M.; T. 10 S., R. 104 W., Sections 13, 23, 24, 25, 26, 27, 28, 32, 33 and 34, 6th P.M.; and T. 11 S., R. 104 W., Sections 4, 5, 6, 7, 8 and 9; 6th P.M.

**EFFECTIVE DATES:** The restrictions shall be in effect year round beginning May 25, 1995 and shall remain in effect until rescinded or modified by the Authorized Officer.

**SUPPLEMENTARY INFORMATION:** This order implements downriver visitor use restrictions mandated in the Ruby Canyon Recreation Area Management Plan, with the Decision Record signed on September 30, 1985 by the Grand Junction Resource Area Manager. The restrictions consist of:

1. Contain wood and charcoal fires within grills or firepans or use stoves. Dead and down wood or driftwood only may be gathered for campfires.

2. All overnight camping groups must possess and use a washable, reusable toilet system that allows for the carry-out and disposal of solid human body waste via an authorized sewer system that is adequate for the size of group and length of trip. All solid human body waste must be carried out of the river area. Dumping or depositing solid human body waste on Public Lands is prohibited. Vault toilets or trash receptacles at BLM administered facilities are not considered appropriate flushing sites for portable toilets. Notice of these regulations will be posted on-the-ground at the Loma Launch Site, at the Grand junction District office and in future river publications. Persons who may be exempted from the restrictions include federal, state, or local officers engaged in fire, emergency law enforcement activities.

**PENALTIES:** Violations of this restriction order are punishable by fines not to exceed \$1,000 and/or imprisonment not to exceed 12 months.

**FOR FURTHER INFORMATION CONTACT:** Catherine Robertson, Area Manager, Grand Junction Resource Area, 2815 H Road Grand Junction, Colorado 81506; (303) 244-3000.

**Mark Morse,**

*Grand Junction District Manager.*

[FR Doc. 95-9656 Filed 4-18-95; 8:45 am]

BILLING CODE 4310-JB-P

[CO-056-1220-00]

**Notice of Seasonal Closure**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of seasonal closure of McIntire Springs property in Conejos County, Colorado to all public use from October 1 through February 15 each year.

**SUMMARY:** Notice is hereby given that effective October 1, 1995, public lands described below are closed to all public use. Under the authority and requirement of 43 CFR 8364.1, and the Federal Land Policy and Management Act of 1976. This closure affects 535 acres of public lands in Conejos County located in T. 35 N., R. 10 E., Sec 12: SE 1/4 NE 1/4, and the E 1/2 SE 1/4, and Sec 13: N 1/2 NE 1/4 and SE 1/4 NE 1/4, T.35 N., R.11 E., Sec 7: Lots 2, 3, 4, SE 1/4 NW 1/4 less Pikes Stockade, NE 1/4 SW 1/4 and SE 1/4 SW 1/4, and Sec 18: Lots 1 and 2. The purpose of this closure is to minimize disturbance and protect critical wintering waterfowl habitat, reduce overcrowding and minimize outbreaks of avian cholera in wintering waterfowl populations. These restrictions do not apply to emergency, law enforcement and Federal, State or other government personnel who are in the area for official or emergency purposes and who are expressly authorized or otherwise officially approved by BLM. Violation of this closure is punishable by a fine or imprisonment as defined in 18 U.S.C. 3571. Notice of this closure will be posted at the site, San Luis Resource Area Office and at the Canon City District Office.

**DATES:** This seasonal closure is in effect from October 1, to February 15, each year and shall remain in effect unless revised, revoked or amended.

**ADDRESSES:** Comments can be directed to the Area Manager, San Luis Resource Area, 1921 State St., Alamosa, CO 81101 or District Manager, Canon City District

Office, 3170 East Main, Canon City, CO 81212.

**FOR FURTHER INFORMATION CONTACT:** Julie Howard, Area Manager at (719) 589-4975.

**Stuart L. Freer,**

*District Manager.*

[FR Doc. 95-9584 Filed 4-18-95; 8:45 am]

BILLING CODE 4310-JB-M

[NV-040-1990-01; M46-83-004P]

### **Bald Mountain Mine Expansion Project Draft Environmental Impact Statement**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act, notice is given that the Ely District of the Bureau of Land Management has prepared, by a third party contractor, a Draft Environmental Impact Statement on Placer Dome U.S. Bald Mountain Mine Expansion Project in eastern Nevada. This document is available for public review for a 45 day period.

**DATES AND ADDRESSES:** Written comments on the Draft Environmental Impact Statement must be postmarked by June 16, 1995.

Public meetings to receive oral and written comments have been scheduled for the dates and places listed below. All meetings will begin at 7:00 p.m. each evening.

- May 8, 1995—at the Ely Bureau of Land Management District Office, 702 Industrial Way, Ely, NV 89301.
- May 9, 1995—Stockman's Motor Hotel, 340 Commercial St., Elko, Nevada 89803.
- May 10, 1995—Sands Regency Hotel Casino, 345 N. Arlington Ave., Reno, Nevada 89501.
- A copy of the Draft Environmental Impact Statement can be obtained from: Bureau of Land Management, Ely District Office, ATTN: Dan Netcher, Project Leader, HC 33 Box 33500, Ely, NV 89301.
- The Draft Environmental Impact Statement is available for inspection at the following additional locations: Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, NV 89520; Eureka, White Pine and Elko County Libraries; and the University of Nevada libraries in Reno and Las Vegas.

**FOR FURTHER INFORMATION CONTACT:** Dan Netcher, Project Leader at the above Ely District Office address or telephone (702) 289-1800.

**SUPPLEMENTARY INFORMATION:** The Draft Environmental Impact Statement analyzes the potential environmental

impacts that could result from the expansion of the current gold mining operations at Bald Mountain Mine and development of the Horseshoe/Galaxy Mine (Proposed Action) and reasonable alternatives. Alternatives analyzed consist of: (1) no action; (2) haul road design; (3) waste rock dump configurations; and (4) reclamation options. The project would involve construction and operation of a new mine at Horseshoe/Galaxy with open pits, crushing facilities, waste dumps, conventional heap leaching facilities and several ancillary facilities. The Bald Mountain Mine expansion would consist of modification of the processing circuit with a wet crushing circuit that would produce a split flow of ore, and the processing facility would consist of both heap leaching and carbon-in-leach facilities with associated tailings. The Bald Mountain Mine expansion would also consist of expansion of the current Top Pit and development of the Sage Pit with corresponding waste rock dumps.

Dated: April 4, 1995.

**Ann J. Morgan,**

*State Director, Nevada.*

[FR Doc. 95-9621 Filed 4-18-95; 8:45 am]

BILLING CODE 4310-HC-M

### **Fish and Wildlife Service**

#### **Endangered and Threatened Species Permit Application**

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

**ACTION:** Notice.

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the City of Waterford, Stanislaus County, California.

**SUMMARY:** This notice advises the public that the City of Waterford (City) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number 801047. The proposed permit would authorize the incidental take of the threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphis*) (VELB) and/or loss of its habitat during the expansion of the city's wastewater treatment facility (WWTF).

The Service also announces the availability of an environmental assessment (EA) for the incidental take permit application, the proposed habitat conservation plan fully describing the proposed project and mitigation, and the accompanying implementing

agreement. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the permit application and EA should be received on or before May 19, 1995.

**ADDRESSES:** Comments regarding the application or adequacy of the EA should be addressed to Mr. Joel Medlin, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E-1823, Sacramento, California 95825. Please refer to permit number 801047 when submitting comments. Individuals wishing copies of the application or EA for review should immediately contact the above office at (916) 979-2725.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Horton, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E-1823, Sacramento, California 95825 (916-979-2725).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under Section 9 of the Act, and its implementing regulations, taking of the VELB, a threatened species, is prohibited. However, the Service, under limited circumstances, may issue permits to take threatened species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated at 50 CFR 17.32.

The City of Waterford proposes to expand their WWTF along the Tuolumne River in Eastern Stanislaus County, California. As a result of construction activities related to the proposed project, 18 valley elderberry bushes (*Sambucus mexicana*) with 149 individual stems 1 inch or greater in diameter will be destroyed resulting in the incidental taking of VELB. This destruction will be mitigated through the replacement planting and permanent protection of 894 elderberry bush seedlings on approximately 3.9 acres in the immediate area. The City has committed to achieving a 90 percent elderberry plant survival rate at the end of the ten-year monitoring period. The associated native species also will be planted. The City has made sufficient funds available to implement all steps of the mitigation and monitoring plan.

The EA considers a no action alternative. This alternative would not involve the removal of elderberry bushes and consequently would not affect the VELB. Under the no action alternative the City's WWTF would continue to experience "surges" in the flow volume due to municipal storm

water inundation. This alternative was rejected by the City for a number of reasons. First, the current system is antiquated, in need of major renovations and near capacity. Second, continued use of the existing WWTF will likely cause discharge of effluent into the Tuolumne River, one of the nation's waterways. Third, the City anticipates changes in rules and regulations governed by the California Water Quality Control Board concerning small City WWTF's that will require the type of expansion contemplated by the City's proposed plan.

Dated: April 13, 1995.

**Thomas Dwyer,**

*Deputy Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 95-9620 Filed 4-18-95; 8:45 am]

BILLING CODE 4310-55-P

### Receipt of Application(s) for Permit

The following applicant(s) have 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.)

PRT-800923

Applicant: Mr. Philip C. Rosen, University of Arizona, Tucson, Arizona.

The applicant requests a permit to take several endangered and threatened fish species that occur within waters in Arizona 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. 95-9622 Filed 4-18-95; 8:45 am]

BILLING CODE 4310-55-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Overseas Private Investment Corporation

#### Agency Report Form Under OMB Review

**AGENCY:** Overseas Private Investment Corporation, IDCA.

**ACTION:** Request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

**DATES:** Comments must be received on or before May 3, 1995. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

**ADDRESSES:** Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

#### FOR FURTHER INFORMATION CONTACT:

**OPIC Agency Submitting Officer:** Lena Paulson, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, D.C. 20527; (202) 336-8565.

**OMB Reviewer:** Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 3201, Washington, D.C. 20503; (202) 395-7340.

#### SUMMARY OF FORM UNDER REVIEW:

**Type of Request:** Extension.

**Title:** Preliminary Application for Financing.

**Form Number:** OPIC 115.

**Frequency of Use:** Once per project sponsor per project.

**Type of Respondents:** Business or other institutions.

**Standard Industrial Classification Codes:** All.

**Description of Affected Public:** U.S. companies investing overseas.

**Reporting Hours:** 2 hours per application.

**Number of Responses:** 300 per year.

**Federal Cost:** \$9,216.00 per year.

**Authority for Information Collection:** Sections 231 and 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended.

**Abstract (Needs and Uses):** This application is sent to U.S. companies requesting information concerning OPIC's finance program. The information provided by these companies is reviewed by OPIC finance officers to determine the soundness of the proposed project and the applicant's qualification for receiving OPIC financial assistance.

Dated: April 11, 1995.

**James R. Offutt,**

*Assistant General Counsel, Department of Legal Affairs.*

[FR Doc. 95-9583 Filed 4-18-95; 8:45 am]

BILLING CODE 3210-01-M

## INTERNATIONAL TRADE COMMISSION

### Agency Form Submitted for OMB Review

**AGENCY:** United States International Trade Commission.

**ACTION:** In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

#### PURPOSE OF INFORMATION COLLECTION:

The proposed information collection is for use by the Commission in connection with investigation No. 332-135 for the quarterly preliminary report on U.S. production of selected synthetic organic chemicals, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

#### Summary of Proposal

- (1) *Number of forms submitted:* One.
- (2) *Title of form:* Preliminary Report on U.S. Production of Selected Synthetic Organic Chemicals (Including Synthetic Plastics and Resins materials).
- (3) *Type of request:* Reinstatement.
- (4) *Frequency of use:* Quarterly.
- (5) *Description of respondents:* Firms manufacturing selected synthetic organic chemicals in the United States.
- (6) *Estimated number of respondents:* 233.
- (7) *Estimated total number of hours to annually complete the forms:* 932.
- (8) *Confidentiality:* Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and

not disclosed in a manner that would reveal the individual operations of a firm.

**ADDITIONAL INFORMATION OR COMMENT:**

Copies of the proposed form and supporting documents may be obtained from Elizabeth R. Nesbitt, telephone (202) 205-3355; email: Elizabeth.Nesbitt@ITC.Sprint.com. Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attention: Desk Officer for the U.S. International Trade Commission (telephone no. 202-395-7340). If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly, you should advise OMB of your intent within 2 weeks of the date this notice appears in the **Federal Register**. Copies of any comments should be provided to Robert A. Rogowsky (U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205-1810.

Issued: April 13, 1995.

By order of the Commission.

**Donna R. Koehnke,**

Secretary.

[FR Doc. 95-9675 Filed 4-18-95; 8:45 am]

BILLING CODE 7020-02-P

**[Investigation No. 332-360]**

**International Harmonization of Customs Rules of Origin**

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and request for public comment.

**EFFECTIVE DATE:** April 7, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202-205-2592), or Holm J. Kappler, Deputy Director, O/TA&TA (202-205-2598). Questions with regard to specific products may also be referred to the following coordinators:

Chapters 1-24, 44-49: Ronald H. Heller (202-205-2596)

Chapters 25, 26, 64-83, 86-89: Lawrence A. DiRicco (202-205-2606)

Chapters 27-40: Edward J. Matusik (202-205-3356)

Chapters 41-43, 61-63, 93-97: Thomas W. Divers (202-205-2609)

Chapters 50-60: Larry B. Clayton (202-205-2603)

Chapters 84, 85, 90-92: Craig M. Houser (202-205-2597)

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. The media should contact Margaret O'Laughlin, Director, Office of Public Affairs (202-205-1819).

**BACKGROUND AND SCOPE OF**

**INVESTIGATION:** Following receipt of a letter from the United States Trade Representative (USTR) on January 25, 1995, the Commission has instituted investigation No. 332-360, *International Harmonization of Customs Rules of Origin*, under section 332(g) of the Tariff Act of 1930. The investigation is intended to provide the basis for Commission participation in work pertaining to the Uruguay Round Agreement on Rules of Origin (ARO), negotiated in the Uruguay Round of Multilateral Trade Negotiations under the General Agreement on Tariffs and Trade (GATT) 1994 and adopted along with the Agreement Establishing the World Trade Organization (WTO).

The ARO is aimed at obtaining the harmonization and clarification of nonpreferential rules of origin for goods in trade on the basis of the substantial transformation test; at achieving discipline in the rules' administration; and at providing a framework for notification, review, consultation, and dispute settlement. These harmonized rules are intended to make country-of-origin determinations impartial, predictable, transparent, consistent, and neutral, and to avoid restrictive or distortive effects on international trade. The ARO provides that technical work to those ends will be undertaken by the Customs Cooperation Council (CCC) (now informally known as the World Customs Organization or WCO), which must report on specified matters relating to such rules for further action by parties to the ARO. Eventually, the WTO Ministerial Conference is to "establish the results of the harmonization work program in an annex as an integral part" of the ARO.

In order to carry out the work, the ARO calls for the establishment of a Committee on Rules of Origin of the WTO and a Technical Committee on Rules of Origin (TCRO) of the CCC. These Committees bear the primary responsibility for developing rules that achieve the objectives of the ARO.

A major component of the work program is aimed at harmonizing origin rules for the purpose of providing more certainty in the conduct of world trade. To this end, the agreement contemplates a 3-year CCC program, to be initiated as

soon as possible after the entry into force of the Agreement Establishing the WTO. Under the ARO, the TCRO is to undertake (1) to develop harmonized definitions of goods considered wholly obtained in one country, and of minimal processes or operations deemed not to confer origin, (2) to consider the use of change in Harmonized System classification as a means of reflecting substantial transformation, and (3) for those products or sectors where a change of tariff classification does not allow for the reflection of substantial transformation, to develop supplementary or exclusive origin criteria based on value, manufacturing or processing operations or on other standards.

Coordination and representation of U.S. positions will be managed by the TPSC subcommittee on Origin (chaired by USTR) which is principally concerned with matters before the WTO Origin Committee and by the Interagency Committee on CCC Matters (chaired by Customs) which is principally concerned with technical issues before the TCRO.

**CONDUCT OF THE INVESTIGATION:** This investigation will provide the basis for the Commission's participation in the harmonization work program and will include (1) soliciting public input to ensure that U.S. business interests are recognized in the development of U.S. proposals, (2) participating in the development and representation of U.S. proposals before the CCC and the WTO, and (3) conducting such other research as the exigencies of the technical work may require.

The Commission will from time to time issue notices and solicit comments and proposals with respect to the development of the work. This initial notice seeks comments with respect to the Rules of Origin published by the U.S. Customs Service as Part 102 of Title 19 of the Code of Federal Regulations which will serve as a starting point in preparing the initial U.S. positions with respect to the CCC and WTO work programs. Subsequent notices will invite comments and proposals on draft U.S. proposals on the rules, which generally will be issued on a product sector basis and will provide information on the status of the work. Finally, during the course of the work program, the Commission will make the results of the TCRO's work available for public comment and hearing.

As called for in the request from the Trade Representative, the Commission is conducting a technical review of the Customs Service's "change of tariff classification" provisions in 19 C.F.R.

Part 102. The Commission will address the sufficiency of these change of tariff classification provisions as a means of determining when substantial transformation has occurred, so as to result in origin being ascribed to the situs country. Specifically, the Commission will attempt to identify instances in which these change of classification rules may lead to different results than the substantial transformation standard, as the latter test has been traditionally applied in determining origin for nonpreferential purposes by U.S. courts and the U.S. Customs Service. In addition, the Commission's analysis will help identify those products or sectors where the change-of-classification approach does not reflect substantial transformation, requiring the use of supplementary or exclusive criteria based upon value, manufacturing or processing operations, or other standards. The Commission will assist in the development of harmonized definitions of goods considered wholly obtained in one country, and of minimal processes or operations deemed not to confer origin. Moreover, the Commission will help analyze foreign proposals and develop U.S. counterproposals as the CCC and WTO work programs progress, and will review provisionally adopted harmonized rules proposed by the CCC Technical Committee.

**WRITTEN SUBMISSIONS:** Interested persons are invited to submit written statements concerning this investigation, and, in particular, the change of tariff classification provisions set out in section 102.20 of the U.S. Customs Service Rules of Origin referenced above. Written statements are encouraged early in the investigative process, and follow-up statements are permitted; but all such statements must be received at the Commission by the close of business on June 15, 1995, in order to be considered. Information supplied to the Customs Service in statements filed pursuant to notices of that agency have been supplied to us and need not be separately provided to the Commission. The Commission is particularly interested in receiving views from the private sector on the suitability of the draft rules as a basis for determining origin for U.S. exports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the

requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Office of the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

**PUBLIC HEARING:** A public hearing in connection with this investigation may be held upon the request of interested parties. Any such hearing will be announced in a future public notice.

Issued: April 10, 1995.

By order of the Commission.

**Donna R. Koehnke,**

Secretary.

[FR Doc. 95-9674 Filed 4-18-95; 8:45 am]

BILLING CODE 7020-02-P

#### [Investigation No. 731-TA-722 (Final)]

#### Honey From the People's Republic of China

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of a final antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-722 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of honey,<sup>1</sup> provided for in heading 0409 and subheadings 1702.90 and 2106.90 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** March 20, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade

<sup>1</sup> The product scope covers natural honey, artificial honey containing more than 50 percent natural honey by weight, and preparations of natural honey containing more than 50 percent natural honey by weight. The subject products include all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

#### SUPPLEMENTARY INFORMATION:

**Background.**—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of honey from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on October 3, 1994, by counsel on behalf of the American Beekeeping Federation, Inc. and the American Honey Producers Association.

**Participation in the investigation and public service list.**—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff report.**—The prehearing staff report in this investigation will be placed in the nonpublic record on July 25, 1995, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

**Hearing.**—The Commission will hold a hearing in connection with this

investigation beginning at 9:30 a.m. on August 8, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 1, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 3, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

**Written submissions.**—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is August 2, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is August 16, 1995; witness testimony must be filed no later than three (3) days before the hearing. 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 subject of the investigation on or before August 16, 1995. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 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 either the public or BPI 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.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published

pursuant to section 207.20 of the Commission's rules.

Issued: April 14, 1995.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95-9676 Filed 4-18-95; 8:45 am]

BILLING CODE 7020-02-P

#### [Investigation 332-361]

### Global Competitiveness of U.S. Environmental Technology Industries: Air Pollution Prevention and Control

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation.

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

**SUMMARY:** In response to a request from the Senate Committee on Finance, the Commission has instituted investigation No. 332-361, Global Competitiveness of U.S. Environmental Technology Industries: Air Pollution Prevention and Control, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

**FOR FURTHER INFORMATION CONTACT:** Industry-specific information may be obtained from Mr. David Ingersoll (202-205-2218) or Ms. Ann Shildneck (202-205-3499), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202-205-3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205-1810.

#### Background

This is the second of two competitiveness studies requested by the Committee on Finance in its letter of October 14, 1993. The report on the first study, investigation No. 332-347, Global Competitiveness of U.S. Environmental Technology Industries: Municipal & Industrial Water and Wastewater was published on March 31, 1995. Notice of the first investigation was published on November 24, 1993 (58 FR 62137). The Commission expects to submit its second report to the Committee by April 19, 1996.

In its report, the Commission will, as requested by the Committee, seek to examine and report on factors relevant to the global competitiveness of the environmental technology industry, including but not limited to government policies such as export promotion and market development, environmental regulation, technology transfer, technical development assistance,

economic development or other financial assistance, and intellectual property protection.

#### Written Submissions

Interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on October 31, 1995. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

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.

#### List of Subjects

Environmental protection, Environmental technology, Air pollution, Pollution prevention, Pollution abatement, Pollution control, Export promotion.

Issued: April 14, 1995.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95-9677 Filed 4-18-95; 8:45 am]

BILLING CODE 7020-02-P

### INTERSTATE COMMERCE COMMISSION

#### Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927-6203.

Comments on the following assessment are due 15 days after the date of availability:

AB-88 (Sub-No. 7X), Bessemer and Lake Erie Railroad Company—

Abandonment Exemption—In Armstrong and Butler Counties, PA. EA available 4/7/95.

AB-290 (Sub-No. 169X), Norfolk and Western Railway Company—Abandonment—Between Ferguson Junction and Glen Echo, Missouri. EA available 4/7/95.

AB-290 (Sub-No. 163X), Central of Georgia Railway Company—Abandonment—at Atlanta, Georgia. EA available 4/11/95.

AB-290 (Sub No. 158X), Norfolk Southern Railway Company—Abandonment—at Elberton, GA. EA available 4/14/95.

AB-290 (Sub-No. 152X), Norfolk Southern Railway Company—Abandonment—At Blanch, Caswell County, NC. EA available 4/14/95.

Comments on the following assessment are due 30 days after the date of availability:

AB-3 (Sub-No. 122X), Missouri Pacific Railroad Company—Abandonment Exemption—In Saline County, Kansas (Trigo Industrial Lead). EA available 4/14/95.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 95-9652 Filed 4-18-95; 8:45 am]

BILLING CODE 7035-01-P

#### [Finance Docket No. 32672]

#### **Smoky Hill Railway and Historical Society, Inc.—Acquisition and Operation Exemption—Line of Burlington Northern Railroad Company<sup>1</sup>**

Smoky Hill Railway and Historical Society, Inc. (SHRHS), a not-for-profit corporation,<sup>2</sup> has filed a notice of exemption to acquire and operate a portion of Burlington Northern Railroad Company's rail line, known as the East

<sup>1</sup> Under the Commission's rules of practice at 49 CFR 1150.32(b), this notice, which was filed on March 6, 1995, should have been published in the **Federal Register** within 30 days of its filing, i.e., by April 5, 1995. The information needed to process this notice was not, however, received at the Commission until April 6, 1995.

<sup>2</sup> The involved property was conveyed and quitclaimed to SHRHS in 1990. SHRHS is currently operating the property primarily as a tourist railroad in connection with its railroad museum.

Lynne Missouri Branch. The trackage extends between milepost 25.9, between Belton and Peculiar in Cass County, MO, and milepost 37.7 in Kansas City, Jackson County, MO, a total distance of 11.8 miles. Consummation of the transaction was scheduled to take place on or after April 13, 1995.

Any comments must be filed with the Commission and served on: Jeremiah D. Finnegan, 3100 Broadway, Suite 1209, Kansas City, MO 64111.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 95-9651 Filed 4-18-95; 8:45 am]

BILLING CODE 7035-01-P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[DEA No. 129F]

#### **Established 1995 Aggregate Production Quota for a Schedule II Controlled Substance**

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of an established 1995 aggregate production quota.

**SUMMARY:** This notice establishes a 1995 aggregate production quota for hydrocodone (for conversion), a controlled substance in Schedule II of the Controlled Substances Act (CSA).

**DATES:** This order is effective on April 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307-7183.

**SUPPLEMENTARY INFORMATION:** Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for controlled substances in Schedule I and II each year. This responsibility has been redelegated to the Deputy Administrator of the DEA pursuant to § 0.104 of Title 28 of the Code of Federal Regulations.

On February 13, 1995, a notice of the proposed 1995 aggregate production

quota for hydrocodone (for conversion), a Schedule II controlled substance, was published in the **Federal Register** (60 FR 8251). All interested persons were invited to comment on or object to this proposed aggregate production quota on or before March 15, 1995. Comments were received from and a hearing on this matter was requested by one pharmaceutical company. The company maintains that the establishment of this aggregate production quota could have an impact on the United States and international narcotic raw material supply, since hydrocodone is derived from narcotic raw materials.

Pursuant to the Code of Federal Regulations, Title 21, § 1303.11(c), the Deputy Administrator may at his discretion hold a hearing on any issue relevant to the determination of an aggregate production quota. After review of all pertinent information, the Deputy Administrator has determined that no issue was found which warrants a hearing on this matter. Moreover, the proposed 2,200 kg of hydrocodone will not threaten the balance and supply of narcotic raw materials. Therefore the proposal for the 1995 aggregate production quota for hydrocodone (for conversion) is adopted without change.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and redelegated to the Deputy Administrator by § 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator of the DEA hereby orders that the 1995

aggregate production quota for the following controlled substance, expressed in grams of anhydrous base, be established as follows:

Basic class	Established 1995 quota (in grams)
Hydrocodone (for conversion) ..	2,200,000

Dated: April 11, 1995.

**Stephen H. Greene,**

*Deputy Administrator.*

[FR Doc. 95-9588 Filed 4-18-95; 8:45 am]

BILLING CODE 4410-09-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meeting of Humanities Panel

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:**

David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4)

and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 1, 1995.

*Time:* 8:00 a.m. to 5:30 p.m.

*Room:* 315.

*Program:* This meeting will review applications to direct Summer Seminars for College Teachers in the field of English and American Literature, submitted to the Division of Education Programs, for projects beginning after June 1, 1996.

2. *Date:* May 2, 1995.

*Time:* 8:00 a.m. to 5:30 p.m.

*Room:* 315.

*Program:* This meeting will review applications to direct Summer Seminars for School Teachers in the field of Foreign Literature and Culture, submitted to the Division of Education Programs, for projects beginning after June 1, 1996.

3. *Date:* May 2, 1995.

*Time:* 8:00 a.m. to 5:30 p.m.

*Room:* M-07.

*Program:* This meeting will review applications in the Faculty Graduate Study Program for Historically Black Colleges and Universities, submitted to the Division of Research Programs, for projects beginning after September 1, 1995.

4. *Date:* May 3, 1995.

*Time:* 8:00 a.m. to 5:30 p.m.

*Room:* 315.

*Program:* This meeting will review applications to direct Summer Seminars for School Teachers in the field of Philosophy and Religion, submitted to the Division of Education, for projects beginning after June 1, 1996.

5. *Date:* May 4, 1995.

*Time:* 8:00 a.m. to 5:30 p.m.

*Room:* 315.

*Program:* This meeting will review applications to direct Summer Seminars for School Teachers in the field of American Studies, submitted to the Division of Education, for projects beginning after June 1, 1996.

6. *Date:* May 4, 1995.

*Time:* 9:00 a.m. to 5:00 p.m.

*Room:* 430.

*Program:* This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after August 1995.

7. *Date:* May 4-5, 1995.

*Time:* 8:30 a.m. to 5:00 p.m.

*Room:* 415.

*Program:* This meeting will review applications submitted to Humanities Projects in Media Program during the March 10, 1995 deadline, submitted to the Division of Public Programs, for projects beginning September 1, 1995.

8. *Date:* May 5, 1995.

*Time:* 8:00 a.m. to 5:30 p.m.

*Room:* 315.

*Program:* This meeting will review applications to direct Summer Seminars for School Teachers in the field of History, Politics, and Society, submitted to the Division of Education Programs, for project beginning after June 1, 1996.

9. *Date:* May 5, 1995.

*Time:* 8:30 a.m. to 5:00 p.m.

*Room:* 430.

*Program:* This meeting will review Biennial/Triennial applications submitted by state humanities councils to Federal-State Partnership, for projects beginning after November 1995.

10. *Date:* May 8, 1995.

*Time:* 8:00 a.m. to 5:30 p.m.

*Room:* 315.

*Program:* This meeting will review applications to direct Summer Seminars for School Teachers in the field of Classical, Medieval, and Renaissance, submitted to the Division of Education Programs, for projects beginning after June 1, 1996.

11. *Date:* May 8, 1995.

*Time:* 8:30 a.m. to 5:00 p.m.

*Room:* 430.

*Program:* This meeting will review Biennial/Triennial applications submitted by state humanities councils to Federal-State Partnership, for projects beginning after November 1995.

12. *Date:* May 8-9, 1995.

*Time:* 8:30 a.m. to 5:00 p.m.

*Room:* 415/May 8;—430/May 9.

*Program:* This meeting will review applications submitted to Humanities Projects in Media Program during the March 10, 1995 deadline, submitted to the Division of Public Programs, for projects beginning after September 1, 1995.

13. *Date:* May 9, 1995.

*Time:* 8:00 a.m. to 5:30 p.m.

*Room:* 315.

*Program:* This meeting will review applications to direct Summer Seminars for School Teachers in the field of British and American Literature, submitted to the Division of Education Programs, for projects beginning after June 1, 1996.

14. *Date:* May 9, 1995.

*Time:* 9:00 a.m. to 5:30 p.m.

*Room:* 415.

*Program:* This meeting will review proposals submitted to the April 1, 1995 deadline in the Higher Education Programs, submitted to the Division of Education Programs, for projects beginning after October, 1995.

15. *Date:* May 15, 1995.

*Time:* 8:30 a.m. to 5:00 p.m.

*Room:* 430.

*Program:* This meeting will review Biennial/Triennial applications submitted by state humanities councils to Federal-State Partnerships, for projects beginning after November, 1995.

16. *Date:* May 16, 1995.

*Time:* 9:00 a.m. to 5:30 p.m.

*Room:* 315.

*Program:* This meeting will review proposals submitted to the April 1, 1995 deadline in the Higher Education Programs, for projects beginning after October, 1995.

17. *Date:* May 18, 1995.

*Time:* 9:00 a.m. to 5:30 p.m.

*Room:* 415.

*Program:* This meeting will review proposals submitted to the April 1, 1995 deadline in the Higher Education Program, for projects beginning after October, 1995.

18. *Date:* May 19, 1995.

Time: 8:30 a.m. to 5:00 p.m.

Room: 430.

Program: This meeting will review Biennial/Triennial applications submitted by state humanities councils to Federal-State Partnership, for projects beginning after November, 1995.

19. Date: May 22, 1995.

Time: 9:00 a.m. to 5:30 p.m.

Room: 315.

Program: This meeting will review proposals submitted to the April 1, 1995 deadline in the Higher Education Program, for projects beginning after October, 1995.

20. Date: May 24, 1995.

Time: 9:00 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review proposals submitted to the April 1, 1995 deadline in the Higher Education Program, for projects beginning after October, 1995.

21. Date: May 25-26, 1995.

Time: 9:00 a.m. to 5:30 p.m.

Room: 430.

Program: This meeting will review applications for Special Projects of the Special Competition deadline for April 28, 1995, submitted to the Division of Public Programs, for projects beginning after September, 1995.

**David C. Fisher,**

*Advisory Committee, Management Officer.*

[FR Doc. 95-9678 Filed 4-18-95; 8:45 am]

BILLING CODE 7536-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-306]

### Northern States Power Company (Prairie Island Unit 2); Exemption

#### I

Northern States Power Company (NSP, the licensee) is the holder of Facility Operating License No. DPR-60 which authorizes operation of Prairie Island Nuclear Generating Plant, Unit No. 2. The unit is a pressurized water reactor (PWR) located in Goodhue County, Minnesota. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

#### II

Pursuant to 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations (1) which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of

three Type A containment integrated leakage rate tests (ILRTs), at approximately equal intervals during each 10-year service period of the primary containment. The third test of each set shall be conducted when the plant is shut down for the 10-year inservice inspection of the primary containment.

#### III

By letters dated February 23 and March 3, 1995, NSP requested temporary relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the third Type A test by approximately 24 months (from the 1995 refueling outage, currently scheduled to begin in May 1995, to the 1997 refueling outage) and would permit the third Type A test of the second 10-year inservice inspection period to not correspond with the end of the current American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) inservice inspection interval.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption. NSP points out that the existing Type B and C testing programs are not being modified by this request and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the consistent and uniform experience at Prairie Island Nuclear Generating Plant, Unit No. 2, during the five Type A tests conducted from 1977 to date, that any significant containment leakage paths are detected by the Type B and C testing. The Type A test results have only been confirmatory of the results of the Type B and C test results.

#### IV

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide a one-time interval extension for the Type A test by approximately 24 months. The Commission has determined, for the reasons discussed below, that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the

common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown. The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment. All Type A tests have passed with significant margin and the licensee has noted that the results of the Type A testing have been confirmatory of the Type B and C tests which will continue to be performed. The licensee has stated that it will perform the general containment inspection although it is only required by Appendix J (Section V.A.) to be performed in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The Prairie Island containment vessels are free-standing steel structures designed for the peak pressure of the design basis accident and low leakage. A concrete shield building surrounds the containment vessel, providing a shield building annulus between the two structures. Penetrations of the containment vessel for piping, electrical conductors, ducts and access hatches are provided with double barriers against leakage. The NRC staff also notes that due to the free-standing design of the containment structure, the vessel shell and penetrations are accessible for inspection from both inside containment and outside in the shield building annulus.

The NRC staff has also made use of the information in a draft staff report, NUREG-1493, "Performance-Based Containment Leak-Test Program," which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience

with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG-1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is 3% of all failures. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks. The Prairie Island Nuclear Generating Plant, Unit No. 2, experience has also been consistent with these results.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded  $1L_a$ . Of these, only nine were not type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than  $2L_a$ ; in one case the leakage was found to be approximately  $2L_a$ ; in one case the as-found leakage was less than  $3L_a$ ; one case approached  $10L_a$ ; and in one case the leakage was found to be approximately  $21L_a$ . For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to  $L_a$  (approximately  $200L_a$ , as discussed in NUREG-1493). Therefore, based on these considerations, it is unlikely that an extension of one cycle for the performance of the Appendix J, Type A test at Prairie Island Nuclear Generating Plant, Unit No. 2, would result in significant degradation of the overall containment integrity. As a result, the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule. Based on the generic and plant-specific data, the NRC staff finds the basis for the licensee's proposed one-time schedular exemption to allow an extension of one cycle for the performance of the Appendix J, Type A test, provided that the general containment inspection is performed, to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not have a significant effect on the quality of the human environment (60 FR 18428).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of April 1995.

For the Nuclear Regulatory Commission.

**Elinor G. Adensam,**

*Acting Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95-9637 Filed 4-18-95; 8:45 am]

BILLING CODE 7590-01-M

### Advisory Committee on Medical Uses of Isotopes: Meeting Notice

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of Meeting.

**SUMMARY:** The U.S. Nuclear Regulatory Commission will convene its next regular meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on May 11 and 12, 1995. Topics of discussion will include: (1) Brachytherapy issues; (2) Guidance documents for the final Radiopharmacy Rule; (3) Prostate implant procedures; (4) National Program Review II; (5) Training and experience of authorized users to allow exemptions to Subpart J; (6) Dose ranges in written directives; (7) Petition to review the final Radiopharmacy Rule; (8) Information from NIST on Sr-90 calibration errors for eye applicators; (9) Revisions to Regulatory Guide 10.8; (10) Status of implementation of the Quality Management rule; (11) Update on the study of the medical use program by the National Academy of Science; (12) Summary of "Business Process Reengineering;" (13) Update on rulemakings: "Medical Administration of Radiation and Radioactive Materials," "Release of Patients Containing Radiopharmaceuticals or Permanent Implants," and "Administration of Byproduct Material or Radiation from Byproduct Material to Patients who may be Pregnant or Nursing."

**DATES:** The meeting will begin at 8 a.m. on May 11 and 12, 1995.

**ADDRESSES:** U.S. Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, Room T2B3, Rockville, MD 20852-2738.

**FOR FURTHER INFORMATION CONTACT:** Josephine M. Piccone, Ph.D., U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, MS T8F5, Washington, DC 20555, Telephone (301) 415-7270. For

administrative information, contact Torre Taylor, (301) 415-7900.

### Conduct of the Meeting

Barry Siegel, M.D., will chair the meeting. Dr. Siegel will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Josephine M. Piccone (address listed above). Comments must be received by May 3, 1995, to ensure consideration at the meeting. The transcript of the meeting will be kept open until May 19, 1995, for inclusion of written comments.

2. Persons who wish to make oral statements should inform Dr. Piccone in writing, by May 3, 1995. Statements must pertain to the topics on the agenda for the meeting. The Chairman will rule on requests to make oral statements. Members of the public will be permitted to make oral statements if time permits. Permission to make oral statements will be based on the order in which requests are received. In general, oral statements will be limited to approximately 5 minutes. Oral statements must be supplemented by detailed written statements for the record. Rulings on who may speak, the order of presentation, and time allotments may be obtained by calling Dr. Piccone, (301) 415-7270, between 8 a.m. and 4 p.m., EST, on May 9, 1995.

3. At the meeting, questions from attendees other than committee members, NRC consultants, and NRC staff will be permitted at the discretion of the Chairman.

4. The transcript, minutes of the meeting, and written comments will be available for inspection, and copying, for a fee, at the NRC Public Document Room, 2120 L Street NW, Lower Level, Washington, DC 20555 (202) 634-3273, on or about May 26, 1995.

5. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *Code of Federal Regulations*, Part 7.

Dated: April 13, 1995.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 95-9638 Filed 4-18-95; 8:45 am]

BILLING CODE 7590-01-M

### Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 3, 1995, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

*Wednesday, May 3, 1995—2:00 p.m.  
Until the Conclusion of Business*

The Subcommittee will discuss proposed ACRS activities and related matters. It will also discuss the status of the appointment of members to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415-7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: April 13, 1995.

**Sam Duraiswamy,**

*Chief, Nuclear Reactors Branch.*

[FR Doc. 95-9639 Filed 4-18-95; 8:45 am]

BILLING CODE 7590-01-M

### Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on May 4-6, 1995, in Conference Room T2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 28, 1994 (59 FR 66977).

#### Thursday, May 4, 1995

*8:30 A.M.—8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)*

The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

*8:45 A.M.—10:15 A.M.: Regulatory Reform Initiatives (Open)*

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of regulatory reform initiatives that involve a systematic review of reactor regulations, regulatory practices, and programs.

Representatives of the industry will participate, as appropriate.

*10:30 A.M.—12:30 P.M.: National Performance Review Phase II (Open)*

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding its efforts and approach to evaluate the NRC regulations and functions along the lines suggested by the National Performance Review Phase II.

Representatives of the industry will participate, as appropriate.

*1:30 P.M.—2:45 P.M.: Best-Estimate Thermal Hydraulic Codes (Open/Closed)*

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the procedures being used by the staff for reviewing the best-estimate ECCS thermal hydraulic codes.

Representatives of the industry will participate, as appropriate.

A portion of this session may be closed to discuss Westinghouse proprietary information applicable to this matter.

*2:45 P.M.—4:15 P.M.: Generic Letter on Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes (Open)*

The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Nuclear Energy Institute regarding the proposed final version of the

Generic Letter on Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes.

*4:30 P.M.—6:30 P.M.: Preparation of ACRS Reports (Open)*

The Committee will discuss proposed ACRS reports on matters considered during this meeting.

#### Friday, May 5, 1995

*8:30 A.M.—8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)*

The ACRS Chairman will make opening remarks regarding conduct of the meeting.

*8:35 A.M.—10:30 A.M.: Processes for Reviewing and Evaluating Operating Events (Open)*

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the processes being used by the NRC Offices of Nuclear Reactor Regulation (NRR) and Analysis and Evaluation of Operational Data (AEOD) for reviewing and evaluating operating events, including events at foreign nuclear power plants.

Representatives of the industry will participate, as appropriate.

*10:45 A.M.—11:45 A.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)*

The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss matters that relate solely to internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

*11:45 A.M.—12:00 Noon: Reconciliation of ACRS Comments and Recommendations (Open)*

The Committee will discuss responses expected from the NRC Executive Director for Operations to ACRS comments and recommendations included in recent ACRS reports.

*1:00 P.M.—2:00 P.M.: License Renewal for Nuclear Power Plants, Scope of Environmental Effects (Open)*

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final revisions to 10 CFR Part 51, License Renewal for Nuclear Power Plants, Scope of Environmental Effects.

Representatives of the industry will participate, as appropriate.

*2:00 P.M.—2:45 P.M.: Future ACRS Activities (Open)*

The Committee will select topics for consideration during future ACRS meetings.

**3:00 P.M.-6:30 P.M.: Preparation of ACRS Reports (Open)**

The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

**Saturday, May 6, 1995****8:30 A.M.-11:30 A.M.: Preparation of ACRS Reports (Open)**

The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

**11:30 A.M.-12:30 P.M.: Strategic Planning (Open)**

The Committee will continue its discussion of which items that are of importance to the Commission should receive additional emphasis in its future deliberations.

**12:30 P.M.-12:45 P.M.: New Research Needs (Open)**

The Committee will discuss new research needs, if any, identified during this meeting.

**12:45 P.M.-1:00 P.M.: Miscellaneous (Open)**

The Committee will discuss miscellaneous matters related to the conduct of Committee activities.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 1994 (59 FR 50780). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, at least five days before the meeting if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

In accordance with subsection 10(d) P.L. 92-463, I have determined that it is necessary to close portions of this meeting noted above to discuss proprietary information per 5 U.S.C. 552b(c)(4); information that involves the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2); and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted

therefor can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301-415-7361), between 7:30 A.M. and 4:15 P.M. EDT.

Dated: April 13, 1995.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 95-9640 Filed 4-18-95; 8:45 am]

BILLING CODE 7590-01-M

**OFFICE OF PERSONNEL MANAGEMENT****Federal Salary Council**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of meeting.

**SUMMARY:** According to the provisions of section 10 of the Federal Advisory Committee Act (P.L. 92-463), notice is hereby given that the forty-fourth meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

**DATES:** May 10, 1995, at 10:00 a.m.

**ADDRESSES:** Office of Personnel Management, 1900 E Street NW., Room 7B09, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., Room 6H31, Washington, DC 20415-0001. Telephone number: (202) 606-2838.

For The President's Pay Agent:

**Lorraine A. Green,**

*Deputy Director.*

[FR Doc. 95-9593 Filed 4-18-95; 8:45 am]

BILLING CODE 6325-01-M

**RAILROAD RETIREMENT BOARD****Agency Forms Submitted for OMB Review**

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s)**

(1) *Collection title:* Certification Regarding Rights to Unemployment Benefits.

(2) *Form(s) submitted:* UI-45.

(3) *OMB Number:* 3220-0079.

(4) *Expiration date of current OMB clearance:* June 30, 1995.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other for-profit.

(7) *Estimated annual number of respondents:* 2,250.

(8) *Total annual responses:* 3,750.

(9) *Total annual reporting hours:* 688.

(10) *Collection description:* In administering the disqualification for the voluntary leaving of work provision of Section 4 of the Railroad Unemployment Insurance Act, the Railroad Retirement Board investigates an unemployment claim that indicates the claimant left voluntarily. The certification obtains information needed to determine if the leaving was with good cause.

**ADDITIONAL INFORMATION OR COMMENTS:**

Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 95-9587 Filed 4-18-95; 8:45 am]

BILLING CODE 7905-01-M

**SECURITIES AND EXCHANGE COMMISSION****Under Review by Office of Management and Budget**

Acting Agency Clearance Officer: David T. Copenhafer, (202) 942-8800

Upon written request copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549

**Extension**

*Rule 15g-9*

*File No. 270-325*

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. §§ 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval for Rule 15g-9 [17 CFR 240.15g-9] (formerly Rule 15c2-6) under the Securities Exchange Act of

1934 (15 U.S.C. §§ 78a *et seq.*), which imposes sales practice requirements on broker-dealers who recommend purchases of certain low-priced, non-NASDAQ OTC securities to persons other than established customers of the broker-dealers. It is estimated that approximately 400 respondents will incur an average burden of 78 hours per year to comply with this rule, for a total annual burden of 31,200 hours.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and the Clearance Officer for the Securities and Exchange Commission, Paperwork Project Number 3235-0385, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: April 12, 1995.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 95-9670 Filed 4-18-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21005; 811-4662]

### SAFECO U.S. Government Securities Fund, Inc.; Notice of Application

April 13, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** SAFECO U.S. Government Securities Fund, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on March 31, 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 May 8, 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 may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, SAFECO Plaza, Seattle, WA 98185.

**FOR FURTHER INFORMATION CONTACT:** Mary Kay Frech, Senior Attorney, at (202) 942-0579, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

#### Applicant's Representations

1. Applicant is an open-end diversified management investment company that was organized as a corporation under the laws of the State of Washington. On May 6, 1986, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on July 15, 1986, and the initial public offering commenced on that date.

2. On May 6, 1993, applicant's board of directors approved an agreement and plan of reorganization (the "Plan") between applicant and SAFECO Taxable Bond Trust, a registered open-end management investment company organized under the laws of Delaware (the "Acquiring Fund").<sup>1</sup>

3. By moving its assets from a Washington corporation to a Delaware trust, applicant expects its shareholders to benefit from the adoption of new methods of operations and employment of new technologies that are expected to reduce costs. For example, Washington corporations are required to hold annual meetings, whereas Delaware trusts have no such requirement. Further, Delaware trusts generally have greater flexibility than Washington corporations to respond to future contingencies, allowing such trusts to operate under the most advanced and cost efficient form of organization. For example, Delaware law authorizes electronic or telephonic communications between a Delaware trust and its shareholders. In

<sup>1</sup> Applicant's board of directors determined that the Plan was in the best interests of applicant and that the interests of applicant's existing shareholders would not be diluted as a result of effecting the transactions.

addition, as one of several series of the Acquiring Fund, applicant's shareholders should enjoy certain expense savings through economies of scale that would not be available to a stand-alone entity.

4. On May 7, 1993, applicant filed proxy materials with the SEC and afterwards distributed such proxy materials to its shareholders. On August 5, 1993, applicant's shareholders approved the reorganization.

5. Pursuant to the Plan, on September 30, 1993, applicant transferred all of its assets to the Acquiring Fund in exchange for shares of the Acquiring Fund. Immediately thereafter, applicant distributed *pro rata* to its shareholders the shares it received from the Acquiring Fund in the reorganization. On September 30, 1993, applicant had 6,252,370.373 shares outstanding, having an aggregate net asset value of \$62,719,739.85 and a per share net asset value of \$10.03.

6. Expenses incurred in connection with the reorganization, consisting of legal fees, accounting fees, and printing and mailing costs for the proxy solicitation, were approximately \$12,068 and were paid by applicant.

7. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant filed articles of dissolution with the State of Washington on October 1, 1993.

9. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 95-9671 Filed 4-18-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21006; 811-7296]

### SAFECO Intermediate-Term Municipal Bond Fund, Inc.; Notice of Application

April 13, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** SAFECO Intermediate-Term Municipal Bond Fund, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on March 31, 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 May 8, 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 may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, SAFECO Plaza, Seattle, WA 98185.

**FOR FURTHER INFORMATION CONTACT:** Mary Kay Frech, Senior Attorney, at (202) 942-0579, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

#### **Applicant's Representations**

1. Applicant is an open-end diversified management investment company that was organized as a corporation under the laws of the State of Washington. On October 21, 1992, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on March 18, 1993, and the initial public offering commenced on that date.

2. On May 6, 1993, applicant's board of directors approved an agreement and plan of reorganization (the "Plan") between applicant and SAFECO Tax-Exempt Bond Trust, a registered open-end management investment company organized under the laws of Delaware (the "Acquiring Fund").<sup>1</sup>

3. By moving its assets from a Washington corporation to a Delaware trust, applicant expects its shareholders to benefit from the adoption of new methods of operations and employment of new technologies that are expected to reduce costs. For example, Washington corporations are required to hold annual meetings, whereas Delaware trusts have no such requirement. Further, Delaware trusts generally have greater flexibility than Washington corporations to respond to future contingencies, allowing such trusts to operate under the most advanced and cost efficient form of organization. For example, Delaware law authorizes electronic or telephonic communications between a Delaware trust and its shareholders. In addition, as one of several series of the Acquiring Fund, applicant's shareholders should enjoy certain expense savings through economies of scale that would not be available to a stand-alone entity.

4. On May 7, 1993, applicant filed proxy materials with the SEC and afterwards distributed such proxy materials to its shareholders. On August 5, 1993, applicant's shareholders approved the reorganization.

5. Pursuant to the Plan, on September 30, 1993, applicant transferred all of its assets to the Acquiring Fund in exchange for shares of the Acquiring Fund. Immediately thereafter, applicant distributed *pro rata* to its shareholders the shares it received from the Acquiring Fund in the reorganization. On September 30, 1993, applicant had 716,492.424 shares outstanding, having an aggregate net asset value of \$7,642,305.23 and a per share net asset value of \$10.67.

6. Expenses incurred in connection with the reorganization, consisting of legal fees, accounting fees, and printing and mailing costs for the proxy solicitation, were approximately \$4,417 and were paid by SAFECO Asset Management Company, applicant's former investment adviser.

7. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant filed articles of dissolution with the State of Washington on October 1, 1993.

9. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those

necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-9672 Filed 4-18-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21007; 811-278]

#### **SAFECO Equity Fund, Inc.; Notice of Application**

April 13, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** SAFECO Equity Fund, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on March 31, 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 May 8, 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 may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, SAFECO Plaza, Seattle, WA 98185.

**FOR FURTHER INFORMATION CONTACT:** Mary Kay Frech, Senior Attorney, at (202) 942-0579, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

<sup>1</sup> Applicant's board of directors determined that the Plan was in the best interests of applicant and that the interests of applicant's existing

shareholders would not be diluted as a result of effecting the transactions.

### Applicant's Representations

1. Applicant is an open-end diversified management investment company that was organized as a corporation under the laws of the State of Washington. On November 26, 1933, applicant filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on November 26, 1933, and the initial public offering commenced on that date. On November 12, 1940, applicant registered under the Act as an investment company.

2. On May 6, 1993, applicant's board of directors approved an agreement and plan of reorganization (the "Plan") between applicant and SAFECO Common Stock Trust, a registered open-end management investment company organized under the laws of Delaware (the "Acquiring Fund").<sup>1</sup>

3. By moving its assets from a Washington corporation to a Delaware trust, applicant expects its shareholders to benefit from the adoption of new methods of operations and employment of new technologies that are expected to reduce costs. For example, Washington corporations are required to hold annual meetings, whereas Delaware trusts have no such requirement. Further, Delaware trusts generally have greater flexibility than Washington corporations to respond to future contingencies, allowing such trusts to operate under the most advanced and cost efficient form of organization. For example, Delaware law authorizes electronic or telephonic communications between a Delaware trust and its shareholders. In addition, as one of several series of the Acquiring Fund, applicant's shareholders should enjoy certain expense savings through economies of scale that would not be available to a stand-alone entity.

4. On May 7, 1993, applicant filed proxy materials with the SEC and afterwards distributed such proxy materials to its shareholders. Applicant's shareholders approved the reorganization at a regular meeting of shareholders on August 5, 1993, that was reconvened at a special meeting of shareholders on September 22, 1993.

5. Pursuant to the Plan, on September 30, 1993, applicant transferred all of its assets to the Acquiring Fund in exchange for shares of the Acquiring Fund. Immediately thereafter, applicant distributed *pro rata* to its shareholders the shares it received from the

Acquiring Fund in the reorganization. On September 30, 1993, applicant had 11,872,883.263 shares outstanding, having an aggregate net asset value of \$148,894,185.84 and a per share net asset value of \$12.54.

6. Expenses incurred in connection with the reorganization, consisting of legal fees, accounting fees, and printing and mailing costs for the proxy solicitation, were approximately \$22,710 and were paid by applicant.

7. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant filed articles of dissolution with the State of Washington on October 1, 1993.

9. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret M. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-9673 Filed 4-18-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35601; File No. SR-PHLX-95-18]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Automated Options Market System and AUTO-X Eligibility of Certain Orders

April 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 4, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to codify its practice of accepting stop, stop-limit,

all-or-none, or better, simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order, market-on-close, opening-only-market, and possible duplicate orders for delivery through the PHLX's Automated Options Market ("AUTOM") system. In addition, the PHLX proposes to codify its practice of accepting orders designated as "day" orders, which are executable on the day they are entered or not at all, and good-till-cancelled ("GTC") orders for delivery through AUTOM and execution through AUTO-X, the automatic execution feature of AUTOM. Currently, day orders and GTC orders are accepted on the PHLX's trading floor as both manually entered orders on floor tickets and through AUTOM.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to codify (1) the acceptance of certain order types and designators for electronic execution through AUTOM; and (2) the designation of certain types of orders that are executed through AUTO-X. AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,<sup>1</sup> is the PHLX's electronic order

<sup>1</sup> See Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR-PHLX-94-41). See also Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR-PHLX-88-22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR-PHLX-88-33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR-PHLX-89-1, extending pilot through

<sup>1</sup> Applicant's board of directors determined that the Plan was in the best interests of applicant and that the interests of applicant's existing shareholders would not be diluted as a result of effecting the transactions.

routing, delivery, execution and reporting system for equity and index options. AUTOM is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor.

Orders for up to 100 options contracts are eligible for AUTOM and public customer orders for up to 25 contracts are eligible for AUTO-X, the automatic execution feature of AUTOM.<sup>2</sup> AUTO-X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO-X are handled manually by the specialist.

At the inception of the AUTOM pilot program, only customer market orders were AUTOM-eligible. Thereafter, the Commission approved proposals permitting delivery of marketable limit, GTC, and cabinet orders (accommodation transactions) through AUTOM.<sup>3</sup>

Exchange By-Law Article X, "Standing Committees," Section 10-18, "Options Committee," grants authority over all connections and communications on the options floor, including AUTOM, to the Options Committee. Pursuant to this authority, the Options Committee decided in 1991 to accept certain additional order types for AUTOM and AUTO-X in the interest of maintaining fair and orderly markets.

The PHLX proposes to incorporate the following order types into the AUTOM

December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR-PHLX-89-03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR-PHLX-90-16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR-PHLX-90-34, extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR-PHLX-91-31, permitting AUTO-X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (order approving File No. SR-PHLX-91-33, permitting AUTO-X for all strike prices and expiration months); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR-PHLX-90-03, extending pilot through December 31, 1993); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR-PHLX-92-38, permitting AUTO-X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR-PHLX-93-57, extending pilot through December 31, 1994).

<sup>2</sup>The Commission recently approved a PHLX proposal to codify the use of AUTOM and AUTO-X for index options. See Securities Exchange Act Release No. 34920 (October 31, 1994), 59 FR 5510 (November 7, 1994) (order approving File No. SR-PHLX-94-40).

<sup>3</sup>See Securities Exchange Act Release Nos. 27599 (making day limit orders eligible for delivery through AUTOM) and 28978 (making GTC and cabinet orders eligible from AUTOM), *supra* note 1.

pilot program: stop,<sup>4</sup> stop-limit,<sup>5</sup> all-or-none,<sup>6</sup> market-on-close,<sup>7</sup> opening-only-market,<sup>8</sup> and cancel-replacement orders.<sup>9</sup> In addition, the PHLX proposes to codify the following order conditions into the AUTO pilot program: or better,<sup>10</sup> possible duplicate orders,<sup>11</sup> and several types of cancellation conditions—simple cancel, simple cancel to reduce size (cancel leaves) and cancel to change price.<sup>12</sup> Currently, these orders are accepted and these designations are utilized for both manual and AUTOM-delivered orders.

With respect to automatic executions, market and marketable limit orders currently are eligible for AUTO-X. The PHLX proposes to codify its practice of designating AUTO-X orders with the conditions "day" or "GTC." Market or marketable limit orders, like all AUTOM orders, are necessarily "day" orders expiring at the end of the trading day or

<sup>4</sup>A "stop" order is a contingency order to buy or sell when the market for a particular option contract reaches a specified price. A stop order to buy becomes a market order when the option contract trades at or above the stop price. A stop order to sell becomes a market order when the option contract trades at or below the stop price. See PHLX Rule 1066(c)(2), "Stop (stop-loss) Order."

<sup>5</sup>A stop-limit order is a contingency order to buy or sell at a limited price when the market for a particular option contract reaches a specified price. A stop-limit order to buy becomes a limit order when the option contract trades at or above the stop price. A stop-limit order to sell becomes a limit order when the option contract trades at or below the stop price. See PHLX Rule 1066(c)(1), "Stop-Limit Order."

<sup>6</sup>An "all-or-none order" is a market or limit order to be executed in its entirety or not at all. See PHLX Rule 1066(c)(4), "All or None Order."

<sup>7</sup>A "market-on-close" order is a market or limit order to be executed as close as possible to the closing bell, or during the closing rotation and should be near to or at the closing price for the particular series. See PHLX Rule 1066(c)(6), "Market-on-Close Order."

<sup>8</sup>An "opening-only-market" order is a market order which is to be executed in whole or in part during the opening rotation or not at all. See PHLX Rule 1066(c)(5).

<sup>9</sup>"Cancel-replacement" is an order which requires the immediate cancellation of a previous order prior to the replacement of a new order. See PHLX Rule 1066(c)(7), "Cancel-Replacement Order."

<sup>10</sup>The designation "or better" indicates that the originator of the order is aware that the market is currently better than the limit price of the order; this order is not filled at a price outside of the "or better" price. The "or better" designation is used to verify the validity of the order and confirms that the order was entered on the correct side.

<sup>11</sup>"Possible duplicate" is a status which indicates that before an AUTOM order is executed manually by the specialist, the specialist should confirm that the order has not yet been executed.

<sup>12</sup>Various types of cancellation conditions and procedures are defined in Option Floor Procedure Advise A-6, "Responsibility to Cancel Orders on the Book" as well as PHLX Rule 1066, "Certain Types of Orders Defined." The designation "simple cancel" indicates that an order is to be cancelled, while "cancel leaves" indicates that the size of a previous order is being reduced and "cancel to change price" cancels the price of a previous order.

GTC orders that are good until cancelled. Thus the PHLX explains that the proposal to codify the use of "day" and "GTC" designators for AUTO-X merely reveals the life span of AUTO-X orders, without adding new order types.

The Exchange believes that these order types are appropriate for AUTOM and AUTO-X because they are commonly utilized in the securities industry and have been accepted through AUTOM since 1991 without significant problems reported by AUTOM users. In addition, the PHLX believes that incorporating such orders into AUTOM extends the benefits of these systems to additional order types.

The PHLX states that all of the additional order types and designators are currently accepted on the Exchange as manual orders, and are thus defined in PHLX Rule 1066, "Certain Types of Orders Defined." The PHLX specialist can accept these orders for placement on the limit order book. According to the PHLX, permitting these orders to be routed by AUTOM directly to the specialist does not affect the handling of the orders by the specialist. For example, an AUTOM order can be placed on the book. None of these orders are discretionary orders, which may not be placed on the book under Floor Procedure Advice ("Advice") A-2, "Types of Orders to be Accepted onto the Specialist's Book."<sup>13</sup> Thus, according to the PHLX, the effect of the proposal is to permit orders that can now be held by a specialist to be routed electronically through AUTOM, as opposed to being routed manually through trading floor representatives.

The Exchange notes that the material terms of these orders are relayed to the specialist by AUTOM and displayed on the order ticket, which is printed at the specialist post. This information is the same as if the order were manually delivered. A computer screen displays the following information respecting incoming AUTOM orders to the trading crowd: numeric designation, buy or sell, call or put, volume, symbol, month, strike, price, and time received.

Accordingly, the PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by codifying certain order types and condition designations into the AUTOM

<sup>13</sup>Under Advice A-2, a specialist may not accept option orders consisting of two or more option series (e.g., spread, straddle, and combination orders).

pilot program. Specifically, the Exchange believes that the additional order types benefit from the advantages of AUTOM, including efficient and prompt order delivery and execution.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after April 4, 1995, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder. In particular, the Commission believes that the proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference

Section, 450 Fifth Street NW., Washington, DC. 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 May 10, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-9668 Filed 4-18-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35600; File No. SR-PSE-95-06]

**Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to New Organizational Structures**

April 13, 1995.

On February 21, 1995, the Pacific Stock Exchange, Inc. ("PSE" 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Articles V and VIII of its Constitution to allow for the admission of entities with new organizational structures as member organizations.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35443 (March 6, 1995), 60 FR 13196 (March 10, 1995). No comments were received on the proposal. This order approves the proposed rule change.

**I. Proposal**

The PSE Constitution currently allows members of the Exchange to confer the privileges of their memberships on a firm which may be either a partnership or a corporation. The Exchange is proposing to amend Article VIII, Section 1(a) of its Constitution to provide that the Exchange may, in its discretion, and on such terms as the Exchange may prescribe, approve as a member firm, entities that have characteristics essentially similar to corporations, partnerships, or both.<sup>3</sup> In addition, the

Exchange is proposing to amend Article V, Sections 4, 5, and 7 of the PSE Constitution (definitions of "member firm," "member organization," and "associated person") to be consistent with the proposed change to Article VIII, Section 1(a). The Exchange is proposing to add the phrase "or other organization" to the definitions of "member firm" and "member organization" and to add the phrases "member of a Limited Liability Company" and "trustee of a business trust" to the definition of "associated person." These amendments would permit the Exchange to approve business trusts, limited liability companies and other organizational structures as member organizations so long as the characteristics of the entity in question are essentially similar to those of corporations or partnerships.

The Exchange believes that the rule change is consistent with Section 6(b) of the Exchange Act, in general, and Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

**II. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b).<sup>4</sup> Specifically, the Commission believes the amendment is consistent with the Section 6(b)(2)<sup>5</sup> of the Act, which requires the rules of an exchange, subject to the provisions of Section 6(c) of the Act,<sup>6</sup> to ensure that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of the exchange and any person may become associated with a member thereof.

The PSE Constitution currently allows members of the Exchange to confer the privileges of their membership on a firm which may be either a partnership or a corporation. The amendments would enable entities with new organizational structures similar to corporations and partnerships to become Exchange members and be included in the Exchange's definition of a member organization. As in the case of a partnership or corporation applying for

since this is a prerequisite to becoming an Exchange member organization. Telephone conversation between Michael D. Pierson, Senior Attorney, PSE, and Elisa Metzger, Senior Counsel, SEC, on March 3, 1995.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(2).

<sup>6</sup> 15 U.S.C. 78f(c).

<sup>14</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange stated that non-corporate or partnership entities would have to be structured in such a format that would qualify as a broker or dealer registered with the SEC pursuant to the Act,

membership, the new entity will be subject to all other requirements for membership approval.

The Commission believes that the amendments to Articles V and VIII of the PSE Constitution reasonably balance the Exchange's interest in having the flexibility to approve entities with new organizational structures for Exchange membership, with the regulatory interests in protecting the financial and structural integrity of a member organization. For example, although the amendments permit the Exchange to approve business trusts, limited liability companies, or other organizational structures with characteristics of corporations or partnerships as member organizations, the PSE will review each Exchange member organization application on a case-by-case basis, and prior to approving any such organization for membership, the Exchange must be satisfied that: (1) the Exchange would legally have appropriate jurisdiction over such an entity; and (2) the permanency of the entity's capital is consistent with that required of other member organizations.

### III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-PSE-95-06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-9669 Filed 4-18-95; 8:45 am]

BILLING CODE 8010-01-M

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## SOCIAL SECURITY ADMINISTRATION

### Office of Inspector General

#### Privacy Act of 1974; Report on Changes to Systems of Records

**AGENCY:** Office of Inspector General (OIG), SSA.

**ACTION:** Notice.

**SUMMARY:** This notice sets forth information on two systems of records, currently maintained by the Inspector General of the Department of Health and Human Services (HHS/IG), that are now being duplicated and slightly modified for use by the Inspector General of the Social Security Administration (SSA/IG).

### FOR FURTHER INFORMATION CONTACT:

Olive Franklin, Office of Investigations, (202)-619-2501. Glenn Sklar, Office of the General Counsel, (410)-965-6247.

**SUPPLEMENTARY INFORMATION:** The Social Security Independence and Program Improvements Act of 1994 (SSIIPIA), Pub. L. 103-296, separated the Social Security Administration (SSA) from its parent agency, the Department of Health and Human Services (HHS), and established SSA as an independent agency effective March 31, 1995. The SSIIPIA also required that all functions relating to SSA that were previously performed by the HHS/IG must be transferred to the SSA/IG. In order to perform these functions, the SSA/IG must duplicate, and slightly modify, two systems of records that are currently maintained by the HHS/IG. Therefore, the system of records entitled "Criminal Investigative Files of the Inspector General, HHS/OS/OIG" (09-90-0003) last published on November 2, 1990, and the system of records entitled "Civil and Administrative Investigative Files of the Inspector General, HHS/OS/OIG" (09-90-0100) last published on September 30, 1982, will now describe both the HHS system of records and the SSA system of records. The SSA system of records will simply require minor conforming changes to system names, numbers, and managers that are described below.

At the present time, the SSA/IG will not be expanding record coverage, changing routine uses, or affecting an individual's ability to access his or her records in any significant way for these systems of records.

**SYSTEM NAME AND NUMBER:** OIG-001—Criminal Investigative Files of the Inspector General, SSA/OIG. (Duplicating existing HHS system of records 09-90-0003 entitled "Criminal Investigative Files of the Inspector General, HHS/OS/OIG.")

**SYSTEM MANAGER AND ADDRESS:** Office of Inspector General, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

**SYSTEM NAME AND NUMBER:** OIG-002—Civil and Administrative Investigative Files of the Inspector General, SSA/OIG. (Duplicating existing HHS system of records 09-90-0100 entitled "Civil and Administrative Investigative Files of the Inspector General, HHS/OS/OIG.")

**SYSTEM MANAGER AND ADDRESS:** Office of Inspector General, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

Dated: April 7, 1995.

**June Gibbs Brown,**

*Inspector General.*

[FR Doc. 95-9579 Filed 4-18-95; 8:45 am]

BILLING CODE 4190-29-M

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Order 95-4-20]

#### Reissuance of the Section 41102 Certificate to Village Aviation, Inc.; d/b/a Camai Air; Order to Show Cause

**AGENCY:** Department of Transportation.

**ACTION:** Notice of reissuance of section 41102 certificate.

**SUMMARY:** The Department of Transportation is proposing to reissue the section 41102 certificate of Village Aviation, Inc. d/b/a Camai Air subject to conditions.

**RESPONSES:** All interested persons wishing to respond to the Department of Transportation's tentative reissuance should file their responses with the Documentary Services Division, in Docket 42860, C-55, room PL401, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than April 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. James A. Lawyer, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-1064.

Dated: April 13, 1995.

**Patrick V. Murphy,**

*Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 95-9605 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-62-P

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## Federal Aviation Administration

[Summary Notice No. PE-95-18]

#### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(1)(12).

petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before May 1, 1995.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. D. Michael Smith, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 14, 1995.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

### **Petitions for Exemption**

*Docket No.: 28196.*

*Petitioner:* Travis County EMS Department.

*Sections of United States Code Affected:* 49 U.S.C. Chapter 411; 41701, 41702, 41708, 41709, 41711, and 41738; 44701, 44702, 44704, 44705, 44709, 44711, 44713, and 44722; Chapter 451; and 46301, 46304, 46306, and 46310.

*Description of Relief Sought:* To allow Travis County, Texas; the aircraft, both currently owned and to be owned or leased for at least 90 days in the future; and the pilots, both currently employed and to be employed by Travis County in the future, to perform emergency first

response medical helicopter; medically necessary relocation of patients to specialized care facilities; emergency search and rescue operations, over lake areas and isolated terrain; law enforcement support, when requested by county, city, or state agencies; fire suppression bucket operations and external load support during fire fighting assignments throughout the county and the immediate surrounding counties; general government air operations, such as search and rescue in flood operations, biological research, and litigation support when an aerial view is necessary for the operation to be effective, if allowed by the Commissioners Court; and training for all the above operations with partial cost reimbursement from the recipients of the services as public aircraft under standards for safety of operations and maintenance developed by Travis County.

[FR Doc. 95-9679 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-13-M

### **Notice of Intent to Rule on Application to Use the Revenue from a Passenger Facility Charge (PFC) at Bert Mooney Airport, Submitted by Bert Mooney Airport Authority, Butte, Montana**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use PFC revenue at Bert Mooney Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

**DATES:** Comments must be received on or before May 19, 1995.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager; Helena Airports District Office, HLN-ADO; Federal Aviation Administration; FAA Building, Suite 2; 2725 Skyway Drive, Helena, MT 59601. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Rick Griffith, Airport Manager, at the following address: Bert Mooney Airport Authority, 101 Airport Road, Butte, MT 59701.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Bert Mooney Airport, under section 158.23 of Part 158.

### **FOR FURTHER INFORMATION CONTACT:**

Mr. David P. Gabbert, (406) 449-5271; Helena Airports District Office, HLN-ADO; Federal Aviation Administration; FAA Building, Suite 2; 2725 Skyway Drive; Helena, Montana 59601. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to use PFC revenue at Bert Mooney Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 13, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the Bert Mooney Airport Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 20, 1995.

The following is a brief overview of the application.

*Level of the proposed PFC:* \$3.00.

*Actual charge effective date:* July 1, 1994.

*Proposed charge expiration date:* March 30, 2000.

*Total estimated PFC revenues:* \$52,000.00.

*Brief description of proposed project:* Purchase new aircraft rescue and firefighting (ARFF) vehicle; expand ARFF building and update existing ARFF/Maintenance building.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Submitted in Bert Mooney's previous application and approved in the Record of Decision dated April 17, 1994.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bert Mooney Airport.

Issued in Renton, Washington on April 13, 1995.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 95-9680 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-13-M

## Flight Data Recorder Systems

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

**ACTION:** Notice of availability for public comment.

**SUMMARY:** This notice announces the availability of and request comments on a proposed Technical Standard Order pertaining to flight data recorder systems. The proposed TSO prescribed the minimum performance standards that flight data recorder systems must meet to be identified with the marking "TSO-C124a."

**DATES:** Comments must identify the TSO file number and be received on or before July 21, 1995.

**ADDRESSES:** Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO-C124a, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 804, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bobbie J. Smith, Technical Programs and Continued Airworthiness Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9546.

### Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 804, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

### Background

The National Transportation Safety Board (NTSB) issued four safety recommendations to the FAA concerning the fire protection standards for cockpit voice records (CVRs) and

flight data recorders (FDRs). The recommendations were prompted by the loss of vital information from several CVRs and FDRs as a result of thermal destruction of the recording medium in posit impact fires. The recommendations request, among other requests, to conduct a study to determine the actual thermal profile of post impact fires and to revise the certification test protocol; to revise TSO's C123 and C124 to reflect the results of the study.

The tests were conducted at the FAA Technical Center and final report was issued October 1994, titled "Investigation of Flight Data Recorder Fire Test Requirements." The revised fire test protocol from this report is included in this revised TSO and is essentially the fire test in the reference European Organisation of Civil Aviation Equipment document "Minimum Operational Performance Specification for Cockpit Voice Recorder System" ED-56A published December 1993 except for the high temperature fire test has been extended to 60 minutes from 30 minutes.

### How to Obtain Copies

A copy of the proposed TSO-C124a may be obtained by contacting "For Further Information Contact." TSO-C124a references EUROCAE Document No. ED-55, dated May 1990, for the minimum operational performance specification, ED-14C, dated December 1989, and RTCA/DO-160C, dated December 1989, for environment standards, and RTCA/DO-178B, dated December 1992, for the computer software requirements. EUROCAE Documents No. ED-55 and ED-14C may be purchased from the European Organisation for Civil Aviation Electronics, 11 rue Hamelin, 75783 Paris Cedex 16, France. RTCA/DO-160C and DO-178B may be purchased from RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036-4001.

Issued in Washington, DC, on April 13, 1995.

**John K. McGrath,**

*Manager, Aircraft Engineering Division,  
Aircraft Certification Service.*

[FR Doc. 95-9645 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-13-M

## Cockpit Voice Recorder Systems

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

**ACTION:** Notice of availability for public comment.

**SUMMARY:** This notice announces the availability of and request comments on a proposed Technical Standard Order pertaining to cockpit voice recorder systems. The proposed TSO prescribes the minimum performance standards that cockpit voice recorder systems must meet to be identified with the marking "TSO-C123a."

**DATES:** Comments must identify the TSO file number and be received on or before July 21, 1995.

**ADDRESSES:** Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO-C123a, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 804, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bobbie J. Smith, Technical Programs and Continued Airworthiness Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9546.

### Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 804, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

### Background

The National Transportation Safety Board (NTSB) issued four safety recommendations to the FAA concerning the fire protection standards for cockpit voice recorders (CVRs) and flight data recorders (FDRs). The recommendations were prompted by the loss of vital information from several CVRs and FDRs as a result of thermal destruction of the recording medium in posit impact fires. The

recommendations request, among other requests, to conduct a study to determine the actual thermal profile of post impact fires and to revise the certification test protocol; to revise TSO's C123 and C124 to reflect the results of the study.

The tests were conducted at the FAA Technical Center and final report was issued October 1994, titled "Investigation of Flight Data Recorder Fire Test Requirements." The revised fire test protocol from this report is included in this revised TSO and is essentially the fire test in the reference European Organisation of Civil Aviation Equipment document "Minimum Operational Performance Specification for Cockpit Voice Recorder System" ED-56A published December 1993 except for the high temperature fire test has been extended to 60 minutes from 30 minutes.

#### How to Obtain Copies

A copy of the proposed TSO-C123a may be obtained by contacting "For Further Information Contact." TSO-C123a references EUROCAE Document No. ED-56, dated October 1993, for the minimum operational requirements for cockpit voice recorders, ED-55, dated May 1990, for the minimum operational performance specification for flight data recorders, ED-14C, dated December 1989, and RTCA/DO-160C, dated December 1989, for environment standards, and RTCA/DO-178B, dated December 1992, for the computer software requirements. EUROCAE Documents No. ED-55 and ED-14C may be purchased from the European Organisation for Civil Aviation Electronics, 11 rue Hamelin, 75783 Paris Cedex 16, France. RTCA/DO-160C and DO-178B may be purchased from RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036-4001.

Issued in Washington, DC, on April 13, 1995.

#### John K. McGrath,

Manager, Aircraft Engineering Division,  
Aircraft Certification Service.

[FR Doc. 95-9646 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-13-M

#### Federal Highway Administration

##### Environmental Impact Statement: Savannah, GA

AGENCY: Federal Highway  
Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an

environmental impact statement will be prepared for a proposed Phase III, IV, and V extension of the Harry S. Truman Parkway, Savannah, Georgia.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Marvin Woodward, Transportation Manager, Federal Highway Administration, Suite 300, 1720 Peachtree Road, N.W., Atlanta, Georgia 30367, Telephone (404) 347-3041; or Mr. David E. Studstill, State Environment/Location Engineer, Georgia Department of Transportation, Office of Environment/Location, 3993 Aviation Circle, Atlanta, Georgia 30336, Telephone (404) 699-4401.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (GDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to construct a 4 lane limited access highway on new location from the terminus of the existing Phase I segment at Derenne Street to the Abercorn Street extension. The project length is approximately 10.3 km. The proposed project is necessary to provide additional capacity to mitigate congestion for north-south traffic on the east side of Savannah.

Alternatives under consideration include: (1) The "no-build", and (2) A controlled access highway on new location.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A public hearing will be held and a public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. Georgia's approved clearinghouse review procedures apply to this program.)

Issued on: April 6, 1995.

#### Marvin Woodward,

Transportation Manager, Atlanta, Georgia.

[FR Doc. 95-9585 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-22-M

#### Federal Railroad Administration

##### National High-Speed Ground Transportation Policy Outreach Meetings

AGENCY: Federal Railroad  
Administration, Office of Railroad  
Development, DOT.

ACTION: Chicago, Illinois Public Meeting  
Postponed.

SUMMARY: The Federal Railroad Administration (FRA) will hold regional public outreach meetings around the United States to invite public input for developing the National High Speed Ground Transportation (HSGT) Policy, as mandated by the Intermodal Surface Transportation Efficiency Act. The public is invited to attend and/or submit written comments. The first meeting which was scheduled to be held April 20, 1995 in Chicago, Illinois has been rescheduled for June 1, 1995.

DATES: Due to this change in dates, we have extended the time during which written comments will be accepted until June 9, 1995. Comments should be submitted by mail to the address below and will be accepted in person at each meeting.

The Chicago session will take place as follows:

DATE: June 1, 1995.

PLACE: The Westin Hotel Chicago,  
Oxford Ballroom, 909 North Michigan  
Avenue, Chicago, Illinois 60611, (312)  
649-6439.

TIME: 5 p.m. to 7:30 p.m.

LOCAL CONTACT: Merrill Travis, IDOT,  
(217) 782-2835.

ADDRESSES: All written statements  
should be submitted to: Honorable  
Jolene M. Molitoris, Administrator,  
Federal Railroad Administration, 400  
Seventh Street, S.W., Room 8206,  
Washington, D.C. 20590, Attn.: HSGT  
Policy.

Issued in Washington, D.C. on April 13,  
1995.

#### Donald M. Itzkoff,

Deputy Administrator, Federal Railroad  
Administration.

[FR Doc. 95-9831 Filed 4-17-95; 2:58 pm]

BILLING CODE 4910-06-P

#### UNITED STATES INFORMATION AGENCY

##### U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information  
Agency.

ACTION: Notice.

**SUMMARY:** A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on April 19 in Room 600, 301 4th Street, S.W., Washington, D.C. from 10:30 a.m.–12:00 p.m.

The Commission will hold a panel discussion on the Middle East Peace Process and Political Islam. The panelists are Ms. Judith Miller, Fellow, Twentieth Century Fund; Mr. Tom Melia, National Democratic Institute; and Mr. Kent Obee, Director, Office of Near East and South Asian Affairs, USIA.

**FOR FURTHER INFORMATION:** Please call Betty Hayes, (202) 619-4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

**Rose Royal,**

*Management Analyst, Federal Register Liaison.*

[FR Doc. 95-9686 Filed 4-18-95; 8:45 am]

BILLING CODE 8320-01-M

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**DEPARTMENT OF VETERANS AFFAIRS**

**Special Medical Advisory Group; Notice of Meeting**

The Department of Veterans Affairs gives notice that a meeting of the

Special Medical Advisory Group, authorized by Title 38, U.S.C., Section 7312, will be held at the Department of Veterans Affairs, Room 930, 810 Vermont Avenue, N.W., Washington, D.C., on May 10, 1995.

The meeting will convene at 8:15 a.m. (EST) and adjourn at approximately 4:00 p.m. (EST), May 10. The meeting will be open to the public up to the seating capacity of the room. Those wishing to attend should contact Susan Hall, Office of the Deputy Under Secretary for Health, at 202-273-5813, no later than May 5, 1995.

Dated: April 6, 1995.

By Direction of the Secretary:

**Heyward Bannister,**

*Committee Management Officer.*

[FR Doc. 95-9590 Filed 4-18-95; 8:45 am]

BILLING CODE 8320-01-M

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**Veterans' Advisory Committee on Education; Meeting**

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Education, authorized by 38 U.S.C. 3692, will be held on May 4, from 12 p.m. to 5 p.m. and on May 5, from 1 p.m. to 3 p.m. The meeting will take place at the American Association of

Collegiate Registrars and Admissions Officers, One Dupont Circle, NW, Suite 330, Washington, DC 20036-1171. The purpose of the meeting will be to discuss Veterans Affairs education issues.

The meeting will be open to the public up to the seating capacity of the conference room. Due to the limited seating capacity, it will be necessary for those wishing to attend to contact Mrs. Celia P. Dollarhide, Director, Education Service, (phone 202-273-7132) prior to April 21, 1995.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 2 p.m. on May 4, 1995.

Dated: April 4, 1995.

By direction of the Secretary.

**Heyward Bannister,**

*Committee Management Officer.*

[FR Doc. 95-9591 Filed 4-18-95; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register

Vol. 60, No. 75

Wednesday April 19, 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).

## POSTAL SERVICE

### Board of Governors; Notice of Vote to Close Meeting

By telephone vote on April 6, 1995, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for May 1, 1995, in New York, New York. The members will consider a filing with the Postal Rate Commission that concerns an experimental category of automatable, prebarcoded First-Class and Priority parcels under Commission Rule 67.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Mackie, Pace, and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and § 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government of the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the

United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39, United States Code; and § 7.3(c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

**David F. Harris,**  
Secretary.

[FR Doc. 95-9586 Filed 4-18-95; 8:45 am]

BILLING CODE 7710-12-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Monday, April 24, 1995, to consider the following matters:

#### Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final amendments to Part 308 of the Corporation's rules and regulations, entitled "Rules of Practice and Procedure," which clarify that the rules' provisions relating to ex parte communications conform to the requirements of the Administrative Procedure Act and, in particular, that the ex parte provisions do not apply to intra-agency communications, which are governed by a separate provision of the Administrative Procedure Act.

#### Discussion Agenda

Memorandum and resolution re: Final amendments to Part 345 of the Corporations' rules and regulations, entitled "Community Reinvestment," which provide clearer guidance to financial institutions on the nature and extent of their Community Reinvestment Act obligation and the methods

by which the obligation would be assessed and enforced.

Corporation's Strategic Plan.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942-3132 (Voice); (202) 942-3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898-6757.

Dated: April 17, 1995.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

Acting Executive Secretary.

[FR Doc. 95-9853 Filed 4-17-95; 3:49 pm]

BILLING CODE 6714-0-M

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 11:00 a.m., Monday, April 24, 1995.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

### CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 14, 1995.

**Jennifer J. Johnson,**

Deputy Secretary of the Board.

[FR Doc. 95-9735 Filed 4-17-95; 9:55 am]

BILLING CODE 6210-01-P

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of April 17, 24, May 1, and 8, 1995.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of April 17**

*Wednesday, April 19*

10:00 a.m.

Briefing on IPE Program and Severe Accident Research Program (Public Meeting)

(Contact: Themis Speis, 301-415-6802)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.

Briefing on EEO Program (Public Meeting) (Contact: Vandy Miller, 301-415-7380)

*Friday, April 21*

10:00 a.m.

Briefing on Commission Decision Tracking System (CDTS) (Public Meeting) (Contact: Samuel Chilk, 301-415-1875)

**Week of April 24—Tentative**

*Tuesday, April 25*

2:00 p.m.

Briefing on NRC Status of High-Level Waste Management Program (Public Meeting)

(Contact: Joseph Holonich, 301-415-6643)

*Wednesday, April 26*

10:00 a.m.

Briefing on Proposed Rule on Safety Equipment Reliability Data (Public Meeting)

(Contact: Charles Rossi, 301-415-7499)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

*Thursday, April 27*

10:00 a.m.

Briefing by IG and Staff Concerning Audit of HLW Licensing Support System (LSS) (Public Meeting)

(Contact: John Hoyle, 301-415-1968)

**Week of May 1—Tentative**

*Wednesday, May 3*

2:00 p.m.

Briefing on NRR Licensing Actions Program (Public Meeting)

(Contact: Roy Zimmerman, 301-415-1284)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of May 8—Tentative**

*Thursday, May 11*

10:00 a.m.

Briefing on Business Process Reengineering for Materials Licensing Area (Public Meeting)

(Contact: Pat Rathbun, 301-415-7178)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

*Friday, May 12*

10:00 a.m.

Briefing by DOE on HLW Licensing Support System (LSS) (Public Meeting)

2:00 p.m.

Briefing on Site Decommissioning Management Plan (SDMP) Program and Policy Issues (Public Meeting)

(Contact: Mike Weber, 301-415-7298)

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415-1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill, (301) 415-1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1963).

In addition, distribution of this meeting notice over the Internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

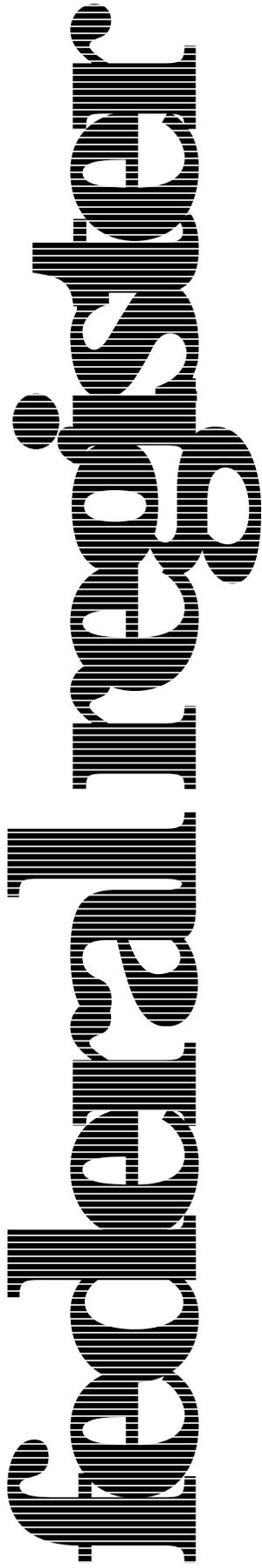
Dated: April 14, 1995.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 95-9753 Filed 4-17-95; 9:55 am]

**BILLING CODE 7590-01-M**



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Wednesday  
April 19, 1995

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**Part II**

**Department of  
Transportation**

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**Federal Aviation Administration**

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**14 CFR Part 187**

**Fees for Certification Services and  
Approvals Performed Outside the United  
States; Rule and Notices**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 187**

[Docket No. 27809; Amendment No. 187-5]

RIN 2120-AE72

**Fees for Certification Services and Approvals Performed Outside the United States**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This rulemaking: Updates existing fees for airman and repair station certification services to reflect current cost levels for such services performed outside the United States (U.S.); Establishes a schedule of fees where no fee currently exists for all tests, authorizations, certificates, permits, or ratings relating to any airman certification or repair station certification performed outside the U.S.; Establishes the methodology for computing user fees and a timetable for periodic updates of fees; and Establishes additional methods of collecting those fees.

This regulation is necessary to allow the FAA to fully recover the costs it incurs in performing airman certification and repair station certification services outside the U.S. and to bring current airman fees charges in line with the General Agreement on Tariffs and Trade (GATT) and other international treaties.

The intended effect of this action is to offset the costs of providing airman and repair station certification services outside the U.S. Recovering these costs will allow the FAA to continue to provide airman and repair station certification services outside the U.S., thereby facilitating the FAA's effort to assure ready acceptance of U.S. aeronautical exports overseas.

EFFECTIVE DATE: May 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Emily A. White, Flight Standards Service, AFS-50, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3301.

**SUPPLEMENTARY INFORMATION:****Background***Statement of the Problem*

The fee schedule that appears in 14 CFR part 187, Appendix A, was established by rulemaking and became effective on October 18, 1982. It

contains fees for certain certification services performed outside of the U.S. by the FAA. However, it does not contain fees for the full scope of activities for which fees may be charged under current statutory authority. Rather, the fee schedule lists only fees for services that were being rendered outside the United States at the time of that rulemaking. The fee schedule has not been updated since 1982, although the FAA's costs for performing these services has escalated since adoption of the present rule in 1982. The FAA incurs special costs to operate overseas that increase the costs for providing services outside the U.S. These additional costs include cost-of-living allowances as well as allowances for housing and education. Due to these costs, employing an inspector outside the U.S. is approximately \$85.4 thousand more costly than employing the same inspector within the U.S.

It is currently necessary to update part 187, including Appendix A, to reflect the services for which fees will be charged and to reflect the methodology for computing current and future fees. The fees for the services described in Appendix A are published in the "Notices" section of the **Federal Register**. The current fees are published in the "Notices" section of the **Federal Register** whenever a fee is revised. Changes to these fees will be published in the "Notices" section.

The changes set out in this rule make the FAA's fees practice more nearly consistent with the principles of nondiscrimination and most-favored-nation treatment that are at the core of the international trade regime set up by the GATT, and which includes the Aircraft Code and the General Agreement on Trade in Services (GATS). Under these core trade principles, governments should not treat foreign nationals differently in the measures that they take that affect international trade. Airman certifications are not governed by any trade agreement to which the U.S. is a party, but the FAA has determined that bringing its fee practices into line with international trade practices is desirable, if not required by any special obligation of the U.S. The FAA measures with regard to certification of foreign repair stations, however, including fees charged, will be subject to U.S. obligations under the GATS, which entered into force January 1, 1995. Applying multilateral trade principles to trade in service for the first time, the GATS covers measures affecting aircraft repair and maintenance services. This regulation is consistent with U.S. obligations under the GATS.

**History***Statutory Authority*

Under 49 U.S.C. 44701, formerly, Title VI of the Federal Aviation Act of 1958, as amended (the Act), gives the Administrator authority to issue certificates for airman, instructors, schools, and repair stations.

In addition, under Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701), the FAA has been charged with establishing a fair and equitable system for recovering full costs expended for any service, such as the issuance of the certificates, that provide a special benefit to an individual beyond those that accrue to the general public. Section 403a of that Act provides, in part, as follows:

It is the sense of the Congress that any work service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared or issued by any Federal Agency \* \* \* to or for any person (including groups, associations, organizations, partnerships, corporations, or businesses), except those engaged in the transaction of official business of the Government, shall be self-sustaining to the fullest extent possible \* \* \*.

Section 403a further provides, in part:

The head of each Federal agency is authorized by regulation (which, in the case of agencies in the Executive Branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefore such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of any existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts \* \* \*.

In 1980, Congress passed the International Air Transportation Competition Act of 1979 (hereinafter "IATC Act") giving the FAA authority to establish fee schedules for airman and repair station certification services provided outside the U.S. Section 28 of the IATC Act amended Section 45 of the Airline Deregulation Act to read as follows:

Nothing in this section shall prohibit the Secretary of Transportation or the Administrator from collecting a fee, charge, or price for any test, authorization, certificate, permit, or rating, administered or issued outside the United States, relating to any airman or repair station. (49 U.S.C. 334, second sentence).

Since the notice of proposed rulemaking (NPRM) was published (59 FR 33832, June 30, 1994), the Congress passed the Federal Aviation Administration Authorization Act of

1994 (hereinafter "FAA Authorization Act of 1994"), P.L. 103-305 (108 Stat. 1569), which was signed into law on August 23, 1994. Section 209 of the FAA Authorization Act of 1994, amended Section 45301 of Title 49 to, among other items, specifically require the FAA to establish and collect fees for foreign repair station certification and inspection actions outside the U.S. at such levels to fully recover the costs of providing such services. Section 209 reads in part:

(2) Foreign Repair Station Certification and Inspection Fees—The Administrator must establish and collect under this subsection fees for certification and inspection of repair stations outside of the United States.

(3) Level of Fees—Fees shall be established under this subsection as necessary \* \* \* except that the Administrator may for such services as the Administrator designates (and shall for certification and inspection of repair stations outside the United States) establish fees at a level necessary to recover the full cost of providing such services.

The amounts collected shall be paid to the Federal Government.

#### Office of Management and Budget (OMB) Guidelines

To aid in establishing fee schedules, OMB has prescribed in Circular No. A-25 the general guidelines to be used in developing an equitable and reasonable uniform system of charges for certain government services and property. The circular provides that "where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those that accrue to the public at large, a charge should be imposed to receive the full cost to the Federal Government of rendering that service." Circular No. A-25 specifies the following:

A special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (for example, receiving a patent, crop insurance, or license to carry on a specific business), or

(b) Provides business stability or assures public confidence in the business activity of the beneficiary (for example, certificates of necessity and convenience [sic: convenience and necessity] for airline routes, or safety inspections of craft); or

(c) Is performed at the request of the recipient and is above and beyond the

services regularly received by other members of the same industry or group, or of the general public (for example, receiving passport visa, airman's certificate, or an inspection after regular duty hours).

In support of the President's guidance in Circular No. A-25, this final rule enables the FAA to fully recover its costs for repair station and airman certification services performed outside the U.S. This rule is also consistent with the guidance in Circular A-25 regarding the use of excise taxes because once the new fees are implemented, appropriated funds will not be used to support these services.

#### Related Activity

If adopted, the proposed new part 142, Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers (Notice No. 92-10), and Special Federal Aviation Regulation No. 58, Advanced Qualification Program, will provide for certification of training centers outside the U.S. The certification provisions relating to these training centers will be contained in the proposed new part 142. The fees for the certification of training centers and for airman certification will be contained in a new FAA advisory circular discussed elsewhere in this document.

The FAA Authorization Act of 1994, cited above, broadened the FAA's Statutory authority to charge for services outside the U.S. Prior to the enactment of this legislation, FAA authority to charge fees for services performed outside the U.S. was limited to repair station and airman certification actions.

Under this legislation, authority to charge fees for services performed outside the U.S. is extended to: "any test, authorization, certificate, permit, rating, evaluation, approval, inspection, review," (49 U.S.C. 45301 (2)(c)). New fees authorized under this expanded authority will be proposed in future rulemaking action.

#### Discussion of Comments Received

The FAA mailed over 600 advance copies of Notice No. 94-24, Fees for Certification Services and Approvals Performed Outside the United States, to the Civil Aviation Authorities of member countries of the International Civil Aviation Organization (ICAO), FAA certificated foreign repair station operators, and interested Aviation Rulemaking Advisory Committee (ARAC) members. The ARAC is a formal standing committee, comprised of representatives from aviation associations and industry. ARAC provides industry input in the form of

information, advice, and recommendations to be considered in the full range of FAA rulemaking activities.

Two commenters responded to the NPRM: Air Line Pilots Association (ALPA) and General Aviation Manufacturers Association (GAMA). All comments received were carefully considered.

The ALPA is concerned that raising fees to reflect current costs for providing services will make FAA airman certification actions too expensive for potential applicants.

The FAA noted in Notice 94-24 that, in the past, most U.S. citizens outside the U.S. have sought airman certification services from designees, who charge market rates for such services, rather than seeking free airman certification services from the FAA. Even so, under the new schedule, FAA charges for airman certification services will be comparable to, or less than, those charged by designees. For example, a written test given by an FAA Aviation Safety Inspector will now be \$40, whereas the same test given at an FAA approved test center ranges from \$60 to \$150 depending upon the location. Accordingly, the fees adopted by this rulemaking are not excessive or too expensive for potential applicants.

Also regarding testing, GAMA questioned if FAA was, in effect, receiving more than full cost recovery where multiple applicants would be simultaneously taking tests.

The proposed time of 0.5 hours, or one-half hour, as the base time for computation of fees for all written tests is based on the time that an FAA Aviation Safety Inspector must spend on each individual applicant in checking qualifications to take specific tests, review of the completed test package, and other individual instruction that might be necessary. This 0.5 hour number does not include the actual test monitoring time, which averages two hours per written test under FAA regulations, where multiple applicants might be involved. FAA specifically sought to avoid the potential of multiple charges by not proposing charges for test monitoring time.

GAMA had several concerns regarding the charging for repair station certification actions that can be addressed by an elaboration on exactly how the U.S. Government may charge for its services.

Under the U.S. Government guidelines and proposed rules, the FAA may charge only for the actual service provided and may not make a profit from its services. Consequently, if no

government time or resources are expended on a particular service, then the FAA cannot charge for that service. There are oversight offices both within and outside of U.S. Government Agencies to assure agency compliance with applicable laws and regulations.

GAMA recommends the use of bilateral-type agreements with foreign governments to accomplish the FAA's foreign repair station workload, rather than using FAA inspectors on a cost recovery basis.

The FAA has been considering bilateral-type maintenance agreements with foreign countries for some time. The FAA expects that at the appropriate time, maintenance-type bilateral agreements will be concluded. This will not only be a cost savings to the end user but to the FAA as well.

GAMA questioned whether an hourly charge for inspector services, such as for repair station certification actions, would encourage an inspector to artificially extend the time required for certification in order to generate more income for the office or as a punitive action against the applicant or certificate holder.

It should be pointed out that hourly billing for these services has been in place for over twelve years with no complaints from repair station certificate holders. Not has any question regarding billing practices ever arisen during the course of regular FAA financial management reviews. Fee collection practices are also subject to other audits by the U.S. Department of Transportation Inspector General, the General Accounting Office, and other oversight offices. Cost allocation studies have shown that the charging of an hourly rate for services that can vary widely in time per facility due to facility size, complexity, and, potential problems uncovered is a very fair and nondiscriminatory way of charging for these services.

GAMA is also concerned that transportation and subsistence not be charged for actions that are performed in the office. Approximately 95 percent of repair station certification actions are performed on site at the facility. For repair station certification actions, that may be handled without a site visit, no transportation and subsistence expense will be incurred that could be charged to the certificate holder.

Finally, GAMA states that since fees collected do not directly affect the FAA budget, the collection of these fees still might not assure the service is available when and where needed.

This statement is incorrect. Since 1991, the fees collected by FAA safety inspectors for repair station and airman

certification actions outside the U.S. has been credited back to the budget of the safety office that performed the certification action as reimbursement for expenses. This procedure helps to ensure that sufficient funds remain available for necessary certification services.

#### **Editorial and Administrative Changes**

In Notice No. 94-24, the FAA proposed that certain administrative changes be made to facilitate review and adjustment of fees as necessary to reflect changes in fees for services performed. The FAA has removed the fees from the chart contained in appendix A of part 187 and replaced it with the methodology for determining fees and a yearly timetable for review. The actual fees derived from this methodology will be contained in Advisory Circular 187-1. Future notice of changes to fees for services will be published in the "Notices" section of the **Federal Register**.

Although the FAA proposed no change to proposed redesignated § 187.15(a), editorial changes are necessary to reflect the revised chart which now describes the fees for services.

All other proposals are adopted as proposed.

#### **Paperwork Reduction Act**

There are no reporting or recordkeeping requirements associated with this rule.

#### **Regulatory Evaluation Summary**

Executive Order 12866 established the requirement that, within the extent permitted by law, a Federal regulatory action may be undertaken only if the potential benefits to society for the regulation outweigh the potential costs to society. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. The FAA has determined that this amended rule is not a "significant rulemaking action," as defined by Executive Order 12866 (Regulatory Planning and Review). The results are summarized in this section.

This rule will not impose any additional costs on any members of society other than those requesting FAA certification services outside the United States. The rule will reimburse the FAA for the cost of services currently being provided to the users. Thus, the beneficiaries, rather than the general taxpayers, will pay for the services provided by the FAA. The new and amended fees are considered equitable

and reflect the cost of providing these services. The benefits of this rule will therefore be the elimination of the need for general federal revenues by the FAA to cover the costs of these services provided by the FAA.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to consider the impact of rules on small entities, that is, small businesses, nonprofit organizations, and local governments. If there is a significant impact on a substantial number of small entities, the Agency must prepare a draft Regulatory Flexibility Analysis (RFA) for the final rule.

The amended rule will primarily affect general aviation pilots and foreign repair stations. The RFA applies neither to individuals nor foreign entities. Therefore, a RFA is not required.

#### **International Trade Impact**

This rule will affect primarily general aviation pilots and foreign repair stations. The rule will have a favorable competitive impact on U.S. repair stations by removing the subsidy that the FAA has provided to foreign repair stations in the form of lower charges for certification services. The rule will enhance the competitiveness of domestic firms.

#### **Federalism Implications**

The regulations hereing will not have substantial direct implications 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 regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### **Conclusion**

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this regulation 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. This regulation is considered nonsignificant under DOT Order 2100.5, Policies and Procedures for

Simplification, Analysis, and Review of Regulations. A final regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT.

**List of Subjects in 14 CFR Part 187**

Administrative practice and procedure, Air transportation.

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14 of the Code of Federal Regulations as follows:

**PART 187—FEES**

1. The authority citation for part 187 continues to read as follows:

**Authority:** Sec. 501, 65 Stat. 290; 31 U.S.C. 483a; secs. 301, 302, 303, 305, 307, 313, 314; 72 Stat. 744, 747, 749, 752, 754; 49 U.S.C. 1341, 1343, 1344, 1346, 1348, 1354, 1355.

Section 187.15 is revised to read as follows:

**§ 187.15 Payment of fees.**

(a) The fees described in Appendix A of this part and published in the "Notices" section of the **Federal Register** are payable to the Federal Aviation Administration by check, money order, or draft payable in U.S. currency and drawn on a U.S. bank.

(b) The fees described in Appendix A of this part and published in the "Notices" section of the **Federal Register** may be paid by wire transfer.

(c) Applicants for the FAA services described in Appendix A of this part shall pay bank processing charges, when such charges are assessed by banks on U.S. Government deposits.

3. Appendix A to part 187 is revised to read as follows:

**Appendix A to Part 187—Methodology for Computation of Fees for Certification Services Performed Outside the United States**

(a) Fixed fees and hourly rates have been derived using the methodology described below to ensure full cost recovery for certification actions or approvals provided by the FAA for persons outside the United States.

(b) These rates are based on aviation safety inspector time rather than calculating a separate rate for managerial or clerical time because the inspector is the individual performing the actual service. Charging for inspector time, while building in all costs into the rate base, provides for efficient cost recovery and time management.

(c) The hourly billing rate has been determined by using the annual operations budget of the Flight Standards Service. The budget is comprised of the following:

(1) Personnel compensation and benefits, budget code series 1100 (excluding codes 1151 and 1152—overtime, Sunday and holiday pay), 1200, and 1300.

(2) Travel and transportation of persons, budget code series 2100 (excluding code 2100—site visit travel).

(3) Transportation of things, budget code series 2200.

(4) Rental, communications, utilities, budget code series 2300.

(5) Printing and reproduction, budget code series 2400.

(6) Contractual services, budget code series 2500.

(7) Supplies and materials, budget code series 2600.

(8) Equipment, budget code series 3100.

(9) Lands and structures, budget code series 3200.

(10) Insurance claims and indemnities, budget code series 4200.

(d) In order to recover overhead costs attributable to the budget, all costs other than direct inspector transportation and subsistence, overtime, and Sunday/holiday costs, are assigned to the number of inspector positions. An hourly cost per inspector is developed by dividing the annual Flight Standards Operations Budget, excluding the items enumerated above, by the number of aviation safety inspections (OMB position series 1825) on board at the beginning of the fiscal year, to determine the annual cost of an aviation safety inspector. This annual cost of an aviation safety inspector is divided by 2,087 hours, which is the annual paid hours of a U.S. Federal Government employee. This result in the hourly government paid cost of an aviation safety inspector.

(e) To ensure that the hourly inspector cost represents a billing rate that ensures full recovery of costs, the hourly cost per inspector must be multiplied by an indirect work factor to determine the hourly inspector billing rate. This is necessary for the following reasons:

(1) Inspectors spend a significant amount of time in indirect work to support their inspection activities, much of which cannot be allocated to any one client.

(2) Not all 2,087 annual paid hours are available as work hours because training, providing technical assistance, leave, and other indirect work activities reduce the work time that may be directly billed. Consequently, the hourly cost per inspector must be adjusted upwards by an indirect work factor. The calculation of an indirect work factor is discussed in paragraph (f) of this appendix.

(f)(1) The indirect work factor is determined using the following formula:

$$\left( 1 + \sum_{i=1}^k a_i \right) (1 + b) = \text{indirect work factor}$$

where:

a=indirect work rate, and

b=leave usage (total leave hours divided by total hours available for work.

(2) The components of the formula are derived as follows:

(i) a=indirect work rate. Indirect work rate is taken from the Flight Standards Staffing Standard Order and is used to project the amount of time an aviation safety inspector spends in indirect activities, as opposed to certification and surveillance work. The indirect work activities are:

(A) Development of master minimum equipment lists on Flight Operations Evaluation Board.

(B) Development of aircraft training documents on Flight Standardization Board.

(C) Development of Maintenance program documents on Maintenance Review Board.

(D) Providing technical assistance.

(E) Assisting legal counsel.

(F) Evaluation of technical

documents.

(G) Leave (all types).

(H) Training.

(I) Administrative time.

(J) Travel for indirect work.

(ii) b=leave usage (total leave hours divided by total hours available for work). This is computed by using OMB guidelines of 280 average annual leave hours and 1,800 average annual hours

available for work for computer manpower requirements.

(g) The hourly inspector cost, when multiplied by the indirect work factor, yields the hourly inspector billing rate and ensures full cost recovery by incorporating the total amount of FAA paid hours needed to produce one hour of direct billable inspector time.

(h) Certifications and approvals for which there are fixed times, such as airman tests, are determined by multiplying the time used in the Flight Standards Staffing Standard or airman test guidelines by the inspector hourly billing rate.

(i) Certifications and approvals for which there are no fixed work rates,

such as airman and repair station facilities (air agencies), are billed at the hourly inspector billing rate.

(j) Actual transportation and subsistence expenses incurred in certification or approval actions will be billed in addition to the hourly inspector billing rate, where such expenses are incurred.

(k) In no event will the fees exceed the actual costs of providing certification or approval services.

(l) The methodology for computing user fees is published in this Appendix.

The User fee schedule is published in an FAA Advisory Circular entitled "Flight Standards Service Schedule of Charges Outside the United States." A copy of this publication may be obtained from: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954

(m) Fees will be reviewed every year, at the beginning of the fiscal year, and adjusted either upward or downward in order to reflect the current costs of

performing tests, authorizations, certifications, permits, or ratings.

(n) Notice of each change to a fee for a service described in the user fee schedule will be published in the "Notices" section of the **Federal Register**.

Issued in Washington, D.C. on April 10, 1995.

**David R. Hinson,**

*Administrator.*

[FR Doc. 95-9150 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

[AC 187-1]

**Schedule of Charges Outside the United States**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability.

**SUMMARY:** The Federal Aviation Administration (FAA) is announcing the availability of Advisory Circular (AC) 187-1 which transmits a schedule of charges for services of FAA Flight Standards Aviation Safety Inspectors outside the United States.

**DATES:** This AC is effective on May 19, 1995.

**ADDRESSES:** How to obtain copies: A copy of this publication may be obtained from: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

**FOR FURTHER INFORMATION CONTACT:** Ms. Emily A. White, Flight Standards Service, AFS-50, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3301.

Issued in Washington, DC, on April 10, 1995.

**Thomas C. Accardi,**

*Director, Flight Standards Service.*

[FR Doc. 95-9151 Filed 4-18-95; 8:45 am]

**BILLING CODE 4910-13-M**

**Schedule of User Fees for Certification Services and Approvals Performed Outside the United States**

**ACTION:** Notice.

**SUMMARY:** This notice informs the public of the effective date of changes to the schedule of user fees for certification services and approvals outside the United States.

The methodology for computing these user fees and the resulting user fee levels were adopted through rulemaking action. This rulemaking "Fees for Certification Services and Approvals Performed Outside the United States", Docket No. 27809, Amendment No. 187-5, is published as a final rule in this same part of the **Federal Register**, and will become effective on May 19, 1995. In connection with its rulemaking initiative, the FAA indicated that it will publish a notice of issuance of Advisory Circular entitled, "Flight Standards Service Schedule of Charges Outside the United States." The Final Rule requires

FAA to publish in the "Notices" section of the **Federal Register** all changes to the schedule of user fees for certification services and approvals performed outside the United States. This notice is issued in response to that requirement. The new schedule of fees, which will also appear in the Advisory Circular, is presented below.

**EFFECTIVE DATE:** The schedule of fees published below becomes effective on May 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Emily A. White, Flight Standards Service, AFS-50, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591, telephone (202) 267-3301.

**SUPPLEMENTARY INFORMATION:** User fees will be reviewed every year, at the beginning of the fiscal year, and adjusted either upward or downward in order to reflect the current costs of performing certification services and approvals outside the United States.

Notice of each change to a fee for a service described in the user fee schedule will be published in the "Notices" section of the **Federal Register**.

Issued in Washington, DC on April 10, 1995.

**Thomas C. Accardi,**

*Director, Flight Standards Service.*

**SCHEDULE OF SERVICES—FLIGHT STANDARDS SERVICE**

Category of service	14 CFR reference	Charge
<b>I. Transportation and Subsistence Charges:</b>		
<b>All Categories of Services</b>		
Transportation and subsistence will be assessed to applicants in addition to the charge published below for certification actions requiring travel from the duty station.	.....	Actual cost.
<b>II. Airman Certification:</b>		
<b>All Categories of Airmen</b>		
Authorizations for written or practical tests (if different from those specified below) .....	Parts 61, 63, 65 .....	\$40.
Special medical check .....	Part 67 .....	\$160.
FA Act Section 609 re-exam .....	Parts 61, 63, 65 .....	\$208.
Inspector review for all tests, approvals, ratings given by designated examiners and evaluators .....	Parts 61, 63, 65 .....	\$40.
<b>Pilots</b>		
Each written test, including: tests for initial issue or renewal of a certificate or rating, restriction and limitation removals, reissuances, determination of knowledge based on military experience in the categories below:		
Private pilot .....	Part 61.103 .....	\$40.
Recreational pilot .....	Part 61.96 .....	\$40.
Commercial pilot .....	Part 61.123 .....	\$40.
Airline Transport pilot .....	Part 61.153 or Part 61.159 .....	\$40.
Instrument Rating .....	Part 61.65 or Part 61.75 .....	\$40.
<b>Flight Instructor:</b>		
Fundamental of Instructing .....	Part 61.183 .....	\$40.
Written, other than gyroplane .....	Part 61.183 .....	\$40.
Written for gyroplane .....	Part 61.183 .....	\$40.
Ground instructor .....	Part 143.2 .....	\$40.

## SCHEDULE OF SERVICES—FLIGHT STANDARDS SERVICE—Continued

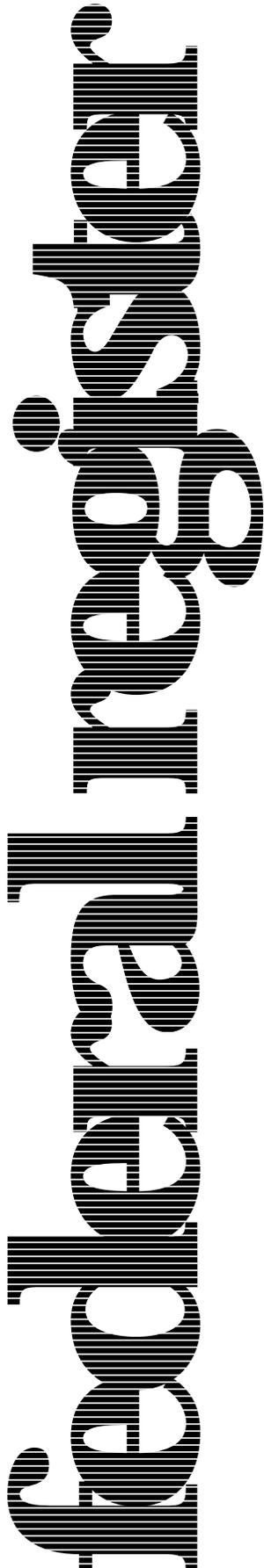
Category of service	14 CFR reference	Charge
Each practical test (oral, flight, simulated flight increments, or combined), for initial award, renewal of a certificate or rating, restriction & limitation removals, reissuances, determination of knowledge based on military competence in the categories below:		
Student pilot .....	Part 61.83 .....	\$32.
Recreational pilot .....	Part 61.96(e) .....	\$248.
Private pilot .....	Part 61.103 .....	\$248.
Commercial pilot .....	Part 61.123 .....	\$248.
Commercial pilot limited to VFR .....	Part 61.129(a) .....	\$248.
Commercial pilot reissue certificate .....	Part 61.11 .....	\$248.
Airline transport pilot .....	Part 61.157 or Part 61.163 .....	\$400.
Airline transport pilot, applicant without IFR rating .....	Part 61.157 or Part 61.163 or Part 61.65 .....	\$400.
Instrument rating .....	Part 61.65 or Part 61.75 .....	\$256.
Flight instructor:		
Instrument rating .....	Part 61.191 or 61.65 .....	\$288.
Added category rating .....	Part 61.191 or Part 61.63 .....	\$248.
Added class rating .....	Part 61.191 or 61.163 .....	\$248.
Renewal .....	Part 61.197 .....	\$160.
Reinstatement .....	Part 61.199(b) .....	\$160.
Ground instructor .....	Part 143.3 .....	\$40.
Type rating with instrument rating .....	Part 61.63 or Part 61.157 or Part 61.163 .....	\$368.
Type rating without instrument rating .....	Part 61.63 .....	\$368.
Category rating .....	Part 61.63 or Part 61.165 .....	\$368.
Class rating .....	Part 61.63 .....	\$368.
Special purpose pilot on basis of foreign certificate .....	Part 61.75 .....	\$68.
Special purpose pilot on basis of aircraft lease .....	Part 61.77(e)(4) .....	\$68.
Pilot proficiency check—12 month .....	Part 61.58(b) .....	\$296.
Pilot proficiency check—24 month .....	Part 61.58(c) .....	\$296.
Instrument competency check .....	Part 61.57 .....	\$320.
Statement of demonstrated ability .....	Part 61.13(d) .....	\$320.
Category II authorization .....	Part 61.57 .....	\$320.
Category III authorization .....	Part 61.58 .....	\$320.
Pilot-in-command in lieu of type rating (LOA) authorization .....	Part 61.31(b) or Part 61.31(h)(3) .....	\$464.
Aerobatic competence authorization .....	Part 91 .....	\$320.
Pilot knowledge/skill authorization .....	Parts 91, 125, 133, 135, 137 .....	\$320.
Flight instructor simulator authorization .....	Parts 121, 135 .....	\$320.
<b>Flight Engineers</b>		
Each written test, including: initial, renewal, added ratings, restriction removals, reissuances, and tests based on military competence.	Part 63.65 (a) & (b) ...	\$40.
Each practical test (oral, flight, or combined) for initials, renewals, added ratings, simulators, restriction removals, reissuances, including tests based on military competency.	Part 63.33(b)(1) .....	\$400.
Special purpose flight engineer based on foreign licenses (initial, renewal, VFR or IFR, with or without medical).	Part 63.42 .....	\$68.
Special purpose flight engineer based on aircraft lease (initial, renewal, VFR or IFR, with or without medical).	Part 63.23 .....	\$68.
<b>Flight Navigators</b>		
Each written test, including: initial, renewal, added ratings, restriction removals, reissuances, and tests based on military competence.	Part 63.53(a) .....	\$40.
Each practical test (oral, flight, or combined) for initials, renewals, added ratings, simulators, restriction removals, reissuances, including tests based on military competency.	Part 63.57 .....	\$400.
<b>Aircraft Dispatchers</b>		
Each written test, including: initial, renewal, added ratings, restriction removals, reissuances, and tests based on military competence.	Part 63.55(a) .....	\$40.
Each practical test (oral, flight, or combined) for initials, renewals, added ratings, simulators, restriction removals, reissuances, including tests based on military competency—competency for airplane or helicopter.	Part 65.59 .....	\$400.
<b>Mechanics</b>		
Each written test, including: initial, renewal, added ratings, restriction removals, reissuances, and tests based on military competence—general, airframe, or powerplant.	Part 65.71(a) or Part 65.77 .....	\$40.
Each practical test for initials, renewals, added ratings, restriction removals, reissuances—airframe or powerplant.	Part 65.79 .....	\$504.

## SCHEDULE OF SERVICES—FLIGHT STANDARDS SERVICE—Continued

Category of service	14 CFR reference	Charge
<b>Inspection Authorization</b>		
Inspection authorization (IA)—initial .....	Part 65.91 .....	\$392.
Inspection authorization (IA)—renewal .....	Part 65.93 .....	\$72.
<b>Repairman</b>		
Initial, renewal, added rating .....	Part 65.101 .....	\$152.
<b>Parachute Riggers</b>		
Each written test, including: initial, renewal, added ratings, restriction removals, reissuances, and tests based on military competence—senior or master.	Part 65.115(a); Part 65.117; Part 65.119(b).	\$40.
Each practical test for initials, renewals, added ratings, restriction removals, reissuances, including tests based on military competence.	Part 65.115(c) .....	\$440.
<b>Designation of Examiners</b>		
For all categories—Includes written and practical tests, initials, added ratings, renewals, restriction removals, reissuances in the categories below:		
Pilot examiners: .....	Part 183.23 .....	
Large turbine .....	.....	\$960.
Pilot proficiency .....	.....	\$440.
Written test examiner .....	.....	\$640.
Airman certification representative .....	.....	\$400.
Other types as the FAA may designate .....	Part 183.11(b) .....	\$960.
Aircraft dispatch examiner (DADE) .....	Part 183.25(f) .....	\$960.
Flight engineer examiner (DFEE) .....	Part 183.25(d) .....	\$960.
Flight navigator examiner (DFNE) .....	Part 183.25(e) .....	\$960.
Designated Airworthiness Representative (DAR)—initial .....	Part 183.33 .....	\$440.
Designated Airworthiness Representative (DAR)—renewal .....	Part 183.33 .....	\$160.
Designated Mechanic Examiner (DME)—initial .....	Part 183.25(a) .....	\$504.
Designated Mechanic Examiner (DME)—renewal .....	Part 183.25(a) .....	\$184.
Designated Parachute Rigger Examiner (DPRE)—initial .....	Part 183.25(b) .....	\$504.
Designated Parachute Rigger Examiner (DPRE)—renewal .....	Part 183.25(b) .....	\$184.
Other designees as the FAA may designate .....	Part 183.11(b) .....	\$504.
III. Air Agencies:		
Repair station certification/approval/authorization/inspection actions .....	Part 145, Subpart C ..	\$80 per inspector hour.
Pilot school certification/approval/authorization/inspection actions .....	Part 141 .....	\$80 per inspector hour.
Airman training centers certification/approval/authorization/inspection actions .....	Part 142 .....	\$80 per inspector hour.
Aviation maintenance technician schools certification/approval/authorization .....	Part 147 .....	\$80 per inspector hour.
NOTE: Future changes to the current fees will be published in the "Notices" section of the <b>Federal Register</b> . A fee is effective on the date of its publication in the "Notices" section of the <b>Federal Register</b> .		

[FR Doc. 95-9152 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-13-M



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Wednesday  
April 19, 1995

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**Part III**  
**Grants and Cooperative  
Agreements to State and  
Local Governments; Final  
Rule**

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Department of Agriculture  
Department of Energy  
Small Business Administration  
Department of Commerce  
Office of National Drug Control Policy  
Department of State  
Department of Housing and Urban Development  
Department of Justice  
Department of Labor  
Federal Mediation and Conciliation Service  
Department of Defense  
Department of Education  
National Archives and Records Administration  
Department of Veterans Affairs  
Environmental Protection Agency  
General Services Administration  
Department of the Interior  
Federal Emergency Management Agency  
Department of Health and Human Services  
National Science Foundation  
National Foundation on the Arts and the Humanities  
    National Endowment for the Arts  
    National Endowment for the Humanities  
    Institute of Museum Services  
Corporation for National and Community Service  
Department of Transportation

DEPARTMENT OF AGRICULTURE  
7 CFR Part 3016

DEPARTMENT OF ENERGY  
10 CFR Part 600

SMALL BUSINESS ADMINISTRATION  
13 CFR Part 143

DEPARTMENT OF COMMERCE  
15 CFR Part 24

OFFICE OF NATIONAL DRUG CONTROL POLICY  
21 CFR Part 1403

DEPARTMENT OF STATE  
22 CFR Part 135

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
24 CFR Part 85

DEPARTMENT OF JUSTICE  
28 CFR Part 66

DEPARTMENT OF LABOR  
29 CFR Part 97

FEDERAL MEDIATION AND CONCILIATION SERVICE  
29 CFR Part 1470

DEPARTMENT OF DEFENSE  
32 CFR Part 33

DEPARTMENT OF EDUCATION  
34 CFR Part 80

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION  
36 CFR Part 1207

DEPARTMENT OF VETERANS AFFAIRS  
38 CFR Part 43

ENVIRONMENTAL PROTECTION AGENCY  
40 CFR Part 31

GENERAL SERVICES ADMINISTRATION  
41 CFR Part 105-71

DEPARTMENT OF THE INTERIOR  
43 CFR Part 12

FEDERAL EMERGENCY MANAGEMENT AGENCY  
44 CFR Part 13

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
45 CFR Part 92

NATIONAL SCIENCE FOUNDATION  
45 CFR Part 602

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES  
National Endowment for the Arts

45 CFR Part 1157  
National Endowment for the Humanities  
45 CFR Part 1174  
Institute of Museum Services  
45 CFR Part 1183  
CORPORATION FOR NATIONAL AND COMMUNITY SERVICE  
45 CFR Part 2541  
DEPARTMENT OF TRANSPORTATION  
49 CFR Part 18  
Grants and Cooperative Agreements to State and Local Governments

AGENCIES: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of Veterans Affairs, Corporation for National and Community Service, Environmental Protection Agency, Federal Emergency Management Agency, Federal Mediation and Conciliation Service, General Services Administration, Institute of Museum Services, National Archives and Records Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Office of National Drug Control Policy, Small Business Administration.

ACTION: Final rule.

SUMMARY: In response to a recommendation by the National Performance Review, this final revision to the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," originally issued in the March 11, 1988, **Federal Register**, raises the dollar threshold for simplified procedures for small purchases (simplified acquisition threshold) by State and local grantees. The agencies' common rule provides uniform fiscal and administrative requirements applicable to all types of grants and cooperative agreements to State and local governments.

EFFECTIVE DATE: This rule is effective May 19, 1995.

FOR FURTHER INFORMATION CONTACT: See preambles of the individual agencies below.

SUPPLEMENTARY INFORMATION:

**Background**

In 1983, a 20-agency task force explored streamlining grants

management and reviewed OMB Circular A-102, "Uniform Administrative Requirements for Grants to State and Local Governments."

In response, two governmentwide documents were eventually issued: a March 1988 common rule (53 FR 8034-8103) containing fiscal and administrative requirements for grants and cooperative agreements to State and local governments (grantees) and subrecipients which are State and local governments (subgrantees), and a March 1988 revised OMB Circular A-102 (53 FR 8028-8032)—directed solely to Federal agencies—containing guidance to Federal agencies on how they should manage the award and administration of Federal grants. Consistent with a March 12, 1987, Presidential memorandum, all affected agencies adopted the common rule verbatim, except where inconsistent with specific statutory requirements.

In September 1993, in *Creating a Government that Works Better and Costs Less*, the National Performance Review (NPR) made a recommendation to "Simplify administration by modifying the common grant rules on small purchases" (FSL05). Specifically, NPR recommended an increase in the dollar threshold for small purchases (simplified acquisition threshold) by local governments from \$25,000 to \$100,000. NPR also made a companion recommendation in the area of reinventing Federal procurement to "Establish new simplified acquisition threshold and procedures" (PROC04). This recommendation sought legislation to simplify small purchases by raising the threshold for the use of simplified acquisition procedures from \$25,000 to \$100,000.

In a February 1994 accompanying report of the NPR entitled *Creating a Government that Works Better & Costs Less—Strengthening the Partnership in Intergovernmental Service Delivery*, NPR elaborated on recommendation FSL05. NPR stated "Local governments have found the \$25,000 limit to be overly restrictive, especially for the purchase of small vehicles that often exceed this amount. For example, to procure one small van with federal funds to satisfy Americans with Disabilities Act requirements, grantees must formally advertise and solicit sealed public bids. This requirement delays the procurement process and prevents grantees from acquiring rolling stock quickly" (page 21).

In many cases, State statutes set a small purchase threshold below the Federal small purchase threshold. State and local governments are encouraged to amend their thresholds in similar

fashion so that grantees will be able to more fully benefit from the change in Federal requirements in this rulemaking.

On October 13, 1994, President Clinton signed Public Law 103-355, the Federal Acquisition Streamlining Act of 1994. The Act amended 41 U.S.C. 403(11) to read "The term 'simplified acquisition threshold' means \$100,000." Formerly, this section defined the "small purchase threshold" at \$25,000. Thus, the proposed rule's language reading "the greater of \$100,000 or the small purchase threshold fixed at 41 U.S.C. 403(11) (currently set at \$25,000)" anticipated this new Act, and is fully consistent with it.

Also, since the latest revision to OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," published in the **Federal Register** on November 29, 1993 (58 FR 62992-63005), states at paragraph \_\_\_\_\_.44(e)(2), "The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$25,000)," OMB has determined that the \$100,000 threshold already applies to grants with institutions of higher education, hospitals, and other non-profit organizations.

On October 14, 1994, OMB published in the **Federal Register** a final revision to OMB Circular A-102 (59 FR 52224-52227).

#### Public Comments

On October 25, 1994, the agencies proposed amendments to the grants management common rule (59 FR 53706-53713). Fifteen public and agency comments were received. All basically supported the increase in the threshold, although some were concerned about whether the increase would have the intended effect in light of some lower State and local thresholds. Some commenters also indicated other desirable changes in grants administration for consideration in future rulemaking actions.

One commenter asked for a clarification whether professional services costing less than \$100,000 could be procured under the small purchase procedures. The common rule does not provide for any different procedures for the procurement of professional services, except for the procurement of architectural/engineering (A/E) services. Grantees may use qualifications-based competitive proposals for the procurement of A/E professional services (see section \_\_\_\_\_.36(d)(3)(v)).

However, this is not a requirement and grantees are authorized to use small purchase procedures for procuring A/E professional services.

#### Text Changes

In response to the new Federal Acquisition Streamlining Act, the following changes in the proposed text are reflected in the final text: (a) the term "simplified acquisition threshold" replaces the term "small purchase threshold," (b) the threshold level is now set at \$100,000 instead of \$25,000, and (c) the language reading "the greater of \$100,000 or the small purchase threshold" now merely reads "the simplified acquisition threshold." In addition, "Contracts other than small purchases" in section \_\_\_\_\_.36(i)(1) has been changed to "Contracts more than the simplified acquisition threshold."

The language changes are reflected in the following eight paragraphs in section \_\_\_\_\_.36: (d)(1), (g)(2) introductory text, (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (h) introductory text, and (i)(1).

#### Impact Analysis

##### *Executive Order 12866*

The participating agencies have determined that this rule is "not significant" for purposes of Executive Order 12866.

##### *Regulatory Flexibility Act of 1980*

The participating agencies certify to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The rule does not affect the amount of funds provided in the covered programs, but rather modifies and updates an administrative and procedural requirement that reduces burden on small entities. As such, a Regulatory Flexibility Analysis has not been prepared.

##### *Paperwork Reduction Act*

The participating agencies certify that this final rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

#### Text of the Final Common Rule

The text of the final common rule appears below:

#### PART \_\_\_\_—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

1. Section \_\_\_\_\_.36 is amended by revising paragraphs (d), (g), (h) and (i) to read as follows:

##### \_\_\_\_\_.36 Procurement.

\* \* \* \* \*

(d) *Methods of procurement to be followed (1) Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) *Procurement by sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in \_\_\_\_\_.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents,

factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a

delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

\* \* \* \* \*

(g) *Awarding agency review*. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in

paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements*. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price*. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price*. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price*. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions*. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted

to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books,

documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

#### Adoption of Final Common Rule

The agency-specific adoptions of the final common rule, which appears at the end of the common preamble, appear below.

#### DEPARTMENT OF AGRICULTURE

##### 7 CFR Part 3016

RIN 0503-AA08

**FOR FURTHER INFORMATION CONTACT:** Gerald Miske, Supervisory Management Analyst, Federal Assistance and Fiscal Policy Division, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-1553.

##### List of Subjects in 7 CFR Part 3016

Accounting, Contract programs, Grant programs—agriculture, Intergovernmental relations, Reporting and recordkeeping requirements.

Issued at Washington, DC.

**Anthony A. Williams,**  
*Chief Financial Officer.*

Approved:

**Dan Glickman,**  
*Secretary of Agriculture.*

Title 7 of the Code of Federal Regulations, part 3016 is amended as follows.

#### PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

1. The authority for part 3016 continues to read as follows:

**Authority:** 5 U.S.C. 301.

2. Section 3016.36 is amended as set forth at the end of the common preamble.

BILLING CODE 3410-90-P

#### DEPARTMENT OF ENERGY

##### 10 CFR Part 600

RIN 1991-AB15

**FOR FURTHER INFORMATION CONTACT:** Cherlyn Seckinger, Business and Financial Policy Division (HR-51) U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8192.

##### List of Subjects in 10 CFR Part 600

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**Richard H. Hopf,**

*Deputy Assistant Secretary for Procurement and Assistance Management.*

Title 10 of the Code of Federal Regulations, part 600 is amended as follows.

#### PART 600—FINANCIAL ASSISTANCE RULES

##### Subpart C—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

1. The authority for part 600 continues to read as follows:

**Authority:** Secs. 644 and 646, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97-258, 96 Stat. 1003-1005 (31 U.S.C. 6301-6308).

2. Section 600.236 [\_\_\_\_\_.36] is amended as set forth at the end of the common preamble.

BILLING CODE 6450-01-M

#### SMALL BUSINESS ADMINISTRATION

##### 13 CFR Part 143

**FOR FURTHER INFORMATION CONTACT:** Calvin Jenkins, Assistant Administrator for Administration, 202-205-6630.

##### List of Subjects in 13 CFR Part 143

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**Philip Lader,**  
*Administrator.*

Title 13 of the Code of Federal Regulations, part 143 is amended as follows:

**PART 143—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The for part 143 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6).

2. Section 143.36 is amended as set forth at the end of the common preamble.

BILLING CODE 8025-01-M

**DEPARTMENT OF COMMERCE**

**15 CFR Part 24**

RIN 0605-AA04

FOR FURTHER INFORMATION CONTACT: John J. Phelan, III, 202-482-4115.

**List of Subjects in 15 CFR Part 24**

Accounting, Contract programs, Grants programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**Sonya G. Stewart,**

*Director, Office of Executive Budgeting and Assistance Management.*

Title 15 of the Code of Federal Regulations, part 24 is amended as follows.

**PART 24—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

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

**Authority:** 5 U.S.C. 301.

2. Section 24.36 is amended as set forth at the end of the common preamble.

BILLING CODE 3510-FA-M

**OFFICE OF NATIONAL DRUG CONTROL POLICY**

**21 CFR Part 1403**

RIN 3201-ZA00

FOR FURTHER INFORMATION CONTACT: Richard Yamamoto, Director, High Intensity Drug Trafficking Areas Program, (202) 395-6755.

**List of Subjects in 21 CFR Part 1403**

Accounting, Contract programs, Grant programs, Intergovernmental relations,

Reporting and recordkeeping requirements.

**Lee P. Brown,**  
*Director.*

Title 21 of the Code of Federal Regulations, part 1403 is amended as follows.

**PART 1403—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 1403 continues to read as follows:

**Authority:** 5 U.S.C. 301.

2. Section 1403.36 is amended as set forth at the end of the common preamble.

BILLING CODE 3180-02-M

**DEPARTMENT OF STATE**

**22 CFR Part 135**

RIN 1400-AA53

FOR FURTHER INFORMATION CONTACT: Robert Lloyd, Office of the Procurement Executive, 703-516-1690.

**List of Subjects in 22 CFR Part 135**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**Lloyd W. Pratsch,**

*Procurement Executive.*

Title 22 of the Code of Federal Regulations, Part 135 is amended as follows:

**PART 135—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 135 continues to read as follows:

**Authority:** 22 U.S.C. 2658.

2. Section 135.36 is amended as set forth at the end of the common preamble.

BILLING CODE 4710-24-M

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 85**

RIN 2535-AA22

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, (202) 708-0294. TDD: (202) 708-1112.

**List of Subjects in 24 CFR Part 85**

Accounting, Contract programs, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Title 24 of the Code of Federal Regulations, part 85 is amended as follows:

**PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS**

1. The authority for part 85 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d).

2. Section 85.36 is amended as set forth at the end of the common preamble.

BILLING CODE 4210-32-M

**DEPARTMENT OF JUSTICE**

**28 CFR Part 66**

[OJP No. 1007F; A.G. Order No. 1961-95]

RIN 1121-AA16

FOR FURTHER INFORMATION CONTACT:

Cynthia J. Schwimer, Director, Financial Management Division, 202-307-3186.

**List of Subjects in 28 CFR Part 66**

Accounting, Contract programs, Grant programs, Intergovernmental relations; Reporting and recordkeeping requirements.

**Janet Reno,**

*Attorney General.*

Title 28, Chapter I, of the Code of Federal Regulations, part 66 is amended as follows.

**PART 66—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 66 is revised to read as follows:

**Authority:** 18 U.S.C. 4042, 4351-4353; 42 U.S.C. 3711 *et seq.*, 5601 *et seq.*, 10601 *et seq.*

2. Sections 66.36 is amended as set forth at the end of the common preamble.

BILLING CODE 4410-18-M

**DEPARTMENT OF LABOR****29 CFR Part 97**

RIN 1291-AA22

FOR FURTHER INFORMATION CONTACT: Melvin Goldberg, Chief, Division of Procurement and Grant Policy, (202) 219-9174.

**List of Subjects in 29 CFR Part 97**

Accounting, Contract programs, Grants programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**Cynthia A. Metzler,**

*Assistant Secretary for Administration and Management.*

Title 27 of the Code of Federal Regulations, part 97 is amended as follows:

**PART 97—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

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

**Authority:** 5 U.S.C. 301; OMB Circular A-102.

2. Section 97.36 is amended as set forth at the end of the common preamble.

BILLING CODE 4150-23-M

**FEDERAL MEDIATION AND CONCILIATION SERVICE****29 CFR Part 1470**

RIN 3076-AA03

FOR FURTHER INFORMATION CONTACT: Peter Regner, (202) 606-8181

**List of Subjects in 29 CFR Part 1470**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**John Calhoun Wells,**

*Director.*

Title 29 of the Code of Federal Regulations, Part 1470 is amended as follows.

**PART 1470—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 1470 continues to read as follows:

**Authority:** 29 U.S.C. 175a.

2. Section 1470.36 is amended as set forth at the end of the common preamble.

BILLING CODE 6372-01-M

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 33**

RIN 0790-AG05

FOR FURTHER INFORMATION CONTACT: Mark Herbst, (703) 614-0205.

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

The Department of Defense adopts this amendment to the Governmentwide common rule on administration of grants and cooperative agreements to State and local governments. In adopting this rule, the Office of the Secretary of Defense, the Military Departments and the Defense Agencies will maintain uniform procedures that are consistent with those of other Executive Departments and Agencies.

The Department of Defense originally codified this Governmentwide rule on March 11, 1988 (53 FR 8034), at 32 CFR Part 278. On February 21, 1992 (57 FR 6199), Part 278 was redesignated as Part 33. This rulemaking amends the redesignated Part 33.

**List of Subjects in 32 CFR Part 33**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**Linda M. Bynum,**

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

Title 32 of the Code of Federal Regulations, part 33 is amended as follows:

**PART 33—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 33 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. 113.

2. Section 33.36 is amended as set forth at the end of the common preamble.

BILLING CODE 5000-04-M

**DEPARTMENT OF EDUCATION****34 CFR Part 80**

RIN 1880-AA63

FOR FURTHER INFORMATION CONTACT: Greg Vick, U.S. Department of Education,

Room 3636 ROB, Washington, DC 20202-4700. Telephone: (202) 708-8199. 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.

**List of Subjects in 34 CFR Part 80**

Accounting, Contract programs, Grant programs—education, Intergovernmental relations, Reporting and recordkeeping requirements.

**Richard W. Riley,**

*Secretary of Education.*

Title 34 of the Code of Federal Regulations, part 80 is amended as follows.

**PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 80 continues to read as follows:

**Authority:** 20 U.S.C. 1221e-3 and 3474, OMB Circular A-102, unless otherwise noted.

2. Section 80.36 is amended as set forth at the end of the common preamble.

BILLING CODE 4000-01-M

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION****36 CFR Part 1207**

RIN 3095-AA23

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on 301-713-6730.

**List of Subjects in 36 CFR Part 1207**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**Trudy Huskamp Peterson,**

*Acting Archivist of the United States.*

Title 36 of the Code of Federal Regulations, part 1207 is amended as follows.

**PART 1207—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 1207 continues to read as follows:

**Authority:** 44 U.S.C. 2104.

2. Section 1207.36 is amended as set forth at the end of the common preamble.

BILLING CODE 7515-01-M

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 43**

RIN 2900-AH26

**FOR FURTHER INFORMATION CONTACT:**

Dale L. Renaud, Deputy Assistant Secretary for Intergovernmental Affairs (075), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-5760.

**List of Subjects in 38 CFR Part 43**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

Title 38 of the Code of Federal Regulations, part 43 is amended as follows:

**PART 43—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 43 is revised to read as follows:

**Authority:** 38 U.S.C. 501, 1712.

2. Section 43.36 is amended as set forth at the end of the common preamble.

BILLING CODE 8320-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 31**

RIN 2030-AA34

**FOR FURTHER INFORMATION CONTACT:**

Linda Yancey, Grants Policy and Procedures Branch, Grants Administration Division (3903F), 401 M Street SW., Washington, DC 20460, (202) 260-5264.

**List of Subjects in 40 CFR Part 31**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 31, 1995.

**Carol M. Browner,**  
*Administrator.*

Title 40 of the Code of Federal Regulations, part 31 is amended as follows.

**PART 31—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 31 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; 42 U.S.C. 6901 *et seq.*; 42 U.S.C. 300f *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 9601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1401 *et seq.*

2. Section 31.36 is amended as set forth at the end of the common preamble.

BILLING CODE 6560-01-M

**GENERAL SERVICES ADMINISTRATION**

**41 CFR Part 105-71**

RIN 3090-AF-59

**FOR FURTHER INFORMATION CONTACT:** John P. Dyer, General Services

Administration, Public Buildings Service, Office of Federal Protective Service, 18th and F Streets, NW, Room 7316, Washington, DC 20405. Telephone: (202) 501-0160.

**List of Subjects in 41 CFR Part 105-71**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 6, 1995.

**Julia M. Stasch,**

*Acting Administrator of General Services.*

Title 41 of the Code of Federal Regulations, part 105-71 is amended as follows:

**PART 105-71—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 105-71 continues to read as follows:

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

2. Section 105-71.136 [\_\_\_\_.36] is amended as set forth at the end of the common preamble.

BILLING CODE 6820-23-M

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

**43 CFR Part 12**

RIN 1090-AA47

**FOR FURTHER INFORMATION CONTACT:**

Dean A. Titcomb, Chief, Acquisition and Assistance Division, (202) 208-6431.

**List of Subjects in 43 CFR Part 12**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 27, 1995.

**Joseph L. Sax,**

*Acting Assistant Secretary—Policy, Management and Budget.*

Title 43 of the Code of Federal Regulations, Part 12 is amended as follows.

**PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS**

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

**Authority:** 5 U.S.C. 301; U.S.C. 6101 note, 7501; 41 U.S.C. 252a; 701 *et seq.*; sec. 307, Pub. L. 103-332, 108 Stat. 2499; sec. 501, Pub. L. 103-316, 108 Stat. 1723; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., p. 215; E.O. 12731, 3 CFR, 1990 Comp., p. 306; OMB Circular A-102; OMB Circular A-110; OMB Circular A-128; and OMB Circular A-133.

**Subpart C—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments**

2. Section 12.76 [\_\_\_\_.36] is amended as set forth at the end of the common preamble.

BILLING CODE 4310-RF-M

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 13**

**FOR FURTHER INFORMATION CONTACT:**

Charles F. McNulty, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2976.

**List of Subjects in 44 CFR Part 13**

Accounting, Contract programs, Grant programs, Intergovernmental relations,

Reporting and recordkeeping requirements.

**Harvey G. Ryland,**  
*Deputy Director.*

Title 44 of the Code of Federal Regulations, part 13 is amended as follows.

**PART 13—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 13 is revised to read as follows:

**Authority:** Reorg. Plan No. 3, 1978; E.O. 12148, 3 CFR, 1979 Comp., p. 412.

2. Section 13.36 is amended as set forth at the end of the common preamble.

BILLING CODE 6718-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Part 92**

RIN 0991-AA77

**FOR FURTHER INFORMATION CONTACT:** Charles Gale, Director, Division of Grants Policy and Oversight, 202-690-6377. For the hearing impaired only: Telecommunications Device for the Deaf 202-690-6415.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** For clarification, in addition to applying to State and local governments, this amendment also applies to Indian Tribal governments.

**List of Subjects in 45 CFR Part 92**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 4, 1995.

**Donna E. Shalala,**  
*Secretary.*

Title 45 of the Code of Federal Regulations, part 92 is amended as follows.

**PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 92 continues to read as follows:

**Authority:** 5 U.S.C. 301.

2. Section 92.36 is amended as set forth at the end of the common preamble.

BILLING CODE 4150-04-M

**NATIONAL SCIENCE FOUNDATION**

**45 CFR Part 602**

RIN 3145-AA30

**FOR FURTHER INFORMATION CONTACT:** Jean Feldman, Deputy Head, Policy Office, Division of Contracts, Policy & Oversight, 703-306-1243. For the hearing impaired only: Telecommunications Device for the Deaf, (703) 306-0090.

**List of Subjects in 45 CFR Part 602**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**Joseph L. Kull,**  
*Chief Financial Officer.*

Title 45 of the Code of Federal Regulations, part 602 is amended as follows.

**PART 602—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 602 continues to read as follows:

**Authority:** 42 U.S.C. 1870(a).

2. Section 602.36 is amended as set forth at the end of the common preamble.

BILLING CODE 7555-01-M

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

**National Endowment for the Arts**

**45 CFR Part 1157**

RIN 3135-AA12

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna DiRicco, Acting Grants Officer, National Endowment for the Arts, (202) 682-5403.

**List of Subjects in 45 CFR Part 1157**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**Laurence Baden,**  
*Deputy Chairman for Management.*

Title 45 of the Code of Federal Regulations, part 1157 is amended as follows.

**PART 1157—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 1157 continues to read as follows:

**Authority:** 20 U.S.C. 959(a)(1).

2. Section 1157.36 is amended as set forth at the end of the common preamble.

BILLING CODE 7537-01-M

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

**National Endowment for the Humanities**

**45 CFR Part 1174**

RIN 3136-AA17

**FOR FURTHER INFORMATION CONTACT:** David J. Wallace, Director, Grants Office, National Endowment for the Humanities, 202-606-8494.

**List of Subjects in 45 CFR Part 1174**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**Sheldon Hackney,**  
*Chairman.*

Title 45 of the Code of Federal Regulations, Part 1174 is amended as follows.

**PART 1174—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 1174 continues to read as follows:

**Authority:** 20 U.S.C. 959(a)(1).

2. Section 1174.36 is amended as set forth at the end of the common preamble.

BILLING CODE 7536-01-M

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

**Institute of Museum Services**

**45 CFR Part 1183**

**FOR FURTHER INFORMATION CONTACT:** Rebecca Danvers, Program Director, 202-606-8539.

**List of Subjects in 45 CFR Part 1183**

Accounting, Contract programs, Grant programs, Intergovernmental relations,

Museums, Reporting and recordkeeping requirements.

**Diane B. Frankel,**  
*Director.*

Title 45 of the Code of Federal Regulations, part 1183 is amended as follows:

**PART 1183—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 1183 continues to read as follows:

**Authority:** 20 U.S.C. 961–968.

2. Section 1183.36 is amended as set forth at the end of the common preamble.

BILLING CODE 7036–01–M

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

**45 CFR Part 2541**

**FOR FURTHER INFORMATION CONTACT:** Rina Tucker, (202) 606–5000 x257 between the hours of 9 a.m. and 5 p.m. (202–565–2799 TDD). This document will be made available in an alternative format upon request for individuals with disabilities.

**List of Subjects in 45 CFR Part 2541**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**Terry Russell,**  
*General Counsel.*

Title 45 of the Code of Federal Regulations, part 2541 is amended as follows.

**PART 2541—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 2541 continues to read as follows:

**Authority:** 42 U.S.C. 4950 *et seq.* and 12501 *et seq.*

2. Section 2541.360 [\_\_\_\_\_.36] is amended as set forth at the end of the common preamble.

BILLING CODE 6050–28–M

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**49 CFR Part 18**

**RIN 2105–AB46**

**FOR FURTHER INFORMATION CONTACT:**

Robert G. Taylor, Department of Transportation, Office of Acquisition and Grant Management, M–62, 400 Seventh Street, SW., Room 9401, Washington, DC 20590, (202) 366–4289.

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

**Background**

This rule is being revised to raise the dollar threshold for small purchases by State and local grantees in accordance with the National Performance Review recommendation and to be consistent with the accompanying governmentwide common rule.

Section 18.6, Additions and exceptions. This section has been revised to codify the current DOT policy for the review and concurrence of exceptions by the Assistant Secretary for Administration to ensure conformance with overall Department policies.

**Regulatory Analyses and Notices**

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The Department of Transportation has determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866, nor a significant regulation under the Department’s Regulatory Policies and Procedures. The regulations should create savings for recipients by reducing the costs of administering grants. The DOT Operating Administrations award approximately \$23 billion through 40 separate assistance programs annually. An undetermined portion of these funds are utilized for small purchases.

*Regulatory Flexibility Act of 1980*

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a “significant economic impact on a substantial number of small entities,” an analysis be prepared describing the rule’s impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities. We certify that these regulations will not have a significant economic impact on a substantial number of small entities, but rather modify and update administrative and procedural requirements.

*Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The rule primarily applies to State or local governments. This action may have some Federalism benefits by removing some procedural restrictions on grantees; however, the Department certifies that this proposal does not have sufficient Federalism implications to warrant a full Federalism assessment under the principles and criteria contained in Executive Order 12612.

*Paperwork Reduction Act*

We certify that this rule would not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

**List of Subjects in 49 CFR Part 18**

Accounting, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**Federico Peña,**  
*Secretary of Transportation.*

Title 49 of the Code of Federal Regulations, part 18 is amended as follows:

**PART 18—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 18 continues to read as follows:

**Authority:** 49 U.S.C. 322(a).

2. Section 18.6 is amended by adding paragraph (b)(1) and (c)(1), and adding and reserving paragraphs (b)(2) and (c)(2), to read as follows:

**§ 18.6 Additions and exceptions.**

\* \* \* \* \*

(b) \* \* \*

(1) All Departmental requests for exceptions shall be processed through the Assistant Secretary of Administration.

(2) [Reserved]

(c) \* \* \*

(1) All case-by-case exceptions may be authorized by the affected operating administrations or departmental offices, with the concurrence of the Assistant Secretary for Administration.

(2) [Reserved]

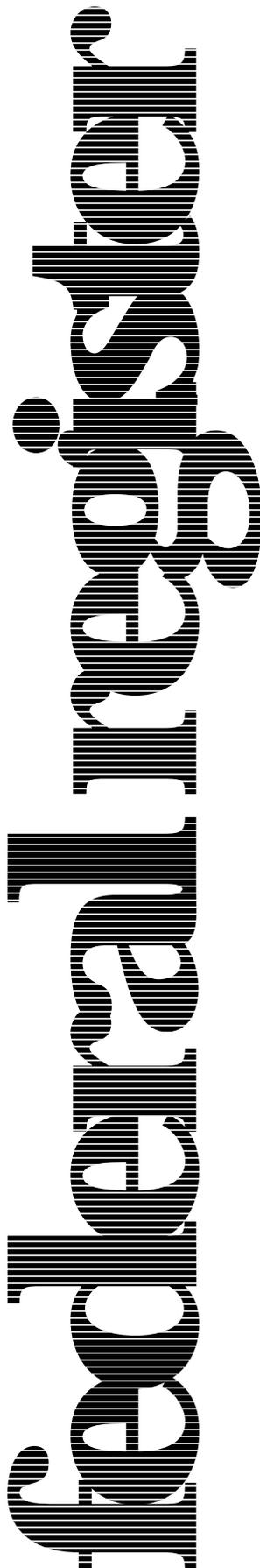
**§ 18.36 [Amended]**

3. Section 18.36 is amended as set forth at the end of the common preamble.

**BILLING CODE 4910-62-M**

[FR Doc. 95-9374 Filed 4-18-95; 8:45 am]

**BILLING CODE 3410-90-P; 6450-01-M; 8025-01-M; 3510-FA-M; 3180-02-M; 4710-24-M; 4210-32-M; 4410-18-M; 4150-23-M; 6372-01-M; 5000-04-M; 4000-01-M; 7515-01-M; 8320-01-M; 6560-01-M; 6820-23-M; 4310-RF-M; 6718-01-M; 4150-04-M; 7555-01-M; 7537-01-M; 7536-01-M; 7036-01-M; 6050-28-M; 4910-62-M**



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Wednesday  
April 19, 1995

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**Part IV**

**Department of  
Health and Human  
Services**

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**Food and Drug Administration**

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**21 CFR Part 310  
Drug Products Containing Quinine for the  
Treatment and/or Prevention of Malaria  
for Over-The-Counter Human Use;  
Proposed Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 310**

[Docket No. 94N-0355]

**Drug Products Containing Quinine for the Treatment and/or Prevention of Malaria for Over-The-Counter Human Use**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would establish that over-the-counter (OTC) drug products containing quinine for the treatment and/or prevention of malaria are not generally recognized as safe and are misbranded. FDA is issuing this notice of proposed rulemaking after considering data and information on the safety of quinine.

**DATES:** Written comments by July 3, 1995. Written comments on the agency's economic impact determination by July 3, 1995. The agency is proposing that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 8, 1977 (42 FR 35346), FDA published an advance notice of proposed rulemaking to amend § 330.10(a)(6) (21 CFR 330.10(a)(6)), and to establish a monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, together with the recommendations of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products (Internal Analgesic Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Although the Internal Analgesic Panel did not review the use of quinine as an antimalarial (other than to note its use in lowering the fever of malarial patients), it did review the safety of quinine used OTC as an analgesic,

antipyretic, and muscle relaxant. The Internal Analgesic Panel concluded that "Until controlled studies show that a dose of not more than 325 milligrams (mg) daily is safe and useful for relief of nocturnal leg cramps the drug should not be available for OTC use for treatment of nocturnal leg cramps." (See 42 FR 35346 at 35434.)

The agency's proposed regulation, in the form of a tentative final monograph, for OTC internal analgesic, antipyretic, and antirheumatic drug products was published in the **Federal Register** of November 16, 1988 (53 FR 46204). In the proposed rule (53 FR 46204 at 46243), the agency agreed with the Internal Analgesic Panel's conclusions concerning the safety of quinine and proposed that quinine be Category II (not generally recognized as safe and effective, and misbranded) when labeled for any OTC antipyretic or internal analgesic use other than the treatment and/or prevention of nocturnal leg muscle cramps.

In the **Federal Register** of May 10, 1993 (58 FR 27636), the agency issued a final rule for certain Category II and III (more data needed) active ingredients for which no significant comments or new data to upgrade the status of these ingredients had been submitted. In that final rule (58 FR 27636 at 27639), the agency determined that quinine (among other ingredients) is not generally recognized as safe and effective and is misbranded when present in OTC internal analgesic, antipyretic, and antirheumatic drug products.

In the **Federal Register** of October 1, 1982 (47 FR 43562), FDA published an advance notice of proposed rulemaking to amend § 330.10(a)(6) and to reopen the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products to consider the OTC use of quinine for the treatment of nocturnal leg muscle cramps. The document reflected the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Although the Miscellaneous Internal Panel stated that quinine "\* \* \* appears to be reasonably safe \* \* \* in generally recommended doses of 200 to 325 mg daily" (47 FR 43562 at 43564), the Miscellaneous Internal Panel recommended that quinine be placed in Category III for use in the treatment of nocturnal leg muscle cramps because of the need for more information about both safety and efficacy (47 FR 43564).

The agency's proposed regulation for OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps was published in the **Federal Register** of November 8, 1985 (50 FR 46588). The agency concurred with both the Internal Analgesic and Miscellaneous Internal Panels that no active ingredient (including quinine) in OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps had been found to be generally recognized as safe and effective and not misbranded. Although the agency acknowledged the OTC availability of quinine for the treatment of malaria (50 FR 46588 at 46592), only its use in the treatment and/or prevention of leg muscle cramps was covered by the proposed rule.

Subsequently, a citizen petition (Ref. 1) requested, among other things, a ban on the OTC sale of all quinine sulfate drug products. Upon review of the citizen petition and other data and information, in the **Federal Register** of August 22, 1994 (59 FR 43234), the agency issued a final rule establishing that any OTC drug product for the treatment and/or prevention of nocturnal leg muscle cramps is not generally recognized as safe and effective and is misbranded. The agency concluded, among other things, that quinine is not safe for OTC use in the treatment and/or prevention of nocturnal leg muscle cramps (59 FR 43234 at 43239). In that final rule, the agency also stated that OTC quinine drug products for antimalarial use would be discussed in future issues of the **Federal Register**.

The agency recognizes that quinine has been marketed for decades, on both an OTC and prescription basis, as an anti-infective agent for the treatment and/or prevention of malaria, a serious and potentially life-threatening disease that at one time was endemic in this country (Ref. 2). However, data and information (discussed elsewhere in this document) reviewed by the agency during the rulemaking for OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps have raised serious safety concerns about the continued OTC availability of quinine for the treatment and/or prevention of malaria.

For reasons discussed in this document, FDA is proposing to classify OTC drug products containing quinine or any quinine salt (e.g., quinine sulfate) labeled for the treatment and/or prevention of malaria as not generally recognized as safe, as misbranded, and a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21

U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, the proposed rule would also declare these products misbranded under section 502 of the act (21 U.S.C. 352). The rule will be incorporated into 21 CFR part 310, subpart E—Requirements for Specific New Drugs or Devices, by adding new § 310.547.

If this proposal is adopted as a final rule, the agency advises that the conditions under which the drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded will be effective 30 days after the date of publication of the final rule in the **Federal Register**. On or after that date, no OTC drug product that is subject to the rule may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the final rule that is repackaged or relabeled after the effective date of the final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce.

## References

(1) Comment No. CP0006, Docket No. 77N-0094, Dockets Management Branch.

(2) Russell, P. F., "The United States and Malaria: Debits and Credits," *Bulletin of the New York Academy of Medicine*, 44(6):623-653, 1968.

## I. Quinine Use In The Treatment and/ or Prevention of Malaria

Malaria is an infectious and potentially fatal disease caused by microscopic parasites (known as protozoa) of the genus *Plasmodium* (Refs. 1 and 2). Of the four species of *Plasmodium* typically associated with malaria in humans (*P. falciparum*, *P. vivax*, *P. ovale*, and *P. malariae*), malaria caused by *P. falciparum* (i.e., falciparum malaria) is the form of the disease usually associated with severe symptoms and death (if not promptly and properly treated). Malaria is most commonly transmitted to humans through the bite of an infected *Anopheles* mosquito (Refs. 1 and 2).

Malaria is initially characterized by nonspecific symptoms similar to those in viral illnesses. Symptoms include fever, lack of well-being, headache, fatigue, and muscle aches (Refs. 1 and 2). Laboratory analysis of blood samples

from persons suspected of having malaria in conjunction with medical assessment and monitoring are necessary to: (1) Confirm a diagnosis of malaria; (2) determine the species of parasite(s) involved; (3) determine the density of parasites in the blood; (4) monitor therapeutic efficacy of treatment; (5) determine the potential for possible exposure to drug-resistant *P. falciparum* and (6) assess coexistent medical complications (all of which influence treatment decisions) (Refs. 1, 2, and 3).

Malaria was a major infectious disease in the United States in the 19th century and through the first third of the 20th century (Ref. 4). Through a combination of control programs, drug development, and education, malaria has since been virtually eradicated from North America (Refs. 1 through 4). Although, approximately 1,000 cases of malaria are reported to the Centers for Disease Control and Prevention (CDC) each year, all but a few cases are associated with travel to or from malaria-endemic areas in other parts of the world (Ref. 3). In those areas, however, malaria remains a major infectious disease and cause of death (Ref. 3).

Preparations made from the bark of one or more species of tree of the genus *Cinchona* have been used for centuries in the treatment and prevention of malaria (Ref. 5). Although *Cinchona* bark contains varying amounts of several drugs with antimalarial action, collectively known as quinoline alkaloids, quinine is the chief member of this group. Use of the term "quinine" in this document includes both the purified alkaloid and its derivatives. Oral quinine for the treatment of malaria is most commonly available as the salt quinine sulfate (Refs. 5 and 6).

In discussing the period in which malaria was endemic in the United States, Russell (Ref. 4) states that quinine " \* \* \* in large bottles stood on the clock shelf in thousands of homes" in the 19th century and was extensively used as a mass prophylactic in malaria control programs in the first quarter of the 20th century. Russell notes that the use of less toxic and more effective synthetic antimalarial drugs (especially chloroquine) replaced quinine as the drug of choice by the 1930's. However, quinine has again become therapeutically important in the management of malaria due to the increasing resistance of *P. falciparum* (and more recently *P. vivax*) to chloroquine (Refs. 3 and 7).

Current treatment of malaria includes the use of oral quinine (in combination with other prescription antimalarial drugs) in medically uncomplicated

cases when the disease is diagnosed or suspected of having been caused by *P. falciparum* contracted in areas where the parasite has become resistant to treatment with chloroquine, and the person is able to tolerate oral medications (Refs. 1, 2, and 3). Quinine is also used for the treatment of malaria following therapies involving exchange blood transfusions and/or intravenous drug therapy during hospitalization for complicated or high density falciparum malaria (a medical emergency), or when the species/drug sensitivity of the parasite is unknown (Refs. 2 and 3).

Falciparum malaria contracted in some areas has demonstrated a reduced susceptibility to standard quinine therapy (Refs. 3 and 7). Increasing resistance to quinine in such endemic areas may in part be due to its extensive use in unsupervised therapy (Ref. 7). Unsupervised therapy (with a drug known to commonly cause unpleasant adverse effects (see section II)) allows for incomplete treatments due to poor compliance with dosing instructions, a practice that may promote proliferation of malarial parasites less sensitive to quinine (Ref. 7). During the treatment of falciparum malaria with quinine, it is recommended that therapeutic efficacy be monitored by the daily examination of blood samples for the presence of malarial parasites until the samples are negative (Ref. 2). Failure to show parasite reduction may indicate drug resistance and necessitate a change in therapy. It is believed that the use of combinations of drugs (e.g., quinine plus either sulfadoxine/pyrimethamine or tetracycline) in the treatment of malaria may help prevent the development of drug-resistant strains of malarial parasites (Refs. 7, 8, and 9). Furthermore, it is believed that such interrupted or irregular quinine therapy during the treatment of falciparum malaria may predispose persons to the serious complications of blackwater fever, including anemia, red blood cell destruction, and renal failure (Refs. 10 and 11).

The continued spread of chloroquine-resistant *P. falciparum* has reduced the number of effective drugs for malaria prevention. CDC recommendations for the prevention of malaria in travelers take into account " \* \* \* the risk of exposure to malaria, the effectiveness and safety of antimalarial drugs, and the use of personal protective measures." Quinine is not included in the list of drugs currently recommended by CDC for the prevention of malaria (Ref. 12).

In summary, malaria is an infectious disease that has been virtually eradicated from North America. Quinine, once the major therapeutic

agent for the treatment of malaria, was replaced in the 1930's with less toxic and more effective drugs. Current public health recommendations do not include the use of quinine in the prevention of malaria and limit its use in the treatment of the disease. Current recommendations for the treatment of malaria only include the use of quinine in combination therapies with other prescription drugs or as part of an intensive therapy involving blood transfusions and parenteral drugs during hospitalization. Clinical and laboratory assessments are necessary for prompt and proper diagnosis and treatment, including clinical monitoring during drug therapy to determine therapeutic efficacy and confirm the successful treatment of this serious and potentially fatal disease.

## References

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- (2) White, N. J., and J. G. Breman, "Malaria," in *Harrison's Principles of Internal Medicine*, 13th ed., edited by K. J. Isselbacher et al., McGraw-Hill, New York, pp. 887-895, 1994.
- (3) McCarthy, A. E., and J. S. Keystone, "Malaria," in *Conn's Current Therapy, 1994*, edited by R. E. Rakel, W. B. Saunders Co., Philadelphia, pp. 94-100, 1993.
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- (6) McEvoy, G. K., editor, *AHFS Drug Information*, American Society of Hospital Pharmacists, Bethesda, MD, pp. 437-440, 1993.
- (7) Weinke, T. et al., "Malaria Therapy in 452 Patients with Special Reference to the Use of Quinine," *Journal of Infection*, 25(2): 173-180, 1992.
- (8) Smit, E. H. D., "Quinine Is Not What It Used To Be," *Acta Leidensia*, 55:21-27, 1987.
- (9) Gramiccia, G., "Quinine: Should the Past Be Taken as a Guidance for the Future," *Acta Leidensia*, 55:15-20, 1987.
- (10) Bateman, D. N., and E. H. Dyson, "Quinine Toxicity," *Adverse Drug Reactions and Acute Poisoning Reviews*, 4:215-233, 1986.
- (11) USPDI, *Drug Information for the Health Care Professional*, The U. S. Pharmacopeial Convention, Inc., Rockville, MD, vol. I, 14th ed., pp. 2379-2382, 1994.
- (12) "Recommendations for the Prevention of Malaria Among Travelers," *Morbidity and Mortality Weekly Report*, Public Health Service, Centers for Disease Control, 39(RR-3):1-10, 1990.

## II. Safety Considerations

Quinine taken orally is currently used as part of a combination drug treatment of uncomplicated, low-density, chloroquine-resistant falciparum malaria. The adult dosage of quinine sulfate used for treatment of this condition is 600 to 650 mg three times daily for 3 to 7 days (Refs. 1 through 5).

In the final rule for OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps (59 FR 43234), the agency discussed a number of safety concerns related to the OTC availability of quinine for this use. The agency noted that adverse reaction reports (59 FR 43234 at 43239) suggested that quinine doses of 260 to 325 mg/day (which are much lower than the dosage used for the treatment of malaria) in healthy, middle-aged adults can produce symptoms of quinine toxicity, including auditory, visual, and gastrointestinal effects. The agency also noted that vestibular, auditory, visual, and vascular effects of quinine can occur in healthy young adults at doses in and below the range commonly employed for the treatment and/or prevention of nocturnal leg muscle cramps (59 FR 43234 at 43239).

Symptoms of side effects associated with quinine (collectively referred to as "cinchonism") include tinnitus (a ringing or buzzing in the ear), nausea, vomiting, visual changes, auditory deficits, and cardiovascular abnormalities (Ref. 1). These symptoms are of varying severity depending upon the amount of quinine used. Some people will experience these side effects even at quinine doses of 260 to 325 mg/day (59 FR at 43239). These side effects occur more frequently at the higher dosages generally used in the treatment of malaria (Ref. 1).

A more severe problem is that people taking quinine remain at risk of developing hypersensitivity to the drug and experiencing a serious, life-threatening, or fatal reaction as a consequence. Reports of adverse reactions to quinine products listed in the agency's spontaneous reporting system show that, from 1969 through June 1992, FDA received 157 reports in which quinine was listed as a suspect drug. (See 59 FR 43234 at 43236.) There were 84 serious reactions: 23 deaths, 5 cases in which the person was disabled, and 56 hospitalizations not involving death or disablement. A trend of increasing numbers of reports per year since 1986 was also observed as the marketing of OTC drug products

containing quinine for the treatment and/or prevention of nocturnal leg muscle cramps expanded after 1986.

A detailed review of 110 reports on file from 1969 through 1990 (59 FR 43236 to 43237) showed 69 (approximately 63 percent) of these reports involved hypersensitivity reactions ranging from rash and fever to angioneurotic edema, thrombocytopenia, or generalized anaphylaxis. Of these 69 reports, 57 (approximately 83 percent) involved quinine products and/or quinine dosages used in the treatment and/or prevention of nocturnal leg muscle cramps. An attempt was made to identify only those reports in which the relationship between quinine and the reported event was strong and reasonably unrelated to other factors. Factors considered included the temporal relationship between quinine administration and the event, absence of concomitant medications (or abatement of the adverse event after quinine was discontinued), absence of confounding medical conditions, a positive test for quinine mediated antibodies, or history of a similar reaction associated with previous quinine exposure. Using these factors, 26 of the 110 reports were identified as cases where it can be reasonably concluded that quinine was the causative agent. These included 6 moderately severe to severe skin reactions, 2 of which were erythema multiforme-like reactions; 13 hematologic events, with 2 resulting in death; 2 cases of hepatitis or elevated liver enzymes; 2 renal reactions, one leading to renal failure requiring dialysis, the other leading to death; 2 cases of a hypersensitivity syndrome with symptoms that included chills, nausea, vomiting, and diarrhea; and 1 report of anaphylaxis complicated by seizures and hypoxia following a single dose of quinine. None of these cases reported an overdose of the drug, and 21 of the 26 reports (approximately 81 percent) involved quinine products and/or quinine dosages used in the treatment and/or prevention of nocturnal leg muscle cramps.

Quinine-induced thrombocytopenia may occur after 1 week of exposure or after months or years of quinine administration, and there may be no characteristic that would predict an adverse event in the person using the product (59 FR 43234 at 43243). The agency believes that a physician could help people using this drug appreciate the nature and frequency of the risk and advise about the signs of thrombocytopenia, such as petechiae (pinpoint, nonraised, round, purplish red spots) and purpura (small

hemorrhage), perhaps allowing identification of this condition before a significant hemorrhage occurred. A number of the adverse reaction reports note the occurrence of a similar prior event related to previous ingestion of quinine in which neither the user nor the physician recognized the relationship of the illness to quinine ingestion. Use of quinine under a physician's prescription, with appropriate emphasis on warning signs, may make timely recognition easier.

Although drug-induced immunologic thrombocytopenia may be the best studied idiosyncratic reaction caused by quinine, quinine has also been reported to have been associated with a number of other hypersensitivity reactions and pharmacologic effects (59 FR 43234 at 43243). These include the possibility of decreased digoxin clearance, increased half-life of quinine when given concurrently with cimetidine, pseudo-allergic reactions in aspirin-sensitive patients, drug fever, nonspecific granulomatous hepatitis, asthma, hemolytic anemia, inhibition of tolbutamide metabolism, hypoprothrombinemia, and hemolytic anemia in glucose-6-phosphate dehydrogenase (G6PD) deficient patients (59 FR 43234 at 43243). Furthermore, the possible pharmacologic effects may have particular significance for the elderly, who may be taking concomitant medications that adversely interact with quinine. Blackburn and Bajrovic (Ref. 6) mention that altered pharmacokinetics with age result in a longer half-life of quinine in older people, which suggests that the frequency and severity of adverse effects may be greater in the elderly.

The agency is aware of reports asserting that the labeling of OTC quinine products for malaria may not be consistent with current medical recommendations and/or may be associated with excessive or inadequate dosages (Refs. 7 and 8). Houlihan (Ref. 7) reported a case involving a 63-year-old man with a history of malaria who thought he was having a recurrence and began self-treatment with 975 mg of quinine sulfate three times a day in accordance with the product's labeling. After 2 days of self-treatment, the man was hospitalized for blindness (that resolved after 10 days) and exhibited electrocardiographic abnormalities (that resolved after 2 days). However, blood tests after hospitalization showed no indication of the existence of malarial parasites. The agency randomly reviewed labels from eight OTC quinine products labeled for use in malaria (Ref. 9) and noted dosage recommendations

as low as 200 mg three times a day (for 6 to 12 days) and as high as 975 mg three times a day (for 6 to 12 days). A fatal dose of quinine for an adult is approximately 2,000 to 8,000 mg (Refs. 3, 10, and 11).

Thus, in the treatment of malaria, a narrow margin of safety exists between a therapeutic dose and a toxic dose of quinine. The agency believes this risk requires that a prescribing physician participate in the decision to use the drug, by assuring the diagnosis, considering the species and possible drug resistance of the infecting parasite, evaluating concurrent medical problems and medications, counseling patients concerning common and potentially severe adverse reactions, and monitoring patient safety and treatment effectiveness.

### References

- (1) White, N. J., and J. G. Breman, "Malaria," in *Harrison's Principles of Internal Medicine*, 13th ed., edited by K. J. Isselbacher et al., McGraw-Hill, New York, pp. 887-895, 1994.
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- (7) Houlihan, G. M., "Labeling of Nonprescription Quinine Needs Revision," *American Journal of Hospital Pharmacy*, 48(9):1892, 1991.
- (8) Letter from H. Most, New York University Medical Center, to E. J. Martin, FDA, copy in OTC Vol. 260001, Docket No. 94N-0355, Dockets Management Branch.
- (9) Copies of labeling for Genetco Quinine Sulfate 5 grain Capsules, Major Quinine Sulfate 325 mg Capsules, Royce Quinine Sulfate 325 mg Capsules, Rugby Quinine Sulfate 325 mg Capsules and Capsules, Westward Quinine Sulfate 200 mg and 325 mg Capsules, and Zenith Quinine Sulfate 200 mg Capsules, copy in OTC Vol. 260001, Docket No. 94N-0355, Dockets Management Branch.
- (10) *Drug Facts and Comparisons*, Facts and Comparisons, Inc., St. Louis, pp. 366-368, January 1993.
- (11) McEvoy, G. K., editor, *AHFS Drug Information*, American Society of Hospital Pharmacists, Bethesda, MD, pp. 437-440, 1993.

### III. The Agency's Tentative Conclusions on OTC Quinine Drug Products for the Treatment and/or Prevention of Malaria

Malaria is a rare (in the United States) but serious and potentially deadly disease that exhibits several biologic patterns. Diagnosis and treatment of the disease depend on such factors as the species of parasite(s) involved, the density of parasites in the blood, the potential for possible exposure to drug-resistant *P. falciparum* or *P. vivax*, and the existence of coexistent medical complications. Malaria requires a medical diagnosis both to confirm the disease and to determine the treatment of choice. Prompt and proper diagnosis, treatment, and monitoring of therapeutic efficacy require laboratory analyses of blood samples and clinical assessments. Continuous physician monitoring is then necessary to determine if the selected drug therapy is effective and to determine if the malarial parasites have been eradicated. Accordingly, the agency concludes that consumers cannot safely and effectively self-treat malaria. Except for quinine products, no other antimalarial drug is available OTC.

Current public health recommendations do not include the use of oral quinine in the prevention of malaria and limit its use in the treatment of the disease (primarily to uncomplicated, low-density, chloroquine-resistant falciparum malaria). Current treatments for malaria include the use of quinine only in combination therapies with prescription drugs or as part of an intensive therapy involving blood transfusions and parenteral drugs during hospitalization. Thus, any patient properly using quinine should be under the care and supervision of a doctor.

Unsupervised quinine therapy (allowing for incomplete or interrupted treatments due to poor compliance with dosing instructions) is a practice believed to promote proliferation of malarial parasites less sensitive to quinine. Furthermore, interrupted quinine therapy in persons with falciparum malaria may also predispose them to the serious complications of blackwater fever, including anemia, red blood cell destruction, and renal failure.

There are serious safety concerns about the continued availability of quinine sulfate for OTC use, even at dosages much lower than those used for the treatment of malaria. Adverse events characteristic of quinine toxicity have been observed in healthy individuals at doses of 260 and 325 mg daily. These events included: Visual, auditory, and gastrointestinal symptoms, and fever.

Studies of auditory, vestibular, and visual function in subjects given quinine confirm sensory disturbances at even lower doses. Altered pharmacokinetics with age result in a longer half-life of quinine in older people, which suggests that the frequency and severity of adverse effects may be greater in the elderly.

Adverse events associated with quinine toxicity are common at the therapeutic doses of quinine used in the treatment of malaria (i.e., 600 to 650 mg three times daily for 3 to 7 days). A fatal dose of quinine for an adult is approximately 2,000 to 8,000 mg. Thus, in the treatment of malaria, a narrow margin of safety exists between a therapeutic dose and a toxic dose of quinine. Based upon quinine's demonstrated toxic effects and potential for harm if used in an unsupervised manner, the agency has determined that quinine should be available for the treatment of malaria only under the supervision of a doctor.

In addition to toxic effects, serious and unpredictable hypersensitivity reactions to quinine can occur. Symptoms are often dramatic, leading people to seek medical treatment. Hospitalization may be required, and fatalities have been reported. Quinine is the only drug available OTC that has such a high association with thrombocytopenia, a serious hematologic sensitivity. Because there are no known factors that predispose people to the development of hypersensitivity to quinine, which may occur after 1 week of exposure or after months or years of use, label warnings cannot be expected to protect consumers from hypersensitivity reactions to quinine products.

Quinine is an important drug in the treatment of drug-resistant forms of malaria. However, it is no longer the primary drug of choice for initial treatment of most types of malaria. In addition, there are serious and complicating aspects of the disease itself and some potentially serious and life threatening risks associated with the use of quinine at doses employed for the treatment of malaria. For these reasons, the agency tentatively concludes that quinine is not safe for OTC use in the treatment of malaria.

The agency is aware that quinine for the treatment of malaria has been marketed both OTC and by prescription, in all cases without approved new drug applications. This proposal would require that any OTC quinine drug products for the treatment and/or prevention of malaria be required to have an approved application for continued marketing. Prescription

quinine drug products will be addressed in a future issue of the **Federal Register**.

#### IV. Analysis of Impacts

FDA has examined the impacts of the proposed 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 proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed 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. Quinine formulations for the treatment of malaria are currently marketed as both OTC and prescription products. None have an approved application. The final rule would stop the initial introduction or initial delivery for introduction into interstate commerce of all OTC quinine products that are labeled for the treatment and/or prevention of malaria, until such time as an approved application is obtained. The final rule would not affect the continued marketing and availability of quinine products by a doctor's prescription. The agency will address this form of marketing in a future issue of the **Federal Register**. The final rule may impose a direct one-time cost associated with changing product labels to conform with prescription labeling requirements. Due to the safety concerns discussed elsewhere in this document, manufacturers would be required to comply with the provisions of the final rule, if implemented, 30 days after its date of publication. Manufacturers are therefore urged to comply voluntarily with this proposed rule and to cease OTC marketing at the earliest possible date. Accordingly, the agency certifies that the proposed 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.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC quinine drug

products for the treatment and/or prevention of malaria. Types of impact may include, but are not limited to, costs associated with relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC quinine drug products for the treatment and/or prevention of malaria should be accompanied by appropriate documentation. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) 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.

Interested persons may, on or before July 3, 1995, submit written comments to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before July 3, 1995. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

#### List of Subjects

##### 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 310 be amended as follows:

#### PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512-516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b-360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354-360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b-263n).

2. New § 310.547 is added to subpart E to read as follows:

**§ 310.547 Drug products containing quinine offered over-the-counter (OTC) for the treatment and/or prevention of malaria.**

(a) Quinine and quinine salts have been used OTC for the treatment and/or prevention of malaria, a serious and potentially life-threatening disease. Quinine is no longer the drug of choice for the treatment and/or prevention of most types of malaria. In addition, there are serious and complicating aspects of the disease itself and some potentially serious and life-threatening risks associated with the use of quinine at doses employed for the treatment of malaria. There is a lack of adequate data to establish general recognition of the safety of quinine drug products for OTC use in the treatment and/or prevention of malaria. Therefore, quinine or quinine salts cannot be safely and

effectively used for the treatment and/or prevention of malaria except under the care and supervision of a doctor.

(b) Any OTC drug product containing quinine or quinine salts that is labeled, represented, or promoted for the treatment and/or prevention of malaria is regarded as a new drug within the meaning of section 201(p) of the act for which an approved application or abbreviated application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for

OTC use for the treatment and/or prevention of malaria is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After May 19, 1995, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

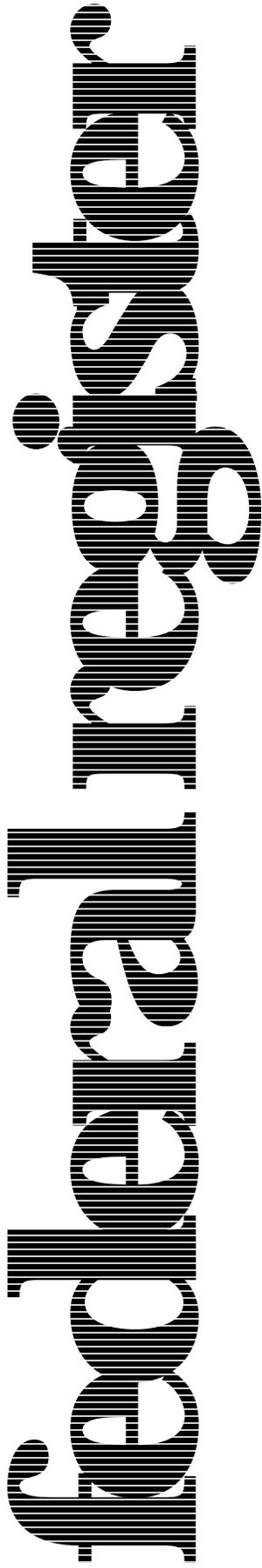
Dated: April 12, 1995.

**William K. Hubbard,**

*Acting Deputy Commissioner for Policy.*

[FR Doc. 95-9701 Filed 4-18-95; 8:45 am]

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Wednesday  
April 19, 1995

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**Part V**

**Department of Labor**

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Office of the Secretary

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**29 CFR Part 15  
Revision of Regulations Governing  
Administrative Claims Under the Federal  
Tort Claims Act and Related Statutes;  
Final Rule**

## DEPARTMENT OF LABOR

## Office of the Secretary

## 29 CFR Part 15

RIN 1290-AA13

**Revision of Regulations Governing Administrative Claims Under the Federal Tort Claims Act and Related Statutes**

**AGENCY:** Department of Labor (DOL), Office of the Secretary.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises DOL's regulations governing administrative claims submitted to DOL pursuant to the Federal Tort Claims Act (FTCA) and the Military Personnel and Civilian Employees' Claims Act (MPCECA), and for payment of claims arising out of the operation of the Job Corps. These regulations are being revised to reflect previous delegations of authority to the Counsel for Claims and to the Regional Solicitors and Associate Regional Solicitors to issue determinations on claims under the statutes covered by these regulations, to clarify the manner in which organizational units of the Department provide administrative assistance to the Office of the Solicitor in regard to claims and litigation under these statutes and to clarify and provide further examples of the manner in which MPCECA claims are submitted and determined. The regulations are also being amended to reflect a change in statutory authority for payment of claims arising out of operation of the Job Corps.

**EFFECTIVE DATE:** May 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Nesvet, Counsel for Claims and Compensation, Division of Employee Benefits, Office of the Solicitor, U.S. Department of Labor, Suite S4325, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219-4405.

**SUPPLEMENTARY INFORMATION:** In the July 22, 1994, **Federal Register**, Volume 59, No. 140, 59 FR 37540-37546, the Office of the Secretary published a proposal to revise the regulations governing the Federal Tort Claims Act (FTCA) and Related Statutes.

The FTCA surrenders the sovereign immunity of the United States for the negligent or wrongful act or omission of a Government employee acting within the scope of his or her employment. The Military Personnel and Civilian Employees' Claims Act (MPCECA) authorizes payment of claims of

employees of the Government for loss of, or damage to, property incident to Government service. The Job Training Partnership Act (JTPA) authorizes payment of claims arising out of the operation of the Job Corps that are not cognizable under the FTCA. Part 15 of title 29 of the Code of Federal Regulations currently contains regulations implementing these three claims authorities.

Interested persons have been afforded an opportunity to comment on the proposed rule. No comments were received on the proposed rule. The final rule is being adopted as proposed, with the exception of the addition of a definition for the term quarters, as used in Subpart B setting forth regulations implementing the MPCECA.

After further review it appears useful to resolve any ambiguity over that term by including a definition of that term. Therefore, a definition of the term quarters is included by adding subparagraph (d) to section 15.20. Since the addition of this definition merely eliminates an ambiguity in the original proposed regulation, public comment is unnecessary. In this connection, I find good cause pursuant to 5 U.S.C. 553(b)(B), to waive public comment.

An internal reorganization in the Office of the Solicitor resulted in a change of title from Counsel for Claims to Counsel for Claims and Compensation. This change is adopted in the final rule. Public comment is unnecessary on this matter pursuant to 5 U.S.C. 553(b)(A) because it relates to internal agency organization. For consistency, sections 15.11 to 15.32 have been renumbered as sections 15.20 to 15.42.

**Regulatory Evaluation**

This amendment is not considered a significant regulatory action under Executive Order 12866. In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned, at the time of publication of the proposed rule, certified to the Small Business Administration that this amendment will not have a significant economic impact on a substantial number of small entities.

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

**List of Subjects in 29 CFR Part 15**

Tort claims, Indemnity payments, Administrative practice and procedure, Government employees.

For the reasons set out above, DOL revises 29 CFR part 15 to read as follows:

**PART 15—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND RELATED STATUTES****Subpart A—Claims Against the Government Under the Federal Tort Claims Act**

Sec.

- 15.1 Scope and purpose.
- 15.2 Definitions.
- 15.3 Administrative claim; who may file.
- 15.4 Administrative claim; where to file.
- 15.5 Administrative claim; evidence or information to substantiate.
- 15.6 Administrative action.
- 15.7 Determination of claims.
- 15.8 Referral to Department of Justice.
- 15.9 Final denial of claim.
- 15.10 Action on approved claim.

**Subpart B—Claims Under the Military Personnel and Civilian Employee' Claims Act of 1964**

- 15.20 General provisions.
- 15.21 Filing of claims.
- 15.22 Allowable claims.
- 15.23 Restrictions on certain claims.
- 15.24 Unallowable claims.
- 15.25 Claims involving carriers or insurers.
- 15.26 Claims procedures.
- 15.27 Computation of award and finality of settlement.
- 15.28 Attorney fees.
- 15.29 Reconsideration.

**Subpart C—Claims Arising Out of the Operation of the Job Corps**

- 15.40 Scope and purpose.
- 15.41 Allowable claims.
- 15.42 Claim procedure.

**Authority:** 28 U.S.C. 2672; 28 CFR 14.11; 31 U.S.C. 3721; 29 U.S.C. 1706(b).

**Subpart A—Claims Against the Government Under the Federal Tort Claims Act****§ 15.1 Scope and purpose.**

(a) The purpose of this subpart is to set forth regulations relating to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of the Department of Labor while acting within the scope of his or her office or employment.

(b) This subpart is issued subject to and consistent with applicable regulations on administrative claims under the Federal Tort Claims Act issued by the Attorney General (28 CFR part 14).

**§ 15.2 Definitions.**

(a) *Department* means the Department of Labor.

(b) *Organizational unit* means the jurisdictional area of each Assistant Secretary and each office head reporting directly to the Secretary.

(c) *Act* means the Federal Tort Claims Act, as amended, (28 U.S.C. 1346(b), 28 U.S.C. 2671, et seq.).

**§ 15.3 Administrative claim; who may file.**

(a) A claim for the injury to or loss of property may be presented by the owner of the property, his or her duly authorized agent, or his or her legal representative.

(b) A claim for personal injury may be presented by the injured person, his or her duly authorized agent, or his or her legal representative.

(c) A claim for death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, it shall present with its claim appropriate evidence that it has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or representative, show the title or legal capacity of the person signing and be accompanied by evidence of his or her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or legal representative.

**§ 15.4 Administrative claim; where to file.**

(a) For the purposes of this subpart, a claim shall be deemed to have been presented when the Department receives, at a place designated in paragraph (b) of this section, a properly executed "Claim for Damage, Injury, or Death" on Standard Form 95, or other written notification of an incident accompanied by a claim for money damages in a sum certain for injury to or loss of property or personal injury or death by reason of the incident.

(b) In any case where the claim seeks damages in excess of \$25,000 or which involves an alleged act or omission of an employee of the Department whose official duty station is in Washington, D.C., a claimant shall mail or deliver his or her claim for money damages for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Department while

acting within the scope of his or her office or employment hereunder to the Council for Claims and Compensation, Office of the Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite S4325, Washington, DC 20210.

(c) In all other cases, the claimant shall address his or her claim to the official duty station of the employee whose act or omission forms the basis of the complaint.

**§ 15.5 Administrative claim; evidence or information to substantiate.**

(a) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant is required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent impairment, the prognosis, period of hospitalization, if any, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by the Department or another federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request: *Provided*, That he or she has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made, or agrees to make available to the Department, any other physician's report previously or thereafter made of the physical or mental condition which is the subject matter of the claim.

(2) Itemized bills for medical, dental and hospital, or any other, expenses incurred or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his or her employer showing actual time lost from employment, whether he or she is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings lost. For example, income tax returns for several years prior to the injury in question and the year in which the injury occurred may be used to indicate or measure lost income; a statement of how much it did or would cost the claimant to hire someone else to do the

same work he or she was doing at the time of injury might also be used in measuring lost income.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(b) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at the time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full name, address, birth date, kinship and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his or her death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him or her for support at the time of his or her death.

(5) Decedent's general physical and mental condition before his or her death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or damages claimed.

(c) *Property damages.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information with respect to each item of property:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for

the injury to or loss of property or the damages claimed.

**§ 15.6 Administrative action.**

(a) *Investigation.* When an organizational unit learns of an incident that reasonably can be expected to result in an allegation of harm caused to an individual or organization by an alleged negligent act or omission by an employee of that organizational unit or when it learns of an administrative claim or of litigation alleging such harm, it has the responsibility to fully investigate the incident and to take all actions necessary to preserve all relevant documents and other evidence. Each organizational unit should institute appropriate procedures to ensure that notification of such incidents are reported to the office responsible for ensuring that evidence is preserved and investigation undertaken.

(b) *Notification.* Upon receipt of an administrative claim under the Act or of notice of litigation seeking damages for an alleged negligent act or omission of an employee of the Department acting within the scope of his or her employment, the Office of the Solicitor shall notify the organizational unit responsible for the activity which gave rise to the claim or litigation and shall provide a copy of the administrative claim or the claim filed in the litigation.

(c) *Administrative Report.* (1) Upon receiving notification of an administrative claim or litigation, the organizational unit or units involved in the circumstances of the claim or litigation shall be responsible for preparing an Administrative Report and forwarding it to the Office of the Solicitor in a timely manner. The Administrative Report shall be in the form of a single memorandum in narrative form with attachments. It should contain all of the following elements, unless permission is obtained from the Office of the Solicitor to dispense with a particular element:

- (i) a brief explanation of the organization and operation of the program involved including statutory authority and applicable regulations;
- (ii) a complete description of the events which gave rise to the claim or litigation, including a specific response to every allegation in the claim or litigation;
- (iii) any information available regarding the questions of whether the claimant or plaintiff actually suffered the harm alleged in the claim or litigation and what individual or organization caused any harm which appears to have occurred;
- (iv) any information available regarding the damages claimed;

(v) any policy reasons which the organizational unit wishes to advance for or against settlement of the claim or litigation; and

(vi) details of any claims the Department may have against the claimant or plaintiff, whether or not they appear to be related to the subject matter of the claim or litigation.

(2) A copy of all documents relevant to the issues involved in the claim or litigation should be attached to each copy of the Administrative Report. Original records should not be forwarded to the Office of the Solicitor unless specifically requested. They should be preserved, however, and remain available for litigation if necessary.

(3) Organizational units should ensure that all Administrative Reports are either prepared or reviewed by an official of the organizational unit who was not personally involved in the incident in question prior to filing of the claim or suit.

(d) *Litigation.* During the course of any litigation, organizational units are responsible for providing assistance to the Office of the Solicitor in responding to discovery requests such as interrogatories and requests to produce documents, for providing assistance in analyzing factual and program issues, for providing witnesses for depositions and trials, and for assistance in producing affidavits and exhibits for use in the litigation.

**§ 15.7 Determination of claims.**

(a) *Authority to consider, ascertain, adjust, determine, compromise and settle claims.* The Counsel for Claims and Compensation shall have the authority to consider, ascertain, adjust, determine, compromise and settle claims pursuant to the Federal Tort Claims Act which involve an alleged negligent or wrongful act or omission of an employee whose official duty station is the Department's national office in Washington, D.C., or which exceed \$25,000 in amount, or which involve a new precedent, a new point of law, or a question of policy. Regional Solicitors and the Associate Regional Solicitors are authorized to consider, ascertain, adjust, determine, compromise and settle, claims arising in their respective jurisdictions pursuant to the Federal Tort Claims Act which do not exceed \$25,000 in amount and which do not involve a new precedent, new point of law, or a question of policy.

(b) *Payment.* Any award, compromise, or settlement in the amount of \$2,500 or less made pursuant to this section shall be paid by the Secretary of Labor out of appropriations available to the

Department. Payment of an award, compromise, or settlement in an amount in excess of \$2,500 made pursuant to this subpart shall be made in accordance with 28 CFR 14.10.

**§ 15.8 Referral to Department of Justice.**

An award, compromise or settlement of a claim under § 2672 title 28, United States Code, and this subpart, in excess of \$25,000 may be effected only with the prior written approval of the Attorney General or his designee. For the purpose of this subpart, a principle claim and any derivative or subrogated claim shall be treated as a single claim.

**§ 15.9 Final denial of claim.**

Final denial of an administrative claim under this subpart shall be in writing, and notification of denial shall be sent to the claimant, or his or her attorney or legal representative by certified or registered mail. The notification of final denial shall include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Department's action, he or she may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

**§ 15.10 Action on approved claim.**

(a) *Payment.* Payment of a claim approved under this subpart is contingent upon claimant's execution of a "Voucher for Payment Under Federal Tort Claims Act," Standard Form 1145. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his or her attorney as payees, and the check shall be delivered to the attorney whose address shall appear on the voucher.

(b) *Acceptance.* Acceptance by the claimant, or his or her agent or legal representative, of an award, compromise, or settlement under § 2672 or § 2677 of title 28, U.S.C., is final and conclusive on the claimant, his or her agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented and constitutes a complete release of any claim against the United States and against any officer or employee of the Government whose act or omission gave rise to the claim by reason of the same subject matter.

**Subpart B—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964**

**§ 15.20 General provisions.**

(a) *Scope and Purpose.* This subpart applies to all claims filed by or on behalf of employees of the Department for loss of or damage to personal

property incident to their service with the Department under the Military Personnel and Civilian Employees' Claims Act of 1964, (hereinafter referred to as the Act). A claim must be substantiated and the possession of the property determined to be reasonable, useful or proper.

(b) *Payment.* The maximum amount that can be paid for any claim under the Act is \$40,000 and property may be replaced in kind at the option of the Government.

(c) *Policy.* The Department is not an insurer and does not underwrite all personal property losses that an employee may sustain. Employees are encouraged to carry private insurance to the maximum extent practicable to avoid losses which may not be recoverable from the Department. The procedures set forth in this subpart are designed to enable the claimant to obtain the proper amount of compensation for the loss or damage. Failure of the claimant to comply with these procedures may reduce or preclude payment of the claim under this subpart.

(d) *Definition.* Quarters means a house, apartment or other residence that is a Department employee's principal residence.

#### § 15.21 Filing of claims.

(a) *Who may file.* (1) A claim may be made pursuant to this subpart by an employee or by a spouse or authorized agent, or legal representative on behalf of the employee. If the employee is deceased, the claim may be filed by a survivor in the following order of preference: spouse, children, parent, brother or sister or the authorized agent or legal representative of such person or persons.

(2) A claim may not be made hereunder by or for the benefit of a subrogee, assignee, conditional vendor or other third party.

(b) *Where to file.* A claim hereunder must be presented in writing. If the claimant's official duty station is at the Department's national office in Washington, DC., or if the claim is for an amount in excess of \$25,000, the claim should be filed with the Counsel for Claims and Compensation, Office of the Solicitor of Labor, U.S. Department of Labor, Suite S4325, 200 Constitution Avenue, NW., Washington, DC 20210. In all other cases the claimant shall address the claim to the regional or branch office of the Solicitor of Labor servicing the claimant's official duty station.

(c) *Evidence required.* The claimant is responsible for substantiating ownership or possession, the facts

surrounding the loss or damage, and the value of the property. Any claim filed hereunder must be accompanied by the following:

(1) A written statement, signed by the claimant or his or her authorized agent, setting forth the circumstances under which the damage or loss occurred. This statement shall also include:

(i) A description of the type, design, model number or other identification of the property.

(ii) The date of purchase or acquisition and the original cost of the property.

(iii) The location of the property when the loss or damage occurred.

(iv) The value of the property when lost or damaged.

(v) The actual or estimated cost of the repair of any damaged item.

(vi) The purpose of and authority for travel, if the loss or damage occurred incident to transportation or to the use of a motor vehicle.

(vii) Any and all available information as to the party responsible for the loss or damage, if such party is someone other than the claimant, and all information as to insurance contracts, whether held by the claimant or by the party responsible.

(2) Copies of all available and appropriate documents such as bills of sale, estimates of repairs, or travel orders. In the case of an automobile, the claimant must file two estimates of repair or a certified paid bill showing the damage incurred and the cost of all parts, labor and other items necessary to the repair of the vehicle or a statement from an authorized dealer or repair garage showing that the cost of such repairs exceeds the value of the vehicle.

(3) A copy of the power of attorney or other authorization if the claim is filed by someone other than the employee.

(4) A statement from the employee's immediate supervisor confirming that possession of the property was reasonable, useful or proper under the circumstances and that the damage or loss was incident to service.

(d) *Time limitations.* A claim under this part may be allowed only if it is filed in writing within 2 years after accrual of the claim. For the purpose of this part, a claim accrues at the later of:

(1) the time of the accident or incident causing the loss or damage;

(2) such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence; or

(3) such time as cause preventing filing no longer exists or as war or armed conflict ends, whichever is earlier, if a claim otherwise accrues during war or an armed conflict or has

accrued within two years before war or an armed conflict begins, and for cause shown.

#### § 15.22 Allowable claims.

(a) A claim may be allowed only if the property involved was being used incident to service with the Department and:

(1) The damage or loss was not caused wholly or partly by the negligent or wrongful act or omission of the claimant, his or her agent, the members of his or her family, or his or her private employee (the standard to be applied is that of reasonable care under the circumstances); and

(2) The possession of the property lost or damaged and the quantity and the quality possessed is determined to have been reasonable, useful or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this subpart shall not be disallowed solely because the claimant was not the legal owner of the property for which the claim is made.

(c) Subject to the conditions in paragraph (a) of this section and the other provisions of this subpart, any claim for damage to, or loss, of personal property incident to service with the Department may be considered and allowed. For the purpose of subpart B of this part, an alternative work location at which an employee is performing duties pursuant to an approved Flexiplace agreement shall be considered an official duty station. The following are examples of the principal types of claims which may be allowed, but these examples are not exclusive and other types of claims may be allowed, unless hereinafter excluded:

(1) *Property or damage in quarters or other authorized places.* Claims may be allowable for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 States or the District of Columbia that were assigned to the claimant or otherwise provided in kind by the United States; or

(ii) Quarters outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or otherwise provided in kind by the United States, except when the claimant is a civilian employee who is a local inhabitant; or

(iii) Any warehouse, office, working area or other place (except quarters) authorized or apparently authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to order or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *Mobile homes.* Claims may be allowed for damage to, or loss of, mobile homes and their contents under the provisions of paragraph (c)(2) of this section. Claims for structural damage to mobile homes, other than that caused by collision, and damage to contents of mobile homes resulting from such structural damage, must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. Claims for damage to, or loss of, tires mounted on mobile homes will not be allowed, except in cases of collision, theft or vandalism.

(4) *Enemy action or public service.* Claims may be allowed for damage to, or loss of, property as a direct consequence of:

(i) Enemy action or threat thereof, or combat, guerrilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals.

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster.

(iii) Efforts by the claimant to save human life or Government property.

(5) *Property used for the benefit of the Government.* Claims may be allowed for damage to, or loss, of property when used for the benefit of the Government at the request of, or with the knowledge and consent of superior authority.

(6) *Clothing and Accessories.* Claims may be allowed for damage to, or loss of, clothing and accessories customarily worn on the person, such as eyeglasses, hearing aids, or dentures.

(7) *Expenses incident to repair.* Claimants may be reimbursed for the payment of any sales tax incurred in connection with repairs to an item. The costs of obtaining estimates of repair (subject to the limitations set forth in § 15.14(c)) are also allowable.

#### § 15.23 Restrictions on certain claims.

Claims of the type described in this section are only allowable subject to the restrictions noted:

(a) *Money or currency.* Claims may be allowed for loss of money or currency (which includes coin collections) only when lost incident to fire, flood, hurricane, other natural disaster, or by theft from quarters (as limited by § 15.22(c)(1)). In incidents of theft from quarters, it must be conclusively shown

that the quarters were locked at the time of the theft. Reimbursement for loss of money or currency is limited to an amount which is determined to have been reasonable for the claimant to have had in his or her possession at the time of the loss.

(b) *Government property.* Claims may only be allowed for property owned by the United States for which the claimant is financially responsible to an agency of the Government other than the Department.

(c) *Estimate fees.* Claims may include fees paid to obtain estimates of repairs only when it is clear that an estimate could not have been obtained without paying a fee. In that case, the fee may be allowed only in an amount determined to be reasonable in relation to the value of the property or the cost of the repairs.

(d) *Automobiles and motor vehicles.* Claims may only be allowed for damage to, or loss of automobiles and other motor vehicles if:

(1) Such motor vehicles were required to be used for official Government business (official Government business, as used here, does not include travel, or parking incident thereto, between quarters and office, or use of vehicles for the convenience of the owner. However, it does include travel, and parking incident thereto, between quarters and an assigned place of duty specifically authorized by the employee's supervisor as being more advantageous to the Government); or

(2) Shipment of such motor vehicles was being furnished or provided by the Government, subject to the provisions of § 15.25.

(e) *Computers and Electronics.* Claims may be allowed for loss of, or damage to, cellular phones, fax machines, computers and related hardware and software only when lost or damaged incident to fire, flood, hurricane, other natural disaster, or by theft from quarters (as limited by § 15.22(c)(1)) or unless it is being shipped as a part of a change of duty station paid for by the Department. In incidents of theft from quarters, it must be conclusively shown that the quarters were locked at the time of the theft.

#### § 15.24 Unallowable claims.

Claims are not allowable for the following:

(a) *Unassigned quarters in United States.* Property loss or damage in quarters occupied by the claimant within the 50 States or the District of Columbia that were not assigned to him or otherwise provided in kind by the United States.

(b) *Business property.* Property used for business or profit.

(c) *Unserviceable property.* Wornout or unserviceable property.

(d) *Illegal possession.* Property acquired, possessed or transferred in violation of the law or in violation of applicable regulations or directives.

(e) *Articles of extraordinary value.* Valuable articles, such as cameras, watches, jewelry, furs or other articles of extraordinary value. This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, if reasonable protection or security measures have been taken by claimant.

(f) *Intangible property.* Loss of property that has no extrinsic and marketable value but is merely representative or evidence of value, such as non-negotiable stock certificates, promissory notes, bonds, bills of lading, warehouse receipts, insurance policies, baggage checks, and bank books, is not compensable. Loss of a thesis, or other similar item, is compensable only to the extent of the out-of-pocket expenses incurred by the claimant in preparing the item such as the cost of the paper or other materials. No compensation is authorized for the time spent by the claimant in its preparation or for supposed literary value.

(g) *Incidental expenses and consequential damages.* The Act and this subpart authorize payment for loss of or damage to personal property only. Except as provided in § 15.22(c)(7), consequential damages or other types of loss or incidental expenses (such as loss of use, interest, carrying charges, cost of lodging or food while awaiting arrival of shipment, attorney fees, telephone calls, cost of transporting claimant or family members, inconvenience, time spent in preparation of claim, or cost of insurance premiums) are not compensable.

(h) *Real property.* Damage to real property is not compensable. In determining whether an item is considered to be an item of personal property, as opposed to real property, normally, any movable item is considered personal property even if physically joined to the land.

(i) *Commercial property.* Articles acquired or held for sale or disposition by other commercial transactions on more than an occasional basis, or for use in a private profession or business enterprise.

(j) *Commercial storage.* Property stored at a commercial facility for the convenience of the claimant and at his or her expense.

(k) *Minimum amount.* Loss or damage amounting to less than \$25.

**§ 15.25 Claims involving carriers or insurers.**

In the event the property which is the subject of the claim was lost or damaged while in the possession of a commercial carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(b) Whenever property is damaged, lost or destroyed incident to the claimant's service and is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage, prior to the filing of the claim against the Government.

(c) Failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer had the claim been timely or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude reasonable filing of such a claim or diligent prosecution, or the evidence indicates a demand was impracticable or would have been unavailing.

(d) Following the submission of the claim against the carrier or insurer, the claimant may immediately submit his claim against the Government in accordance with the provisions of this subpart, without waiting until either final approval or denial of the claim is made by the carrier or insurer.

(1) Upon submitting his or her claim, the claimant shall certify in his claim that he or she has or has not gained any recovery from a carrier or insurer, and enclose all correspondence pertinent thereto.

(2) If final action has not been taken by the carrier or insurer on the claim, the claimant shall immediately notify them to address all correspondence in

regard to the claim to the appropriate Office of the Solicitor of Labor.

(3) The claimant shall advise the appropriate Office of the Solicitor of any action taken by the carrier or insurer on the claim and, upon request, shall furnish all correspondence, documents, and other evidence pertinent to the matter.

(e) The claimant shall assign to the United States, to the extent of any payment on the claim accepted by him or her, all rights, title and interest in any claim he or she may have against any carrier, insurer, or other party arising out of the incident on which the claim against the United States is based. After payment of the claim by the United States, the claimant shall, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment received by him or her from the United States.

(f) Where a claimant recovers for the loss from the carrier or insurer before his or her claim under this subpart is settled, the amount of recovery shall be applied to the claim as follows:

(1) When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this part, no compensation is allowable under this subpart.

(2) When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss.

(3) For this purpose, the claimant's total loss is to be determined without regard to the maximum payment limitations set forth in § 15.20. However, if the resulting amount, after making this deduction exceeds the maximum payment limitations, the claimant shall be allowed only the maximum amount set forth in § 15.20.

**§ 15.26 Claims procedures.**

(a) *Award.* The Counsel for Claims and Compensation, the Regional Solicitors, and the Associate Regional Solicitors are authorized to consider, ascertain, adjust, determine, compromise and settle claims filed under this subpart that arose within their respective jurisdictions, except that any claim for an amount in excess of \$25,000 shall fall within the exclusive jurisdiction of the Counsel for Claims and Compensation.

(b) *Form of claim.* Any writing received by the Office of the Solicitor within the time limits set forth in § 15.21(d) will be accepted and considered a claim under the Act if it constitutes a demand for compensation from the Department. A demand is not

required to be for a specific sum of money.

(c) *Notification.* The determination upon the claim shall be provided to the claimant in writing by the deciding official.

**§ 15.27 Computation of award and finality of settlement.**

(a) The amount allowable for damage to or loss of any item of property may not exceed the lowest of:

(1) the amount requested by the claimant for the item as a result of its loss, damage or the cost of its repair;

(2) the actual or estimated cost of its repair; or

(3) the actual value at the time of its loss, damage, or destruction. The actual value is determined by using the current replacement cost or the depreciated value of the item since its acquisition, whichever is lower, less any salvage value of the item in question.

(b) Depreciation in value is determined by considering the type of article involved, its cost, its condition when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(c) Current replacement cost and depreciated value are determined by use of publicly available adjustment rates or through use of other reasonable methods at the discretion of the official authorized to issue a determination upon the claim in question.

(d) Replacement of lost or damaged property may be made in kind wherever appropriate.

(e) At the discretion of the official authorized to issue the determination upon the claim in question, a claimant may be required to turn over an item alleged to have been damaged beyond economical repair to the United States, in which case no deduction for salvage value will be made in the calculation of actual value.

(f) Notwithstanding any other provisions of law, settlement of claims under the Act are final and conclusive.

**§ 15.28 Attorney fees.**

No more than 10 per centum of the amount in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim.

**§ 15.29 Reconsideration.**

(a) *Deciding Official.* While there is no appeal from the decision of the deciding official in regard to claims under the Act, the deciding official may always reconsider his or her determination of a claim.

(b) *Claimant.* A claimant may request reconsideration from the deciding official by directing a written request for reconsideration to the deciding official within 180 days of the date of the original determination. The claimant must clearly state the factual or legal basis upon which he or she rests the request for a more favorable determination.

(c) *Notification.* The determination upon the reconsideration will be provided to the claimant in writing by the deciding official.

### **Subpart C—Claims Arising Out of the Operation of the Job Corps**

#### **§ 15.40 Scope and purpose.**

(a) The purpose of this subpart is to set forth regulations relating to claims for damage to persons or property arising out of the operation of Job Corps which the Secretary of Labor finds to be a proper charge against the United States but which are not cognizable under the Federal Tort Claims Act.

(b) This subpart further amplifies the regulatory provisions set forth in 20 CFR 638.526(b) regarding such claims.

#### **§ 15.41 Allowable claims.**

(a)(1) A claim for damage to persons or property arising out of an act or omission of a student enrolled in the Job Corps may be considered pursuant to § 436(b) of the Job Training Partnership Act (29 U.S.C. 1706(b)):

(i) if the act or omission which gave rise to the claim took place at the center to which the student involved was assigned, or

(ii) if the student involved was not within the geographical limits of his hometown and was within 100 miles of the center to which he or she was assigned, or while he or she was on authorized travel to or from the center.

(2) The claim may be paid if the deciding official, in his or her discretion, finds the claim to be a proper charge against the United States resulting from an act or omission of a student enrolled in the Job Corps.

(b) A claim for damage to person or property hereunder may not be paid if the claim is cognizable under the Federal Tort Claims Act (28 U.S.C. 2677).

(c) A claim for damage to person or property may be adjusted and settled hereunder in an amount not exceeding \$1500.

#### **§ 15.42 Claim procedures.**

(a) *Claim.* A claim under this subpart must be in writing and signed by the claimant or by an authorized representative. It must be received by the Office of the Solicitor within two years of the date upon which the claim accrued.

(b) *Award.* The Regional Solicitors and Associate Regional Solicitors are authorized to consider, ascertain, adjust, determine, compromise and settle claims filed under this subpart that arose within their respective jurisdictions.

(c) *Notification.* The determination upon the claim shall be provided to the claimant in writing by the deciding official.

(d) *Reconsideration.* Reconsideration of a determination under this subpart shall be available pursuant to the procedures and limitations set forth in § 15.29.

Signed at Washington, D.C., this 14th day of April 1995.

**Robert B. Reich,**

*Secretary of Labor.*

[FR Doc. 95-9659 Filed 4-18-95; 8:45 am]

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